

**IN THE CIRCUIT COURT OF COLE COUNTY  
NINETEENTH JUDICIAL CIRCUIT OF MISSOURI**

JOSEPH PERELES, <i>et. al</i> ,	)	
	)	
<i>Plaintiffs</i> ,	)	
	)	Case No. 22AC-CC00114
v.	)	
	)	
JOHN R. ASHCROFT, in his official	)	
capacity as Missouri Secretary of State,	)	
	)	
<i>Defendant</i> .	)	

**DEFENDANT’S MOTION TO DISMISS THE PETITION**

COMES NOW, Defendant Secretary of State Ashcroft, by and through counsel, and moves the court to dismiss the Petition for lack of subject-matter jurisdiction as unripe.

This case is unripe, and “[r]ipeness, like standing, is an element of justiciability.” *Calzone v. Ashcroft*, 559 S.W.3d 32, 35 (Mo. Ct. App. 2018). In declaratory judgment cases, the court must be presented with “(1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, ...; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.” *Missouri NAACP v. State*, 601 S.W.3d 241, 246 (Mo. banc 2020) (quoting *Mo. Soybean Ass’n v. Mo. Clean Water Comm’n*, 102

S.W.3d 10, 25 (Mo. banc 2003)). Courts “employ[] a two-fold test in ascertaining whether a controversy is ripe for judicial determination: (1) whether the issues presented are fit for judicial resolution, and (2) whether denying relief would create hardship for either party.” *Graves v. Missouri Dep't of Corr., Div. of Prob. & Parole*, 630 S.W.3d 769, 773 (Mo. banc 2021).

“A declaratory judgment is not a general panacea for all real and imaginary legal ills. It is not available to adjudicate hypothetical or speculative situations that may never come to pass.” *Graves v. Missouri Dep't of Corr., Div. of Prob. & Parole*, 630 S.W.3d 769, 773 (Mo. banc 2021). “Courts do not sit in judgment on the wisdom or folly of proposals. Neither will courts give advisory opinions as to whether a particular proposal would, if adopted, violate some superseding fundamental law...” *Calzone*, 559 S.W.3d 3 at 35 (quoting *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990)).

The petition claims that the current congressional district map is unconstitutional because the court-approved 2011 map is no longer numerically equal. Pet. ¶¶ 46-49. They further claim that “[t]he General Assembly and Governor have failed to enact a new congressional plan.” Pet. ¶ 44. But the Petition concedes that time still exists for the General Assembly to adopt a map before the primary election. The Petition notes that with an emergency clause a law becomes effective immediately, Pet. ¶ 5, and without

an emergency clause a law becomes effective in 90 days, Pet. ¶ 4. The Petition admits that the General Assembly could change course. Pet. ¶ 40. Despite claiming that the General Assembly has failed to enact a map before the candidate filing deadline, Plaintiffs have not alleged that they filed or intended to file to become candidates. Nor have they alleged that they are harmed by not knowing what district they will reside in before the primary or the general election. Pet. ¶ 42 (claiming only that “[i]t is in the interest of voters ... that new congressional districts be established as soon as possible...”). Plaintiffs claim that their concern is that “the 2022 election will be held using illegal district maps, depriving Plaintiffs of their constitutional rights.” Pet. ¶ 44. The Petition further requests that the court “enjoin Defendant from using the current plan in any future elections,” Pet. ¶ 9, an event that may not happen. *See also* Pet. ¶¶ 31 (“If used in any future election”), 49 (“Any future use of Missouri’s current congressional district plan would violate Plaintiffs’ constitutional right to cast an equal, undiluted vote.”).

Contrary to Plaintiffs’ speculation, the General Assembly still has ample time to act, and it may replace the current congressional district map; thus, judicial intervention is unwarranted before that time has expired. The federal and state constitutions entrust map-drawing to the State’s legislature. U.S. CONST. art. I, § 4; MO. CONST. art. III, § 45. Ninety days before the August 2,

2022, primary is May 4, 2022.<sup>1</sup> The last day of the General Assembly's regularly scheduled session is May 13, 2022. On March 24, 2022, the Missouri Senate passed a new map with an emergency clause, 30-2. St. Louis Public Radio, *Missouri Senate passes new 6-2 Republican majority congressional map*, STLPR (Mar. 24, 2022), available at <https://bit.ly/3r2K838>. As a result, a map can pass on the last day of the session with an emergency clause, or before May 4, 2022 to be effective before the August primary. Even after that, the General Assembly may still act through a special session called by the Governor.

Missouri precedents confirm that there is no controversy until the General Assembly cannot act. *S.C. v. Juv. Officer*, 474 S.W.3d 160, 163 (Mo. banc 2015) (“Ripeness does not exist when the question rests solely on a probability that an event will occur.”). When the Auditor filed for declaratory judgment before the Fiscal Year had ended and the Governor could still act until the final day of the fiscal year, the Court held that “the requirements for ripeness were not met.” *Schweich v. Nixon*, 408 S.W.3d 769, 779 (Mo. banc 2013). When a budget excess was not current or foreseeable, plaintiffs could not maintain a refund action. *Buechner v. Bond*, 650 S.W.2d 611, 614 (Mo. banc 1983). When a prisoner seeks to challenge a preliminary action which

---

<sup>1</sup> The court may take judicial notice of the calendar and the events of the General Assembly. *Hartman v. Logan*, 602 S.W.3d 827, 839 n.10 (Mo. Ct. App. 2020); *Missouri NAACP v. State*, 601 S.W.3d 241, 244 (Mo. banc 2020).

may lead to a decision or further action, the case is not ripe. *Graves*, 630 S.W.3d at 775 (noting “a court’s authority to entertain preemptive challenges to an agency action or decision” inherently raises ripeness concerns).

Notably, this is not a pre-enforcement challenge where a party may challenge an enacted law when “the facts necessary to adjudicate the underlying claims were fully developed and the law at issue were affecting the plaintiff in a manner that gave rise to an immediate, concrete dispute.” *S.C.*, 474 S.W.3d at 163. Instead, this is a *pre-enactment* challenge betting against the General Assembly’s future actions. Regardless of the merits of Plaintiffs’ claims, any declaration would merely be an advisory opinion and unnecessarily coercive until the General Assembly’s time has expired. *See Grove v. Emison*, 507 U.S. 25, 34 (1993) (“Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.”).

Finally, no prejudice will result in requiring Plaintiffs to raise their claims at a later date *if and when* the necessary facts have crystallized into a dispute the court can adjudicate. Indeed, the facts that underlie the premise of the Petition have changed substantially, and Defendant should not bear the burden of responding to stale factual allegations. Plaintiffs have not claimed an injury or harm from the current map presently existing (nor could they),

and any alleged vote dilution may only occur, at the earliest, on the primary date: August 2, 2022. No prejudice will occur from dismissal.

By contrast, preliminary adjudication of Plaintiffs' claims would result in prejudice to the State and to its voters. It might also generate confusion and/or inter-branch conflict. Accordingly, Plaintiffs' claims are not fit for judicial resolution at this time, and the risk of prejudice from premature adjudication is significant. Plaintiffs' Petition should be dismissed in its entirety as unripe.

### **CONCLUSION**

The court should grant the motion to dismiss the Petition as unripe.

April 18, 2020

Respectfully Submitted,

**ERIC S. SCHMITT**  
Attorney General of Missouri

*/s/ D. John Sauer*  
D. John Sauer, #58721  
*Solicitor General*  
Jeff P. Johnson, #73249  
Office of the Attorney General  
Supreme Court Building  
P.O. Box 899  
207 W. High St.  
Jefferson City, MO 65102  
Tel: (573) 751-8870  
Facsimile: (573) 751-0774  
E-mail: john.sauer@ago.mo.gov

*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that, on April 18, 2022, a true and correct copy of the foregoing was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case.

*/s/ D. John Sauer*  
*Counsel for Defendant*