No. SC101541

In the Supreme Court of Missouri

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE MISSOURI STATE CONFERENCE, *et al.*,

Appellants,

v.

MIKE KEHOE, *et al.*,

Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Christopher K. Limbaugh
Case No. 25AC-CC006724

BRIEF OF STATE RESPONDENTS

CATHERINE L. HANAWAY
ATTORNEY GENERAL

LOUIS J. CAPOZZI, III, #77756
Solicitor General
JOSEPH KIERNAN, #77798
Assistant Solicitor General

Counsel for Respondents

815 Olive Street, Suite 200
St. Louis, MO 63101
Phone: (573) 645-9662
Fax: (314) 340-7981
Louis.Capozzi@ago.mo.gov
Joseph.Kiernan@ago.mo.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes & Constitutions

Rules

Other Authorities

INTRODUCTION

Dissatisfied with legislation enacted by the Missouri General Assembly, Appellants bring this moot and nonjusticiable appeal to rewrite one of the oldest parts of Missouri's Constitution, Article IV, § 9:

> The governor shall, at the commencement of each session of the general assembly, at the close of his term of office, and at such other times as he may deem necessary, give to the general assembly information as to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary.

Id. Section 9 empowers the Governor to call the General Assembly into an extraordinary session to consider matters he deems "necessary." *Id.* In seeking to second-guess the Governor's choice to call a special session, Appellants claim that this is a "case of first impression." Appellants' Br. 15. The reason why is clear. The executive's § 9 discretionary power to convene the General Assembly is so well-established, so clearly evidenced by the plain text of the Constitution, and so fundamental to the republican form of government at the federal level and across the States—that there is *no legitimate legal question* over the Governor's power.

Having lost below, Appellants gambit to rewrite Article IV fails for at least five independently sufficient reasons. *First*, Appellants lacked standing to bring this suit at all. Below, Appellants pointed to two potential injuries—expenses incurred by the General Assembly during the extraordinary session and their own lobbying expenses. The former is not cognizable for purposes of taxpayer standing. *City of Slater v. State*, 494 S.W.3d

580, 587 (Mo. App. W.D. 2016), *abrogated on other grounds, Goodman v. Saline Cnty. Comm'n*, 2024 WL 1392392 (Mo. App. W.D. Apr. 2, 2024) (quoting *John T. Finley, Inc. v. Mo. Health Facils. Review Comm.*, 904 S.W.2d 1, 3 (Mo. App. W.D. 1995)). The latter is a self-inflicted injury that cannot give rise to standing. *See Mo. State. Conf. of Nat'l Ass'n for the Advancement of Colored People v. State*, 730 S.W.3d 550, 564 (Mo. banc 2026) (holding that plaintiffs "cannot manufacture standing").

Second, this suit is moot. Appellants' purported injuries—like expenses incurred by the General Assembly during the extraordinary session—cannot be remedied by any court because the extraordinary session is over. Any expenses incurred during the extraordinary session have been paid and cannot be recovered. Thus, even assuming Appellants had an injury at the start of the case, any such injury can no longer be redressed by a favorable ruling from this Court. *See Mo. NAACP*, 730 S.W.3d at 563 ("A claim becomes moot when an event 'makes a court's decision unnecessary or makes granting effectual relief by the court impossible.'" (quoting *D.C.M. v. Pemiscot Cnty. Juv. Off.*, 578 S.W.3d 776, 780 (Mo. banc 2019))). Thus, Appellants are necessarily asking this Court to render an advisory opinion—which this Court cannot do.

Third, Appellants' claim fails on the merits. The Governor has discretionary power to call an extraordinary session of the General Assembly under Article IV, § 9. As a matter of plain text and ordinary understanding, "extraordinary occasions" simply refers to times outside of the regular sessions of the General Assembly when the Governor may convene the Legislature. And the session may address whatever topic he deems "necessary." Mo. Const. art. IV, § 9. The Missouri Constitution makes clear that no one is empowered to

second-guess the Governor's determination of what constitutes an "extraordinary occasion," or what is "necessary" for the General Assembly to consider. After all, the Governor, like the President, is "invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience." *Marbury v. Madison*, 5 U.S. 137, 165–66 (1803).

Fourth, Missouri's political question doctrine bars Appellants' suit. The political question doctrine exists for cases exactly such as this where litigants attempt to compel courts to sit in review of political decisions by coordinate branches. The Missouri Constitution makes clear that the extraordinary session can address whatever the Governor deems "necessary." Mo. Const. art. IV, § 9. Here, Appellants, dissatisfied with the legislative products of the extraordinary session, ask this Court to second-guess the Governor's determination of what is "necessary," including the "extraordinary occasion." Their basis? They believe the Governor's reasons are insufficient based on their own, imposed requirement of some sufficient departure from the "status quo." *See* Appellants' Br. 17. But that is a quintessential policy—not a legal—argument. Appellants provide no manageable judicial standard to second-guess a decision the Missouri Constitution expressly allows the Governor to make—bringing this case squarely within the ambit of the political question doctrine. *See Baker v. Carr*, 369 U.S. 186, 217 (1962). Notably, the vast majority of other courts to consider cases like this one have found gubernatorial extraordinary session calls to be a political question. *See, e.g.*, *State ex rel. Andrews v. Quam*, 7 N.W.2d 738, 738–9 (N.D. 1943) (holding that the question of what merits an

"extraordinary occasion . . . . is to be determined by the governor alone and is not subject to challenge or review by the courts"); *Herzberger v. Kelly*, 7 N.E.2d 865 (Ill. 1937).

Finally, even if this Court entertained reversing the Circuit Court's well-reasoned judgment, well-established equitable principles counsel delaying judicial relief until after the 2026 midterm elections. Both pieces of legislation enacted during the extraordinary session concerned the imminent midterm elections, especially Missouri's new congressional map under H.B. 1. By enjoining the 2025 Plan, this Court would sew enormous chaos. It should follow its established precedent in *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1 (Mo. banc 1970) (per curiam), and delay any relief until after the 2026 elections.

For all these reasons, this Court should affirm.

STATEMENT OF FACTS

On August 29, 2025, Governor Kehoe issued a Proclamation calling the Missouri General Assembly to convene in extraordinary session on September 3, 2025. Pursuant to this Proclamation, the General Assembly convened on September 3, 2025, and considered the legislative matters related to congressional redistricting and ballot measure reform delineated in the Proclamation. The General Assembly passed two pieces of legislation: (1) H.B. 1, enacting a new congressional map for Missouri (the "2025 Plan"); and (2) House Joint Resolution 3 ("H.J.R. 3"), a proposed constitutional amendment that would tighten the standards for ballot measures. The General Assembly adjourned *sine die* on September 12, 2025, and Governor Kehoe signed H.B. 1 on September 28, 2025. The 2025 Plan is now Missouri's operational congressional map. *See Luther v. Hoskins*, 730 S.W.3d 567, 574 (Mo. banc 2026).

On September 3, 2025, Appellants brought this suit challenging the Governor's Proclamation and the extraordinary session of the General Assembly. D2. On September 4, 2025, Appellants moved to preliminary enjoin and temporarily restrain the General Assembly from meeting. D21. On September 8, 2025, Appellants moved for a change of judge. D24. On September 14, 2025, shortly before the September 15 hearing, Appellants filed their First Amended Petition, D36, which reduced their claims to a declaratory judgment and preliminary injunction alleging that the Governor's Proclamation was insufficient. Appellants' Amended Petition excluded Count II of their initial petition, which contended that Article III, § 45 did "not grant authority to create new congressional boundaries without a decennial census certification." D2 at 14–15. On October 31, the

Circuit Court denied Appellants' motion for a temporary restraining order and preliminary injunction. D47.

The Circuit Court held a bench trial on December 15, 2025. D1 p. 15. On February 13, 2026, the Circuit Court entered judgment in favor of Respondents, upholding the Governor's discretionary authority under Article IV, § 9 to call an extraordinary session of the Missouri General Assembly. D57. The Circuit Court also held that the "issue is one of a political question to be properly determined by the sitting governor of the State of Missouri, and not the courts." D57 at 5. On March 2, Appellants filed their notice of appeal in this Court.

ARGUMENT

I. Appellants lacked standing to bring this suit in the first place.

In the Circuit Court, Appellants pointed to two bases for their standing—expenses incurred by the General Assembly during the extraordinary session and their planned expenses incurred in lobbying the General Assembly. *See* D36 at 3. Neither injury is legally cognizable. *See Matter of A.L.P.*, 729 S.W.3d 236, 240 (Mo. banc 2026). ("To have standing, a party must have a 'legally cognizable interest in the subject matter' and 'a threatened or actual injury.'" (quoting *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 46 (Mo. banc 1989))).

A. Appellants lack taxpayer standing.

To prove taxpayer standing, Appellants "must establish that one of three conditions exists: '(1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality.'" *State ex rel. Mo. Automobile Dealers Ass'n v. Mo. Dept. of Revenue & Its Dir.*, 541 S.W.3d 585, 592 (Mo. App. W.D. 2017) (quoting *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011)). Below, Appellants relied only on the first condition, a "direct expenditure of funds." See D36 ¶¶ 73, 77. In particular, Appellants pointed to the state legislators' compensation during the extraordinary session. See *id.* at 3.

Taxpayer standing does not allow a litigant to challenge the General Assembly's session expenditures. "A series of cases holds that 'general operating expenses which [an agency] incurs regardless' of the allegedly illegal activity are not 'direct' expenditures, and are insufficient to establish taxpayer standing." *City of Slater*, 494 S.W.3d at 587 (quoting

Finley, 904 S.W.2d at 3). In *City of Slater*, the Western District explained that "'salaries for staff time of [agency] employees, correspondence and telephone calls' used to engage in the allegedly unlawful activity are 'not the type of expenditure of public funds which would give standing, as they are general operating expenses which would be incurred whether or not the challenged transaction took place.'" *Id.* (quoting *Ours v. City of Rolla*, 965 S.W.2d 343, 346 (Mo. App. S.D. 1998)).

Simply put, expenditures for legislators conducting legislative business, such as per diem payments, are not "direct expenditures" that confer taxpayer standing. *State ex rel. Mo. Auto. Dealers Ass'n*, 541 S.W.3d at 592.

B. Appellants lack direct standing.

Appellants have also not pointed to any other injury that confers standing. Below, Appellants pointed to the lobbying expenses they incurred during the extraordinary session. *See* D36 at 3. But that is simply a self-inflicted injury and not cognizable. *See Mo. NAACP*, 730 S.W.3d at 563 (plaintiffs cannot "manufacture" standing); *accord Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 418 (2013) (holding that "self-inflicted injuries" do not "give rise to standing"). The Governor's decision to call an extraordinary session did not *force* Appellants to spend money lobbying legislators; therefore, Appellants cannot prove their so-called injury is fairly traceable to the actions they challenge. *See Clapper*, 568 U.S. at 418.

II. Appellants' suit is moot.

Eight months after the adjournment *sine die* of the General Assembly's second extraordinary session, this suit remains moot. In Missouri, "[a] cause of action is moot

when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any then existing controversy." *River Fleets, Inc. v. Creech*, 36 S.W.3d 809, 813 (Mo. App. W.D. 2001) (quoting *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 325 (Mo. banc 2000)). And "[a]s a general rule, moot cases must be dismissed." *Friends of San Luis, Inc. v. Archdiocese of St. Louis*, 312 S.W.3d 476, 484 (Mo. App. E.D. 2010) (quoting *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 227 (Mo. banc 1982)).

The General Assembly's extraordinary session is long-complete, "an event . . . that makes [this] court's decision unnecessary" and "makes granting effectual relief by the court impossible . . . ." *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001) (quoting *Armstrong v. Elmore*, 990 S.W.2d 62, 64 (Mo. App. W.D. 1999); *Kinsky v. Steiger*, 190 S.W.3d 194, 195 (Mo. App. E.D. 2003)). Here, an "intervening event" occurred—the General Assembly's adjournment *sine die* on September 12, 2025—which "alter[ed] the position of the parties that any judgment rendered [merely becomes] a hypothetical opinion." *Reed*, 41 S.W.3d at 473 (quoting *Armstrong*, 990 S.W.2d at 64). After that, it became impossible for the Circuit Court—or this Court—to redress any of Appellants' alleged injuries.

Appellants' purported injuries and sought relief demonstrate the mootness of this case and reveal fatal redressability defects. In their pretrial briefing, Appellants pointed to the General Assembly's expenditures during the extraordinary session and their lobbying expenses as bases for standing. D51 at 5.

They cannot obtain relief for either of these alleged harms. The General Assembly's expenditures during the extraordinary session have already been expended. Declaratory and permanent injunctive relief would not rescind those payments already made to legislators. Likewise, Appellants' lobbying expenses during the extraordinary session also cannot be recovered. Thus, this Court cannot grant "effectual relief" to redress Appellants' supposed injuries. *Reed*, 41 S.W.3d at 473.

Appellants' only response on appeal has been to indirectly invoke the public policy exception to mootness. Appellants' Br. 7. It does not apply. The public policy mootness exception applies "if a case presents an issue that (1) is of general public interest and importance, (2) will recur, and (3) will evade appellate review in future live controversies." *City of Manchester v. Ryan*, 180 S.W.3d 19, 22 (Mo. App. E.D. 2005) (quoting *McNeil-Terry v. Roling*, 142 S.W.3d 828, 832 (Mo. App. E.D. 2004)). "This . . . exception is very narrow . . . and if an issue of public importance in a moot case is likely to be present in a future live controversy practicable capable of review, the 'public interest' exception does not apply." *Id.* (quoting *Kinsky*, 109 S.W.3d at 196 (Mo. App. E.D. 2003)).

And, here, the exception does not apply because the issue of the Governor's authority under Article IV, § 9 to call extraordinary sessions "is likely to be present in a future live controversy practically capable of review." *Id.* Appellants admitted to this in their first amended petition. *See generally* D36. There, they observed that "[s]ince 1944, there have been at least 33 extraordinary sessions convened by the Governor." D36 ¶ 49. The frequency with which the Missouri Governor calls extraordinary sessions demonstrates that Missouri courts will have ample opportunities to render an opinion on

"the definition of and parameters around the term 'extraordinary occasion . . . .'" *See* D36 ¶ 52. Therefore, though the issue is capable of repetition, it will not evade review.

Further, there is no reason why a court could not—in a future case—adjudicate a challenge to an extraordinary session *before* the extraordinary session ends. Experience suggests Missouri's courts are capable of adjudicating challenges within a few weeks. *See, e.g.*, *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024) (recounting that case advanced from filing in late August through the circuit court to publication of Supreme Court opinion on September 20). Here, Appellants' own dilatoriness prevented that from happening. Appellants waited to file their motion for preliminary injunctive relief only after the General Assembly had already convened on September 3. D21. They then moved for a change of judge on September 8, causing further delay. D24. By the time a new judge was assigned, only four days were left in the extraordinary session.

Given this case's clear mootness, Appellants are necessarily asking this Court for an advisory opinion, one which this Court is "not authorized" to issue. *Cope v. Parson*, 570 S.W.3d 579, 586 (Mo. banc 2019) (citing *Marsh*, 626 S.W.2d at 227); *see also State ex rel. Heart of Am. Council v. McKenzie*, 484 S.W.3d 320, 324 n.3 (Mo. banc 2016) ("An opinion is advisory if there is no justiciable controversy . . . ."). This Court should find this case moot and affirm.

III. The Governor has the discretionary power to call an extraordinary session under Article IV, § 9 of the Missouri Constitution (responds to Point Relied On I).

Article IV, § 9 is straightforward. It grants the Governor the authority to call extraordinary sessions of the General Assembly at his discretion. It states:

> The governor shall, at the commencement of each session of the general assembly, at the close of his term of office, and at such other times as he may deem necessary, give to the general assembly information as to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. *On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary*.

Mo. Const. art. IV, § 9 (emphasis added). The last sentence—"On extraordinary occasions he may convene the general assembly. . . ."—assigns the Governor power to convene extraordinary sessions of the General Assembly at times of his choosing. Drawing from the plain text, Article IV's panoply of executive powers, Article III's assignment of analogous powers to the General Assembly to convene *sua sponte*, persuasive federal and state authorities, and logic—the Governor can call an extraordinary session whenever he determines an "extraordinary occasion[]" exists for the General Assembly to meet outside regular session.

The Missouri Constitution has expressly given the Governor discretion to call an extraordinary session since the very beginning. Indeed, the 1820 Constitution was materially identical: "On extraordinary occasions he may convene the general assembly by proclamation, and shall state to them the purposes for which they are convened." Mo. Const. (1820) art. IV, § 7. The 1820 Constitution also replicated the "extraordinary occasions" language in the U.S. Constitution's presidential congressional convening power, U.S. Const. art. II, § 3, likely the model for Missouri's provision. The President's discretionary prerogative has never been doubted. *See infra* at Section III.C. Unsurprisingly, § 9 also aligns with a vast host of executive convening powers in state

constitutions across the country too. Those States have held that it is the Governor's discretionary, political decision—alone—to call an extraordinary session of the legislature.

Despite the ancient lineage of § 9, Appellants can point to no case where a litigant ever second-guessed the Governor's decision to call an extraordinary session. When Missouri courts considered § 9, or its prior analogues, they focused on interpreting the *General Assembly's compliance* with the Governor's message, not the Governor's discretionary choice to issue a proclamation and designate matters for legislative consideration. *See, e.g.*, *Lauck v. Reis*, 274 S.W. 827, 831 (Mo. 1925) ("[T]his much having been said regarding the purpose and effect of the special message of the Governor, let us proceed to analyze the particular paragraph of that message above referred to with the purpose of determining whether it conferred power upon the General Assembly in extra session."). Meanwhile, neither this Court nor any lower Missouri court has *any* precedent which divests or even suggests divesting the Governor of his executive power to convene the General Assembly in extraordinary session. Nor does any Missouri law or precedent define "extraordinary occasion" or limit the Governor's discretion to decide when such an "extraordinary occasion" arises.

Clear meaning, plain text, constitutional context, and strongly persuasive federal and sister state authorities all point in one direction: the Governor wields the discretionary power to decide when to call an extraordinary session of the General Assembly. Against all this authority, Appellants invite this Court to adopt a freewheeling test—invented seemingly *ex nihilo*—where courts would routinely be allowed to second-guess the calling of extraordinary sessions. Appellants' Br. 17. But Appellants cite *zero* Missouri

constitutional text or precedent supporting their position. They mangle out-of-state precedent yet fail to find *any authority* which supports their position. This Court should not accept their invitation to rewrite § 9.

A. "Extraordinary occasions" merely refers to times designed by the Governor outside of regular sessions of the General Assembly.

The commonsense understanding of "extraordinary occasions," Mo. Const. art. IV, § 9, simply means convening the General Assembly (or any other convened legislative body) outside of its "regular session[s]." *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 190, 190 n.6 (1972) (observing that under the Minnesota Constitution, similar to the U.S. Constitution, "[p]ower is vested in the Governor to convene both houses of the legislature 'on extraordinary occasions'"). Examples are plentiful. *See, e.g.*, U.S. Const. art. II, § 3 (the President "may, on extraordinary Occasions, convene both Houses, or either of them"); *City of St. Louis v. Withaus*, 16 Mo. App. 247, 250 (Mo. App. 1884) (discussing how extra sessions can be called "upon extraordinary occasions").

There is no indication that this phrase is ambiguous, despite Appellants' strenuous endeavors to the contrary. Appellants' own citations to the history of § 9 in Missouri—a history which stretches back more than *two centuries*—speaks to this. *See* Appellants' Br. 15. It is a simple assignment of authority in the hands of the Governor. And it is a "cardinal rule that, when the language is plain, there can be no construction because there is nothing to construe." *State ex rel. Brown v. Bd. of Educ. of City of St. Louis*, 242 S.W. 85, 87 (Mo. banc 1922).

1. Even entertaining Appellants' view that "extraordinary occasions" is ambiguous, all analysis cuts in favor of the Governor's discretionary power.

Even pondering Appellants' novel view that "extraordinary occasions" is ambiguous, all indicia of constitutional analysis favor gubernatorial discretion. None favor Appellants' rewrite, which characterizes "extraordinary occasions" as some type of emergency clause—without any basis in law or constitutional text—that litigants, rather than the State's chief executive, have the prerogative to define. *See State, ex rel. Mo. Hwy. & Transp. Comm'n v. Pruneau*, 652 S.W.2d 281 (Mo. App. S.D. 1983) ("[T]he courts of this state may not interfere with, or attempt to control, the exercise of discretion by the executive department in those areas where, as in this case, the law vests such a right to exercise judgment in a discretionary manner with the executive branch of government.").

Contrary to Appellants' beliefs, dictionaries reinforce the commonsense understanding of "extraordinary occasions." "Dictionary definitions contemporaneous with the ratification of the Constitution inform our understanding." *Utah v. Evans*, 536 U.S. 452, 492 (2002) (Thomas, J., concurring in part); *see also Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 346 (1999) (using "[d]ictionaries roughly contemporaneous with the ratification of the Constitution"); *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 568 n.2 (2012) (also using "contemporaneous" dictionaries). Since the phrase "extraordinary occasions" was added to the original Constitution, its original public meaning is best understood by how the term was used at the time.

Noah Webster's American Dictionary of the English Language (1828) captured how "extraordinary" would have been understood in the governmental context when it was first

inserted into the Missouri Constitution in 1820. It defines "extraordinary" as "[s]pecial; particular; sent for a special purpose, or on particular occasion; as an *extraordinary* courier or messenger; an embassador extraordinary; a gazette *extraordinary*."[1] This definition, describing how "extraordinary" was used in the context of government, fits squarely with the contemporary, plain text reading of the Constitution. "Extraordinary" simply means a session "for a special purpose," therefore, called on an "extraordinary occasion[]." This is exactly what Article IV, § 9 describes. The Constitution's requirements that the Governor proclaim the "purpose" of the extraordinary session buttresses this. Despite Appellants' efforts to obfuscate, the Constitution is exceptionally clear.

Missouri authority agrees too. When Missouri courts have considered "extraordinary occasions" language and executive discretion before, they have left whether the "extraordinary occasion" existed to the political actors. In 1925, the appellate courts pondered an analogous "extraordinary occasions" provision in a Columbia, Missouri ordinance. *See State ex inf. Hulen ex rel. McDonnell v. Brown*, 274 S.W. 965, 967 (Mo. 1925). The relevant Columbia ordinance closely tracked § 9, incorporating the "on extraordinary occasions" phrase verbatim: "He [the mayor] may, on extraordinary occasions, convene the city council, stating to them, when assembled, the object for which they are convened." *Hulen ex rel. McDonnell*, 274 S.W. at 967. The *Hulen ex rel. McDonnell* court held:

> It is evident from a reading of the statute and the ordinance that no limitations as to the duties of the mayor are set forth which the president of the council may not

[1] *Extraordinary*, *American Dictionary of the English Language* (1828), https://webstersdictionary1828.com/Dictionary/extraordinary, accessed Dec. 10, 2025.

> perform in such absence or disability. The right to call an extra session is given the president pro tem. under the ordinance. Whether or not there existed an extraordinary occasion for calling an extra session of the council will not be inquired into by this court.

Id. This judicial treatment of "extraordinary occasions" indicates that Missouri courts will (1) not probe beyond the statutory, or here, constitutional text, and (2) leave the definition of what merits an "extraordinary occasion" for an extraordinary legislative session to the political actors, or here, branches.

Strongly persuasive authority aligns with this as well. Interpreting Kansas's identical "extraordinary occasions" language, the Kansas Supreme Court in *Farrelly v. Cole*, 56 P. 492 (Kan. 1899), held that "the words 'extraordinary occasion," employed in the [U.S. and Kansas], have been construed, by long-continued custom and practical usage, not to be synonymous with 'over-powering and urgent necessity.'" *Farrelly*, 56 P. at 497. Despite Appellants' imaginary requirements for "extraordinary occasions," the Missouri Constitution simply means times the Governor defines outside of regular sessions of the Legislature.

South Carolina agrees too. Its supreme court interpreted a portion of the South Carolina Constitution materially identical to § 9 which reads that "[t]he Governor may on extraordinary occasions convene the General Assembly in extra session." *McConnell v. Haley*, 711 S.E.2d 886, 887 (S.C. 2011) (quoting S.C. Const. art. IV, § 19). Like in Missouri, the term "extraordinary occasions' is not defined by the [South Carolina] Constitution." *Id.* Yet, the South Carolina Supreme Court was crystal clear:

> State constitutional provisions will not be construed to impose limitations beyond their clear meaning. Because there is no indication in the Constitution as to what constitutes an "extraordinary occasion" to justify an extra session of the General Assembly, this matter *must be left to the discretion of the Governor and this Court may not review that decision*."

Id. (citing *Segars-Andrews v. Judicial Merit Selection Comm'n*, 691 S.E.2d 453 (S.C. 2010); *Farrelly*, 56 P. 492) (emphasis added). Constitutional silence, as in the Missouri Constitution, safeguards gubernatorial discretion. Courts "may not add words by implication when the plain language is clear and unambiguous." *Gray v. Taylor*, 368 S.W.3d 154, 156 (Mo. banc 2012) (citing *State ex rel. Young v. Wood*, 254 S.W.3d 871, 873 (Mo. banc 2008)).

B. Even assuming that "extraordinary occasions" is ambiguous, and then assuming that "extraordinary occasions" carries some meaning expressing exigency, the Governor wields discretionary authority to determine such "extraordinary occasions."

Eschewing plain text and common sense, the crux of Appellants' theory turns on contriving a new definition for "extraordinary occasions" to suit their political objective—wiping out the duly-enacted legislation of the General Assembly. *See* Appellants' Br. 16–17. They stitch together selective definitions, reinterpret them, and then fashion a bizarre tripartite test from "extraordinary occasions" which the Governor, apparently, must satisfy to exercise *a discretionary power*. *See id*. at 17. The flaws with Appellants' semantic exercise are discussed *infra* at Section III.F. However, even assuming Appellants' incorrect, theoretical rewriting of "extraordinary occasions" is the correct reading, it is still the Governor—and the Governor alone—who gets to decide whether an "extraordinary occasion" has arisen.

A straightforward parsing of § 9 reinforces this. Section 9's repeated use of the word "may" demonstrates the unilateral discretionary authority the Constitution grants to the Governor: "On extraordinary occasions he *may* convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary." Mo. Const. art. IV, § 9 (emphasis added). "Use of the word 'may' in a statute implies alternate possibilities and that the *conferee of the power has discretion in the exercise of the power*.'" *In re Estate of Parker*, 25 S.W.3d 611, 616 (Mo. App. W.D. 2000) (quoting *State ex rel. Nixon v. Boone*, 927 S.W.2d 892, 897 (Mo. App. W.D. 1996)) (emphasis added).

In contrast to the discretion of "may," § 9 uses the word "shall" to state the *sole requirement* for the Governor. *See Am. Fed'n of State, Cnty. & Mun. Emps. v. State*, 653 S.W.3d 111, 120 (Mo. banc 2022) ("[T]he word 'shall' imposes a mandatory duty."). Under § 9, the Governor "shall state specifically each matter on which action is deemed necessary." Mo. Const. art. IV, § 9. Parties do not dispute that Governor Kehoe complied with this *sole requirement* for extraordinary sessions under § 9. *State v. Adams*, 19 S.W.2d 671, 737 (Mo. banc 1929) (citations omitted).

The plain text of "deemed necessary" reveals further support for gubernatorial discretion. The subordinate phrase, "on which action is deemed necessary," Mo. Const. art. IV, § 9, buttresses the Governor's discretionary authority because the power to "deem[ ] necessary" an action *solely lies with the Governor*. *Id.* This aligns with other executive powers in Missouri's Constitution where the Governor defines whether certain conditions exist. *See Kinder v. Holden*, 92 S.W.3d 793, 810 (Mo. App. W.D. 2002) ("Thus,

'the power to decide whether a public exigency exists such as justifies the calling out of the militia is vested solely in the Governor.'" (quoting *McKittrick ex rel. Donaldson v. Brown*, 85 S.W.2d 385 (Mo. 1935))). No other authority, textual or otherwise, indicates to the contrary. *Id.* Unmoored from common readings of constitutional text, Appellants contend that the Proclamation requires some "actions that are necessary." Appellants' Br. 28. That may be their opinion, but that does not justify a judicial countermand of the Governor's discretionary decision. *See Independence-Nat. Educ. Ass'n v. Independence Sch. Dist.*, 223 S.W.3d 131, 137 (Mo. banc 2007) (reiterating that there is "no authority for this Court to read into the Constitution words that are not there"). Just as § 9 also "provides the governor 'shall recommend to [the general assembly's] consideration such measures *as he shall deem necessary and expedient*,'" *In re McGaugh*, 705 S.W.3d 535, 547 (Mo. banc 2025) (quoting Mo. Const. art. IV, § 9) (emphasis added), § 9 grants sole authority for the Governor to "deem necessary" actions for the General Assembly in the proclamation.

C. The analogous Article II, § 3 of the U.S. Constitution establishes unilateral, unreviewable executive discretion to call extraordinary legislative sessions.

The U.S. Constitution supports gubernatorial discretion too. *See* U.S. Const. art. II, § 3. Appellants decline to even engage with this clear indication that Missouri's Governor, like the President, wields discretionary authority to call extraordinary legislative sessions on "extraordinary occasions."

Article IV, § 9 of the Missouri Constitution mirrors Article II, § 3 of the U.S. Constitution where the President's power to convene Congress appears undoubted. Article

II, § 3 authorizes that the President "may, on extraordinary Occasions, convene both Houses, or either of them." The U.S. Supreme Court treats this convening power, housed in Article II (executive powers) as fully discretionary and at the disposal of the President. *See, e.g.*, *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 808 (2025) (Thomas, J., dissenting) (citations omitted) ("That provision means that he [the President] can make Congress meet . . . .").

Early practice is conclusive. When President Washington convened the U.S. Senate under Art. II, § 3, he did so "without in any manner disclosing what was the 'extraordinary occasion.' He did so on at least three subsequent occasions, and since his day at least nine other presidents have done the same thing," as of 1943. *State ex rel. Andrews*, 7 N.W.2d at 739 (N.D. 1943). "In 1898 the governor of Kansas followed the same rule, under the same circumstances, and in *Farrelly v. Cole* . . . the court held that such question is to be determined by the governor alone and is not subject to challenge or review by the courts." *Id.* (citations omitted). Neither the U.S. Supreme Court nor presidential practice suggest that any restrictions on this power exist within the Constitution or without. Since Missouri's convening clause was directly adopted from the U.S. Constitution of 1789,[2] this is powerful persuasive precedent that the Governor, like the President, decides when and what merits an "extraordinary occasion."

[2] The history of this core executive convoking power is even older and more fundamental, harkening back to the thirteenth century and the royal prerogative to summon Parliament. *See* Paul Brand, *The Development of Parliament, 1215–1307*, in *A Short History of Parliament* (Clyve Jones, ed., 2009), at 11 (describing how English kings summoned representatives in 1254, 1265, and 1295). Plaintiffs would rubbish this hallmark feature of our system of separation of powers.

D. The Governor's discretion to call extraordinary legislative sessions and determine what merits an "extraordinary occasion" is well-established across the States.

At least twenty-nine other States use the phrase "extraordinary occasion[s],"[3] authorizing the Governor to call for extraordinary sessions. Significant persuasive

[3] *See* Ala. Const. art. V, title 122 ("The governor may, by proclamation, on extraordinary occasions, convene the legislature at the seat of government. . . ."); Ark. Const. art. VI, § 19 ("The Governor may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government. . . ."); Cal. Const. art. IV, § 3(b) ("On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session."); Colo. Const. art. IV, § 9 ("The governor may, on extraordinary occasions convene the general assembly, by proclamation, stating therein the purpose for which it is to assemble. . . ."); Del. Const. art. III, § 16 ("He or she may on extraordinary occasions convene the General Assembly by proclamation. . . ."); Idaho Const. art. 4, § 9 ("The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it. . . ."); Kan. Const. art. I, § 5 ("The governor may, on extraordinary occasions, call the legislature into special session by proclamation. . . ."); Ky. Const. § 80 ("He may, on extraordinary occasions, convene the General Assembly at the seat of government. . . ."); Iowa Const. art. IV, § 11 ("He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened."); Maine Const. art. V, § 13 ("The Governor may, on extraordinary occasions, convene the Legislature; and in case of disagreement between the 2 Houses with respect to the time of adjournment, adjourn them to such time, as the Governor shall think proper, not beyond the day of the next regular session. . . ."); Md. Const. art. II, § 16 ("The Governor shall convene the Legislature, or the Senate alone, on extraordinary occasions. . . ."); Mich. Const. art. V, § 15 ("The governor may convene the legislature on extraordinary occasions."); Minn. Const. art. IV, § 12 ("A special session of the legislature may be called by the governor on extraordinary occasions"); N.C. Const. art. III, § 9 ("The Governor shall have power, on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation. . . ."); Neb. Const. art. IV, § 8 ("The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened. . . ."); Nev. Const. art. V, § 9 ("Except as otherwise provided in Section 2A of Article 4 of this Constitution, the Governor may, on extraordinary occasions, convene the Legislature by Proclamation. . . ."); N.Y. Const. art. IV, § 3 ("The governor shall have power to convene the legislature, or the senate only, on extraordinary occasions."); Ohio Const. art. III, § 8 ("The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the

precedent reveals that the apex courts of these States have refused to impose extra-constitutional restrictions on the governor's prerogative to call extraordinary sessions.

Farrelly v. Cole is instructive. The Constitution of Kansas states: "The governor may, on extraordinary occasions, call the legislature into special session by proclamation. . . ." Kan. Const. art. I, § 5. This clause is materially identical to Article IV, § 9 of the Missouri Constitution. Plaintiffs in *Farrelly*, almost exactly as Appellants here, challenged the validity of an extraordinary session called by the governor on grounds that no extraordinary occasion existed and the governor lacked sufficient reason to issue the proclamation. The Kansas Supreme Court invoked foundational principles to reject this challenge:

> This is a power the exercise of which the framers of the constitution have seen fit to intrust to the chief executive officer of the state alone. As they have not defined

---

purpose for which such special session is called. . . ."); Okla. Const. art. VI, § 7 ("The Governor shall have power to convoke the Legislature, or the Senate only, on extraordinary occasions."); Or. Const. art. V, § 12 ("He may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall state to both houses when assembled, the purpose for which they shall have been convened."); Pa. Const. art. IV, § 12 ("He may, on extraordinary occasions, convene the General Assembly. . . ."); R.I. Const. art. IX, § 7 ("The governor may, on extraordinary occasions convene the general assembly at any town or city in this state. . . ."); S.C. Const. art. IV, § 19 ("The Governor may on extraordinary occasions convene the General Assembly in extra session."); Tenn. Const. art. III, § 9 ("He may, on extraordinary occasions, convene the General Assembly by proclamation, in which he shall state specifically the purposes for which they are to convene. . . ."); Tex. Const. art. IV, § 8 ("The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government. . . ."); W. Va. Const. art. VII, § 7 ("The governor may, on extraordinary convene, at his own instance, the Legislature; but when so convened it shall enter upon no business except that stated in the proclamation by which it was called together."); Wash. Const. art. III, § 7 ("He may, on extraordinary occasions, convene the legislature by proclamation, in which shall be stated the purposes for which the legislature is convened."); Wis. Const. art. V, § 4 ("He shall have power to convene the legislature on extraordinary occasions. . . ."); Wyo. Const. art. IV, § 4 ("He shall have power to convene the legislature on extraordinary occasions.").

> what shall be deemed an extraordinary occasion for this purpose, nor referred the settlement of the question to any other department or branch of the government, the governor must necessarily be himself the judge, or he cannot exercise the power.

Farrelly v. Cole, 56 P. at 498 (quoting *Whiteman v. Wilmington & Susquehanna R.R. Co.*, 2 Harr. 514, 525 (Del. Sup. Ct. 1839)). "He may err, but this court has no jurisdiction to review his decision or to correct his error." *Id.* Not only did the *Farrelly* court emphasize the non-justiciability of these types of challenges, but the Governor's prerogative to decide when to convene. Even if "extraordinary occasion" carried some meaning beyond non-regular times, it is the Governor, and the Governor alone, who determines that meaning.

Other States follow this reasoning too. *See State v. Fair*, 76 P. 731, 732 (Wash. 1904) ("It was the exclusive province of the governor, under the Constitution, to determine whether an occasion existed of sufficient gravity to require an extra session of the Legislature, and his conclusion in that regard is not subject to review by the courts." (citing *Farrelly*, 56 P. 492)); *Jaksha v. State*, 385 N.W.2d 922, 927 (Neb. 1986) (holding that the Nebraska Constitution "permits the Governor to determine when an extraordinary occasion exists, necessitating convention of a special session of the Nebraska Legislature." citing Neb. Const. art. IV, § 8)); *In re Governor's Proclamation*, 33 P. 530, 531 (Colo. 1894) ("The governor is thus invested with extraordinary powers. He alone is to determine when there is an extraordinary occasion for convening the legislature. . . ."); *People ex rel. Carter v. Rice*, 20 N.Y.S. 293, 296 (Gen. Term), *aff'd*, 135 N.Y. 473, 31 N.E. 921 (N.Y. 1892) ("This article gave the governor power to convene the legislature in extraordinary session, and from the very nature of this provision he must be the judge as to what constitutes the

extraordinary occasion."). Meanwhile, Appellants cite *zero* authority—not one out-of-state case—which supports their position whatsoever.

E. Even if this Court can second-guess the Governor's reason for calling an extraordinary session, he had good reasons here.

This Court should not get courts involved in the business of second-guessing the Governor's reasons for calling extraordinary sessions. But in any event, the Governor had rational bases for calling an extraordinary session here. *See F.C.C. v. Beach Comm'cns, Inc.*, 508 U.S. 307, 313 (1993) (explaining that, under rational basis review, courts must reject a challenge "if there is any reasonably conceivable state of facts" supporting the challenged policy).

First, the Governor could have reasonably believed that the General Assembly should reconsider redistricting in response to recent, aggressive redistricting efforts in other States. In particular, California was moving to aggressively to limit Republicans—who won 38.3 percent of the vote in the 2024 presidential election—to just likely 7.7 percent of the congressional seats. *See* Associated Press, California President, (Nov. 5, 2024), https://tinyurl.com/ms6xf6e2. Democrats in Missouri—even under the H.B. 1 congressional map—are better represented as a proportional matter than Republicans in California. Governor Kehoe certainly could have considered redistricting as an appropriate response to efforts in other States—to ensure Missouri's political majority is fairly represented in the federal government. *See Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012) (per curiam) ("[R]edistricting is predominately a political question.").

Second, the Governor could have reasonably believed that an extraordinary session was warranted to consider initiative petition reform. In recent years, wealthy special interest groups have pushed through a substantial number of constitutional amendments. *See, e.g.*, *Coleman*, 696 S.W.3d 347, 354–56 (Mo. banc. 2024) (discussing sweeping abortion amendment). Some people believe it is too easy to change the Missouri Constitution, *see Adams v. Hoskins*, __S.W.3d__, 2026 WL 1027637, at *5 (Mo. App. W.D. Apr. 16, 2026) (recognizing this perspective), and that recent amendments justify reconsideration of whether the amendment rules are strict enough.

Whether this Court thinks those considerations could justify calling an extraordinary session should be beside the point. Under the Missouri Constitution, the Governor is "invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience." *Marbury*, 5 U.S. at 165–66.

F. Appellants' arguments fail.

One consistent theme unifies Appellants' assertions on appeal: rewriting Missouri's Constitution. Under the guise of championing judicial review, they aim to change the plain language of § 9 to add new, unfounded stipulations to the Governor's exercise of his convening authority. Bereft of any textual, precedential, or historical basis, Appellants invite this Court to adopt their definition of "extraordinary occasions." Appellants' Br. 17. This Court should reject that invitation. *See State ex rel. Major v. Patterson*, 129 S.W. 888, 890 (Mo. 1910) ("[I]t is not for this court, nor county courts, to rewrite the Constitution."); *State on Info. of Danforth v. Hickey*, 475 S.W.2d 617, 622 (Mo. banc 1972)

("We cannot, and must not, undertake to amend such constitutional provision by judicial interpretation. To do so would violate Article II, § 1 of the Missouri Constitution, relating to separation of powers.").

1. Appellants provide no constitutional basis for their proposed redefinition of "extraordinary occasions."

To avoid the straightforward meaning of "extraordinary occasions," which means simply times outside of the normal, regular sessions of the General Assembly, Appellants propose a multi-factor test to second-guess the Governor's discretionary authority. Appellants' Br. 17. This is multiply erroneous.

First, as noted, the phrase—"extraordinary occasions"—is old soil in Missouri, used in Missouri's first constitution in 1820. *See supra* at 12. This largely tracks the *federal* executive convening power, so it is no surprise that the language is similar. *See* U.S. Const. art. II, § 3. Appellants ignore this history, and the fact that the President has long been understood to have full discretionary power to call special sessions of Congress. *See State ex rel. Andrews*, 7 N.W.2d at 739 (N.D. 1943) (discussing recognition of this unilateral executive power since its use by President Washington).

Next, Appellants bring out their dictionaries. They do not even try to understand what the meaning of "extraordinary occasion" meant at the time of its insertion into Missouri's Constitution. Rather, they just list quoted definitions of "extraordinary" and "occasion" separately from modern dictionaries. Appellants' Br. 16. They never actually provide *any* definition of "extraordinary occasion" as a single phrase. Instead, they cherry-pick small parts of the anachronistic definitions of each component word. *See id*.

Taking these, Appellants make the leap to define "extraordinary occasion" as "requir[ing] three things: (1) circumstances that are unusual, not merely of recurring concern; (2) an event or development that represents a change from the status quo since the last regular session; and (3) a specific need to act that the legislature could not have addressed in its regular session." Appellants' Br. 17. How Appellants arrive at this definition is baffling. They provide no constitutional language. Section 9 says *nothing* about these supposed requirements that Appellants are reading into Missouri's Constitution. And, in fact, the Constitution says *nothing* at all about "extraordinary occasion" somehow requiring the Governor to "describe an extraordinary circumstance . . . that the general assembly did not have an opportunity to address during the last legislative session." Appellants' Br. 17. Appellants provide no persuasive authority that even suggests support for this definition. Appellants provide no indication or even suggestion that when Missouri's Constitution, the U.S. Constitution, or *any constitution whatsoever* uses the phrase "extraordinary occasion," they were originally understood to impose these three requirements.

If the Framers of Missouri's Constitution—whether in 1820, 1875, or 1945—wanted to constrain the Governor's convening power to particular "occasion[s]" and describe factors therein, *they would have included that language*. *See State ex rel. Proctor v. Walker*, 92 S.W. 69, 73 (Mo. 1906) ("[W]e are of the opinion that if such inhibition upon the lawmaking power was intended by the framers at that instrument, that such intention would have at least been manifested or indicated by reasonably clear and definite terms employed in the instrument."). They did not.

2. Appellants' superfluity argument does not make sense.

Fumbling for another instrument in their interpretive toolbox, Appellants claim that the Circuit Court "collaps[ed] the trigger of authority into the procedural requirement and render[ed] the phrase 'on extraordinary occasions' superfluous." Appellants' Br. 14. But there is no superfluity in this grant of authority. *See State, to Use of Gentry v. Fry*, 4 Mo. 120, 165 (Mo. 1835) ("[T]o ascertain what power, by the Constitution, belongs to the executive department, you wander not in the undefined regions of executive power in the abstract, but look to the specific grants of authority contained in the instrument."). The phrase "on extraordinary occasions" simply means occasions outside of the regular—"ordinary"—sessions of the General Assembly. That phrase differentiates extraordinary sessions from the General Assembly's regular—or *ordinary*—sessions. There is no superfluity in the approach of the State and Circuit Court.

3. Appellants' attempt to rewrite § 9 conflicts with historical operation of the § 9 power.

Appellants' belief that "[t]he Proclamation at issue here does not approach" historical examples is unfounded. Appellants' Br. 16. Moreover, their assertion that "prior governors understood the requirement"—Appellants' invented requirement—to involve a "genuine, unforeseen change in circumstances," *id.* at 15, is utterly unsupported.

A review of Missouri governors' exercise of § 9 shows that Governor Kehoe's August 2025 proclamation, *see* D3, fits readily within the mix of everyday, status quo measures which prior governors often cited as the bases for their proclamations. The Governor has issued proclamations for a wide range of political topics, not just

emergencies, in contrast to Appellants' suggestions. *See* Appellants' Br. 35 (improperly conflating "emergency" with "extraordinary").

Over two decades from the early 1990s to the late 2010s, the Governor of Missouri called thirteen extraordinary sessions on a wide range of legislative matters, including extremely quotidian issues: September 1993 (flood recovery funding); September 1994 (impeachment of the Secretary of State); May 1997 (completing work on the budget after a legislative impasse over abortion funding); September 1997 (economic development, including allocating with funds for historic buildings); September 2001 (prescription drug program for low-income seniors and meatpacking law revisions); June 2003 (revenue raising); September 2003 (raising taxes and revenues for education; nursing home legislation); September 2005 (abortion restrictions; drunk driving restrictions; workers' compensation; prescription drugs at schools; public information availability); August 2007 (economic development); June 2010 (tax incentives for automakers; state pension system); September 2011 (business incentives; natural disaster aid; delay presidential primary; give St. Louis control over its police; teacher-student social media prohibition); December 2013 (tax breaks for Boeing); May 2017 (electricity legislation).[4] These examples show that the Governor exercises political discretion to ask the General Assembly to address a wide variety of topics during extraordinary sessions. He does *not* need to justify some "change from the status quo." Appellants' Br. 17.

[4] The Associated Press, A historical look at Missouri special legislative sessions, AP, (May 18, 2017), https://apnews.com/a-historical-look-at-missouri-special-legislative-sessions-39c25ec9c8544673aa5a96f0c0e74a41.

IV. Missouri's political question doctrine renders Appellants' suit nonjusticiable (responds to Point Relied On II).

Missouri's political question doctrine bars Appellants' request for this Court to rewrite the Constitution. *See State ex rel. Major v. Shields*, 198 S.W. 1105, 1106 (Mo. banc 1917) (averring that when "the Governor's duties devolve on him by law, under a higher authority than the order of a court—*i.e.*, the mandate of the Constitution . . . . [t]he duties thus conferred are political, and his acts are entirely independent of the judiciary . . . ."). It renders their suit—and this appeal—nonjusticiable because they ask the State's judicial branch to supervise inherently political decisions by the Governor and General Assembly over when the legislature can convene. *See State ex rel. Att'y Gen. v. Vail*, 53 Mo. 97, 114 (Mo. 1873) ("That neither this Court nor any other branch of the judiciary can interfere with the exercise of a purely political power, confided by the constitution to the Executive, is clear.").

Appellants, inserting atextual restrictions into § 9, demand this Court sit in review of a completely discretionary political decision which the Constitution vests in the Governor. The Court should decline that invitation. *See Shields*, 198 S.W. at 1106 ("If the Governor is clothed with political discretion in regard to the execution and enforcement of the law and other duties enjoined on him, so he is concerning the issuance of commissions to those elected to office; and the court has no greater power to prescribe the rule of his conduct in one case than in the other."). After all, under any healthy separation of powers, "[t]he Governor is the exclusive judge of the facts requiring an extraordinary session of the Legislature." *Newsom v. City of Rainier*, 185 P. 296, 298 (Or. 1919) (citing *Farrelly*, 56

P. 492) (interpreting the Oregon Constitution's materially identical language to § 9).[5] There is substantial overlap between Appellants' failure on the merits and their failure to rebut the applicability of the political question doctrine. Section 9's language and analogous extraordinary session clauses across the country definitively establish that it is the discretionary, *political* preserve of the Governor to call an extraordinary session that courts do not merely render judgment in favor of the gubernatorial prerogative but deem such challenges nonjusticiable political challenges.

A. Missouri law reinforces the Circuit Court's judgment that Appellants' challenge is a nonjusticiable political question.

Missouri's "political question doctrine establishes a limitation on the authority of the judiciary to resolve issues, decidedly political in nature, that are properly left to the legislature. If a case actually involves the resolution of a political question, the matter is immune from judicial review." *Bennett v. Malinckrodt, Inc.*, 698 S.W.2d 854, 865–66 (Mo. App. E.D. 1985); *see also State ex rel. Bartley v. Fletcher*, 39 Mo. 388, 394 (Mo. 1867) (stating that this Court cannot control the Governor "in the exercise of executive duties devolved on him by law"). Missouri courts have adopted the justiciability guidelines from *Baker v. Carr*, 369 U.S. 186 (1962). Dismissal for non-justiciability is warranted if:

> [P]rominent on the surface of any case held to involve a political question [there] is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy

[5] *Compare* Mo. Const. art. IV, § 9 ("On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary."), *with* Or. Const. art. V, § 12 ("He may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall state to both houses when assembled, the purpose for which they shall have been convened.").

> determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Bennett, 698 S.W.3d at 864 (quoting *Baker v. Carr*, 396 U.S. at 217).

Appellants' suit is nonjusticiable. The Missouri Constitution expressly reserves the discretion to the Governor, Mo. Const. art. IV, § 9, or three-fourths of the House and Senate to call the General Assembly into session. Mo. Const. art. III, § 20(b). Here, Section 9 is "a textually demonstrable constitutional commitment of the issue"—calling an extraordinary session—"to a coordinate political department"—the Governor. *Bennett*, 698 S.W.3d at 864. In any case, Appellants cannot identify any "judicially discoverable and manageable standards for resolving it" because it is "an initial policy determination of a kind clearly for nonjudicial discretion." *Baker*, 396 U.S. at 217. After all, how would courts assess a Governor's determination that addressing a particular subject was "necessary"? Mo. Const. art. IV, § 9. Section 9's text provides no meaningful guidance. For courts to do so anyway would show a "lack of respect due" to a "coordinate branch of government." *Bennett*, 698 S.W.3d at 864; *see also Bartley*, 39 Mo. at 398–99 ("Whatever powers are conferred by the Constitution on the Executive are *political* powers—whatever duties are enjoined upon him are *political* duties.") (emphasis added).

B. The Governor's unilateral, unreviewable power to call extraordinary sessions is well-established in Missouri.

As noted, Missouri has a long history of governors calling extraordinary sessions of the General Assembly.[6] Despite that long history, Appellants cite *zero* precedent suggesting that Missouri's Constitution allows courts to second-guess the Governor's use of the convening power. In fact, this Court has suggested exactly the opposite: "The Governor, under the Constitution, can call an extraordinary session of the General Assembly . . . . *If he finds the occasion to exercise this prerogative*, he must 'state specifically each matter concerning which the action of that body (General Assembly) is deemed necessary.'" *State ex rel. Rice v. Edwards*, 241 S.W 945, 948 (Mo. banc 1922) (quoting Mo. Const. (1875) art. 5, § 9) (emphasis added). "[I]f he finds the occasion to exercise this prerogative," indicates that the Governor has discretion to determine *when* and *if* he will call an extraordinary session. *Id.*

C. Other States interpreting identical clauses have determined that legal challenges are nonjusticiable.

In State after State with similar, or identical, "extraordinary occasions" extraordinary session clauses, courts have determined that legal challenges to this discretionary, executive power are nonjusticiable.[7] In *Farrelly*, the Kansas Supreme Court

[6] For example, the Missouri Constitution of 1875 contained materially identical language. *See, e.g.*, *Withaus*, 16 Mo. App. at 249 ("The state constitution provides (art. V, sect. 9), that the governor may convene the general assembly on extraordinary occasions by proclamation 'wherein he shall state specifically each matter concerning which the action of that body is deemed necessary . . . .").

[7] *See, e.g.*, *State ex rel. Andrews v. Quam*, 7 N.W.2d 738, 738–9 (N.D. 1943) (holding that the question of what merits an "extraordinary occasion . . . . is to be determined by the governor alone and is not subject to challenge or review by the courts"); *Herzberger v.*

ruled that it lacked jurisdiction to review the discretionary, political decisions of the Governor and the Kansas Legislature, including calling the extraordinary session. *Farrelly*, 56 P. at 497 (contrasting such discretion with the "[m]inisterial acts" that "do not flow from the exercise of discretion" and which are reviewable). In Washington, a State with identical "extraordinary occasion" language, its supreme court held that it is the "exclusive province of the governor, under the Constitution, to determine whether an occasion existed of sufficient gravity to require an extra session of the Legislature, and *his conclusion in that regard is not subject to review by the courts*." *State v. Fair*, 76 P. 731, 732 (Wash. 1904) (emphasis added).

The same situation exists in Georgia, Idaho, and South Carolina. *See Burger v. State*, 92 S.E. 72, 73 (Ga. 1917) ("[T]he Governor is thus invested with extraordinary powers, and in the exercise of such powers and prerogatives neither the legislative nor the judicial department . . . has any power to call him to account, nor can they or either of them review his action in connection therewith."); *Idaho State AFL-CIO v. Leroy*, 718 P.2d 1129, 1133 (Idaho 1986) (quoting *Diefendorf v. Galley*, 10 P.2d 307, 314–15 (Idaho 1932)); *McConnell v. Haley*, 711 S.E.2d 886, 887 (S.C. 2011) (noting that, as in Missouri, "there is no indication in the Constitution as to what constitutes an 'extraordinary occasion'

Kelly, 7 N.E.2d 865 (Ill. 1937). The *Herzberger* court reviewed the "extraordinary occasion" special session provision of the 1870–1970 Illinois Constitution, and held that "no authority to review the exercise of the discretionary power vested in the Governor by the Constitution was, by that instrument, seated in the judiciary. The only remedy provided for a violation by an executive of his constituted authority is by impeachment." *Id.* at 866–67.

to justify an extra session of the General Assembly, this matter must be left to the discretion of the Governor and this Court may not review that decision").

States after State has held that judicial challenges to gubernatorial discretion to determine "extraordinary occasions" are nonjusticiable political questions. Appellants cannot identify *any* contrary authority.

D. Appellants' attempts to avoid the political question doctrine fail.

Appellants provide a medley of theories to avoid the political question doctrine. None are persuasive. *See State ex inf. Barrett ex rel. Bradshaw v. Hedrick*, 241 S.W. 402, 414 (Mo. banc 1922) (noting that an "executive act, is due process of law and cannot be reviewed by the courts").

1. Appellants cannot escape *Baker v. Carr*.

In an unsuccessful attempt to elude *Baker v. Carr*, Appellants claim that § 9 "does not textually commit the question of whether an extraordinary occasion exists to the Governor." Appellants' Br. 27. As discussed above, that is clearly wrong. *See supra* Part IV.A. And, contrary to Appellants repeated averments, however, § 9 does *not* "set[] express limits on executive power" through the "extraordinary occasions" phrase. Appellants' Br. 27.

Trying to inject some clear statement requirement, Appellants claim that the "absence of an express instruction that the Governor is to be 'the sole judge' of what constitutes an extraordinary occasion is significant." Appellants' Br. 28. But Appellants cite no authority suggesting those specific "magic words" are required to confer discretionary authority. Only once in Missouri's Constitution is the phrase "sole judge"

used, Mo. Const. art. III, § 18, in reference to the General Assembly's powers to determine the "qualifications, election and returns of its own members." *Id.* Other than that, following their flawed logic, Appellants would eviscerate both Article IV, § 1, vesting "[t]he supreme executive power" in the Governor *and* Article III, § 1, vesting "[t]he legislative power" in the General Assembly. In their view, any assignment of power under the Constitution to the Governor and, presumably, the General Assembly, deprives those branches of any discretionary authority to exercise that power, in direct conflict with the vesting clauses.

The majority of Appellants' objections to the other *Baker v. Carr* factors stem from their own redefinition of "extraordinary occasions." For example, Appellants claim they are "not asking the Court to make a policy determination as to whether a recent change in the status quo is sufficient to necessitate the convening of an extraordinary occasion." Appellants' Br. 28. But that is exactly what they are doing. Appellants are asking this Court to first treat "extraordinary occasions" as somehow against the plain language, requiring the Governor to show whether there is a change in the "status quo," whatever that means. By injecting their invented definition, Appellants try to avoid the simple fact that they are asking the Court to substitute its judgment, or Appellants' judgment, for the Governor's. Since § 9 indicates that the Governor wields power to call extraordinary sessions as he determines, a policy decision, subjecting those decisions, writ-large, to judicial review would force this Court to step into the political shoes of the executive (and the General Assembly under Article III, § 20(b)). *See Pearson v. Koster*, 367 S.W.3d 36,

67 (Mo. banc 2012) (Fischer, J., concurring) (recognizing that when "decisions are political in nature," they are "best left to political leaders, not judges").

In a similar vein, Appellants claim that they are not asking the Court to "disrespect or overrule the Governor's proper exercise of discretion," Appellants' Br. 28, but instead that they are trying to define the "trigger" for this power. Appellants cannot define what that trigger even is. Unlike scenarios where the legislature may delegate power to the executive and provide conditions for its exercise, *see, e.g.*, *Wayman v. Southard*, 23 U.S. 1 (1825); *see also Gundy v. United States*, 588 U.S. 128, 172–73 (2019) (Gorsuch, J., dissenting), here the Governor is acting pursuant to an enumerated, solely executive constitutional power. This renders the search for an invisible trigger irrelevant. As in *Farrelly*, there is no textual clue or slightest indication that some other entity is tasked by *the Constitution* in determining when to call an extraordinary session, other than the General Assembly under Article III, § 20(b). Therefore, Appellants *are* questioning a clearly vested executive power without any conflicting constitutional language or even the facial apprehension of ambiguity.

2. Appellants' attempt to distinguish *Farrelly* and other strong precedents fails.

Appellants cannot identify *any* contrary authority where a court has enjoined a state legislature from meeting, or invalidated subsequent, duly passed legislation because it found that gubernatorial powers to call such a session were restricted or that "extraordinary occasion" imposed an external limitation on the exercise thereof. Instead, they resort to ineffectual critiques of the numerous authorities which back the Governor's authority.

In particular, Appellants fault the Circuit Court for relying on "legal authorities from 2 foreign jurisdiction dating back nearly 200 years." Appellants' Br. 33. These nineteenth-century sources are far more relevant than anything Appellants have presented. They were interpreting analogous executive powers to convoke the legislature in extraordinary session. Relevantly, the case of *Whiteman v. Wilmington & Susquehanna Rail Road Co.*, 2 Har. (Del.) 514 (1839), which *Farrelly* relies on as authority for its holding, was decided *only nineteen years* after "extraordinary occasions" was inserted into the original Missouri Constitution. Appellants find no grounds to resist the persuasiveness of *Farrelly*. For example, the *Farrelly* court held:

> [T]he constitution empowers the executive to convene the legislature on extraordinary occasions, and does not in terms authorize the intervention of any one else in determining what is and what is not such an occasion in the constitutional sense. It is obvious that the question is *addressed exclusively to the executive judgment*, and neither the legislative *nor the judicial department can interfere to compel* action . . . .

Farrelly, 56 P. at 499–500. Appellants attempt to downplay this, asserting that "[b]y the same logic, the Governor would be the sole judge of every undefined term in the Constitution that relates to executive authority." Appellants' Br. 33. Once again, Appellants prefer to simply ignore the plain language of the Constitution which gives the Governor discretionary authority to determine what merits an "extraordinary occasion." In Appellants' world, any phrase which has any degree of flexibility must be committed to the courts, rather than the political branch to which that determination is attributed by the Constitution.

Appellants' maneuvers to distinguish other authorities are equally unavailing. Their principal lines of attack include asserting that a paucity of more recent citations somehow undermines the logic of judicial holdings or simply misreading of the opinions, *see* Appellants' Br. 33–34. They claim that "[n]one of these decisions analyzed the threshold question of whether the facts stated in a proclamation actually constituted an 'extraordinary occasion'" or that the posture of litigants in those cases was slightly different. Appellants' Br. 34. What all the State's out-of-state authorities clearly state, however, is that the Governor wields discretionary power to determine what constitutes an extraordinary occasion.

During trial, both Parties addressed a Kentucky case, *Beshear v. Acree*, 615 S.W.3d 780 (Ky. 2020), in particular. In *Beshear*, the Kentucky Supreme Court interpreted the meaning of § 80 of the Kentucky Constitution which reads, "He [the Kentucky Governor] may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that should have become dangerous from an enemy or from contagious diseases." Ky. Const. § 80. *Beshear* aligns with fully discretionary gubernatorial powers. The Kentucky Supreme Court observed that "Section 80 contains the permissive 'may . . . convene" as opposed to the mandatory 'shall . . . convene.' Even in times when the Commonwealth is confronted with something extraordinary, to include enemies and contagious diseases, the decision to convene the General Assembly in a special session is solely the Governor's." *Beshear*, 615 S.W.3d at 806.

Now, realizing that the authority undermines their arguments, Appellants try to re-characterize *Beshear*, claiming that it "is entirely consistent with Appellants' position."

See Appellants' Br. 34–35. Not quite. As *Beshear* states, "'extraordinary occasions' has been construed customarily to allow special legislative sessions for reasons of immediate import relating to funding and other matters." *Beshear*, 615 S.W.3d at 806. It cites several of these "other matters," including "alternate energy policies, appropriation of funds for capital projects and road construction, taxation of military pay, pretrial diversion for substance abusers, and public employee insurance plans." *Id.* at 806 n.34. Funnily enough, in 2013, Kentucky held an extraordinary session to consider legislative redistricting. *See* Legislative Research Commission, *Extraordinary Session since 1940* (last visited May 7, 2026), https://legislature.ky.gov/Law/Statutes/Pages/KrsExtraOrdList.aspx. And nowhere does *Beshear* suggest that there are constitutional requirements cabining what merits an "extraordinary occasion" and what does not. *Id.* at 806. Just like in Missouri, creative litigants cannot simply conjure extra-textual requirements into the state constitution.

V. The *Hadley*/*Purcell* doctrine strongly favors staying relief until the upcoming 2026 elections are concluded.

Even if this Court agrees with Appellants on the merits, well-established equitable principles foreclose enjoining H.B. 1 and H.J.R. 3 until after the upcoming 2026 midterm elections. *First*, Missouri's recognized equitable principles support delayed relief, reducing chaos surrounding the quickly approaching upcoming election. *See State ex rel. Ellis v. Creech*, 259 S.W.2d 372, 374 (Mo. banc 1953) (highlighting that injunctive relief is discretionary and is "to be exercised in accordance with well settled equitable principles"). In fact, this Court has already recognized and applied an analogue to the *Purcell* principle: *Hadley*, 460 S.W.2d 1 (Mo banc. 1970).

In 1970, this Court applied the rule that federal courts would subsequently call the *Purcell* principle. On February 25, 1970, in *Hadley*, this Court received a mandate on remand after the U.S. Supreme Court found that districts for electing school officials were unconstitutionally apportioned. *Id.* at 2. As of that date, the candidate filing period was scheduled to end in a few days. *Id.* at 3. Under those circumstances, this Court "concluded that the imminence of these elections is such that it would be unwise for this court hastily to attempt to implement the February 25, 1970, decision of the Supreme Court of the United States with respect to those elections." *Id.* Consistent with *Reynolds v. Sims*, 377 U.S. 533, 585 (1964), also the key basis for *Purcell*, this Court held that "the overriding public interest in the orderly operation of respondent and other junior college districts in Missouri requires, and this court so orders, that the elections of trustees of said districts scheduled in April, 1970, be held under the *present* provisions of Chapter 178, V.A.M.S." *Id.* at 2–3 (relying on *Reynolds*, 377 U.S. at 585).

Hadley makes this is an *a fortiori* case. Whereas candidate filing was *ongoing* when this Court declined to alter election districts for an upcoming election, candidate filing in Missouri closed about one-and-a-half months ago. As in *Hadley*, "the election machinery [was] already in operation," *Hadley*, 460 S.W.3d at 3, as election officials have already been implementing the 2025 Plan. This Court should apply *Hadley* here and postpone relief until after the 2026 midterms.

Second, if this case was in federal court, the *Purcell* principle would apply under these circumstances, requiring any injunction in favor of Appellants to be stayed until after the 2026 elections. *See Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418,

419–20 (2025) (staying lower district court injunction issued during candidate filing period). In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws and should act and rely upon general equitable principles." *Reynolds*, 377 U.S. at 585; *Hadley*, 460 S.W.2d at 2 (same). Such "considerations" exist here, where many Missourians have already initiated campaigns for the duly enacted congressional districts and candidate filing deadlines approach. *See* § 115.349, RSMo. In such circumstances the U.S. Supreme Court "has recognized that 'practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges.'" *Merrill v. Milligan*, 142 S. Ct. 879, 882 (Kavanaugh, J., concurring) (quoting *Riley v. Kennedy*, 553 U.S. 406, 426 (2008)). This is the "*Purcell* principle." *See id*. The *Purcell* principle derives from a universal, "basic tenet of election law: When an election is close at hand, the rules of the road should be clear and settled." *Democratic Nat'l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay). This logic applies with equal force in Missouri. *See Hadley*, 460 S.W. at 3 ("We conclude it would be wholly inequitable and impracticable to attempt at this late date to apply the principles enunciated in the decision of February 25, 1970, to the elections scheduled for April 7, 1970.").

Third, even if this Court were to agree with Appellants' merits arguments, enjoining H.B. 1 is simply not practicable at this stage. Since early December, when the State gave notice that H.B. 1 was in effect and would presumptively govern elections in 2026, candidates have built their campaigns around that map. Candidates have been campaigning

and fundraising based on H.B. 1's significantly changed borders. Missouri voters know who is running for office and where. They are already making their informed decisions based on campaign information predicated on the duly passed congressional map. After candidates entered the race and the filing deadline passes, the public becomes aware of their candidacy and the universe of choices available to them in August. *Cf. Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring) ("Filing deadlines need to be met, but candidates cannot be sure what district they need to file for.").

Candidate filing ended on March 31, 2026. The state and local election authorities are in the midst of preparing for the August 4 primary election. Equity thus requires delaying relief until after the 2026 midterms. *See Hadley*, 460 S.W.2d at 3 (noting that the "overriding public interest in the orderly operation of . . . districts in Missouri requires, and this court so orders, that the elections of trustees of said districts . . . be held under the present provisions of Chapter 178"); *see also Merrill*, 142 S. Ct. at 882 (2022) (Kavanaugh, J., concurring) (describing the *Purcell* principle as "a sensible refinement of ordinary stay principle for the election context—a principle that is not absolute but instead simply heightens the showing necessary for a plaintiff to overcome the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures.

CONCLUSION

For all these reasons, this Court should affirm.

Dated: May 11, 2026

Respectfully submitted,

CATHERINE L. HANAWAY
ATTORNEY GENERAL

Louis J. Capozzi III, #77756
Solicitor General
/s/ Joseph Kiernan
Joseph Kiernan, #77798
Assistant Solicitor General
Office of the Attorney General
Old Post Office Building
815 Olive St, Suite 200
St. Louis, MO 63101
Office: (314) 340-3413
Email:
Louis.Capozzi@ago.mo.gov
Joseph.Kiernan@ago.mo.gov

Counsel for State Respondents.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 12,269 words, complies with Missouri Supreme Court Rule 84.06(b), includes the information required by Rule 55.03, and includes information on how the brief was served on the opposing party. The font is Times New Roman 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free.

/s/ Joseph Kiernan
Joseph Kiernan

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was filed and served electronically on all counsel of record via the Court's e-filing system on May 11, 2026.

/s/ Joseph Kiernan
Joseph Kiernan