

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

PEOPLE NOT POLITICIANS, *et al.*,

Plaintiffs,

v.

MISSOURI SECRETARY OF STATE
DENNY HOSKINS,

Defendant.

Case No. 25AC-CC07128

DEFENDANT'S PRETRIAL BRIEF

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INTRODUCTION

Plaintiffs ask this Court to do something it cannot do: rule on a hypothetical case. They challenge actions that the State has already remedied in their favor and speculate about issues that may prove unproblematic in their effort to overturn the State's recent redistricting plan via a referendum. But Missouri courts "do not decide questions of law disconnected from the granting of actual relief." *State ex rel. Energy Dev. Ass'n v. Pub. Serv. Comm'n*, 386 S.W.3d 165, 176 (Mo. App. W.D. 2012). Because Plaintiffs are now completely free to pursue their referendum, there is no relief left for this Court to give right now. The Court should therefore dismiss the case.

But even if this Court sees a justiciable controversy in this record, Defendant Secretary of State is entitled to judgment. The Missouri Constitution and statutes establish the right of referendum but include key procedural mechanisms for submitting a petition for the ballot. These measures provide basic ground rules, ensuring an orderly and integral process for verifying a referendum petition. Plaintiffs demand this Court disregard these provisions—threatening to sow chaos at a time when the State needs clear election-integrity rules that everyone can trust. If this Court has jurisdiction, it should enforce the law as written and grant judgment to the Secretary of State.

Specifically, the Court should either dismiss this case or enter judgment for Defendant, for three reasons:

- I. Plaintiffs' first claim is moot because the Secretary of State has now approved Plaintiffs' referendum petition as to form;

- a. Plaintiffs’ desire to have the Secretary approve as to form a referendum petition against House Bill 1 has now been fully satisfied;
 - b. No recognized exception to mootness applies—any judgment entered in favor of Plaintiffs would be nothing more than an advisory opinion;
- II. Plaintiffs’ second claim is not ripe as the Secretary of State has taken no action to approve or disapprove any signatures;
 - a. Plaintiffs have not even submitted any signatures;
 - b. Any concerns that Plaintiffs will be unable to meet the signature thresholds do not rise beyond mere speculation at this point;
- III. Even if the claims here are justiciable, both Counts fail on the merits and warrant a judgment in favor of Defendant;
 - a. For Count I, the Secretary of State properly rejected Plaintiffs’ referendum petitions prior to enactment of House Bill 1; Because Plaintiffs had no “law” to challenge through a referendum petition until Governor Kehoe signed House Bill 1 on September 28, 2025, their claims that the Secretary should have accepted as to form the submitted petitions prior to enactment fail as a matter of law;
 - b. For Count II, because the right of referendum only extends to laws, any signatures collected before House Bill 1’s enactment are premature; Thus, at the very least, the Secretary cannot be required to count signatures on the invalid petitions collected prior to September 29, 2025, when Plaintiff von Glahn submitted the final petition;

c. But Missouri law makes clear that the Secretary need not accept any signatures gathered prior to the petition's approval as to form—ensuring that voters are signing a valid petition.

This Court should dismiss this suit for want of a justiciable claim, and if it reaches the merits on any issue, the Court should deny both Counts for their fatal legal and factual deficiencies.

BURDEN OF PROOF

As movants in this case, Plaintiffs bear the burden of proving, by a preponderance of the evidence, that they are entitled to the injunctive and declaratory relief sought. Entitlement to an injunction requires Plaintiffs to show that they succeed on “the merits of [their] claims” and that “weigh[ing] the harm[s]” favors the Plaintiffs in the absence of relief. *Estate of Hutchinson v. Massood*, 494 S.W.3d 595, 608 (Mo. App. W.D. 2016) (quoting *State ex rel. Koster v. Didion Land Project Ass’n*, 469 S.W.3d 914, 918 (Mo. App. E.D. 2015)). Plaintiffs must also demonstrate: “1) no adequate remedy at law; and 2) irreparable harm will result if the injunction is not awarded.” *Suppes v. Curators of Univ. of Mo.*, 613 S.W.3d 836, 847 (Mo. App. W.D. 2020) (citation omitted).

The Court may grant declaratory relief only when:

(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, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.

Mo. Soybean Ass'n v. Mo. Clean Water Comm'n, 102 S.W.3d 10, 25 (Mo. banc 2003) (internal quotation omitted). “When seeking declaratory relief, a legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question. The party seeking relief has the burden of establishing that they have standing.” *World Wide Tech., Inc. v. Off. of Admin.*, 572 S.W.3d 512, 519 (Mo. App. W.D. 2019).

BACKGROUND

A. Missouri’s Referendum Process

The Missouri Constitution reserves for Missouri voters the “power to approve or reject by referendum any act of the general assembly”—with certain exceptions. Mo. Const. art. III, § 49. A referendum may be ordered in two ways: (1) the General Assembly may refer the law to the people; or (2) a voter may petition for a referendum on a law by collecting signatures of “five percent of the legal voters in each of two-thirds of the congressional districts.” *Id.* § 52(a).

The process commences by submitting a sample sheet to the Secretary of State, which the Secretary and Attorney General review “for sufficiency as to form.” Mo. Rev. Stat. § 116.332.1. This submission must happen “[b]efore . . . [the] referendum petition [is] circulated for signatures.” *Id.* The Attorney General shall conduct her review and give her comments to the Secretary of State within ten days. *Id.* § 116.332.3. The Secretary of State will then “make a final decision” and “send written notice to the person who submitted the petition” within fifteen days—determining whether the petition is acceptable as to form. *Id.* § 116.332.4.

Following approval as to form, a referendum proponent must then gather valid signatures in support of the referendum petition. *See id.* § 116.060. A final petition with signatures must “be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.” Mo. Const. art. III, § 52(a). The Secretary of State will then “examine the petition to determine whether it complies with the Constitution of Missouri and with this chapter.” Mo. Rev. Stat. § 116.120.1. The Secretary must also verify that there are a sufficient number of valid signatures for the petition to qualify for the ballot. *See id.* § 116.120. If there are enough signatures on the referendum petition, the law will only “take effect when approved by a majority” of the people at the next election. Mo. Const. art. III, § 52(b).

B. Factual Background

On August 29, 2025, Governor Kehoe announced a special session of the Missouri General Assembly. First Am. Pet. ¶ 22. The General Assembly convened on September 3. *Id.* ¶ 24. On September 12, the General Assembly passed House Bill 1, Joint Stipulation ¶ 7, titled “To repeal sections 128.345, 128.346, and 128.348, RSMo, and to enact in lieu thereof twelve new sections relating to the composition of congressional districts.” *Id.* Ex. 2.

That same day, Plaintiff Richard von Glahn submitted two referendum-petition sample sheets on House Bill 1 to the Secretary of State. Joint Stipulation ¶ 10; *see also id.* Exs. 4, 5. Defendant Secretary of State informed Plaintiff von Glahn

that the referendum petition had been referred to the Attorney General for review of legal sufficiency as to form on September 14. Joint Stipulation ¶ 15; *id.* Ex. 7.

Plaintiff von Glahn submitted a third referendum petition on House Bill 1 on September 15. Joint Stipulation ¶ 17; *see also id.* Ex. 8. The Secretary responded to Plaintiff von Glahn with a letter informing him that this latest referendum petition had been “refer[ed]... to the Attorney General for review of legal sufficiency as to form.” *Id.* ¶ 19; *id.* Ex. 9. On September 18, before the Secretary had reviewed Plaintiffs’ petitions, Plaintiffs filed this suit seeking declaratory and injunctive relief.

See generally Pet.

On September 26, the Secretary of State informed Plaintiff von Glahn that his three referendum petitions had been denied as to form. Joint Stipulation ¶ 24; *id.* Ex. 11. The Secretary of State followed the Attorney General’s assessment that the referendum petitions were insufficient as to form because House Bill 1 had not yet been enacted into law. *Id.* Ex. 11.

On September 28, Governor Kehoe signed House Bill 1 into law. Joint Stipulation ¶ 26. Prior to enactment, Plaintiffs had collected approximately 32,600 signatures in support of the referendum petition. *Id.* ¶ 29. The following day, Plaintiff von Glahn submitted a fourth referendum-petition sample sheet on House Bill 1 to the Secretary of State. *Id.* ¶ 27; *see also id.* Ex. 12. Also on September 29, Plaintiffs filed an Amended Petition. *See generally* First Am. Pet.

After the Secretary of State received the Attorney General’s assessment that the fourth referendum petition was sufficient as to form, the Secretary approved

Plaintiffs' petition as to form on October 14. Joint Stipulation ¶ 30; *id.* Ex. 13. Between submission of the fourth referendum petition and approval by the Secretary of State, Plaintiffs collected approximately 70,200 signatures in support of their referendum petition. Joint Stipulation ¶ 32.

C. Plaintiffs' Requested Relief

Plaintiffs bring two counts in their Amended Petition. In Count I, they allege that the Secretary of State exceeded his authority under Mo. Rev. Stat. § 116.030 when he denied their referendum petitions as to form before the Governor signed House Bill 1 into law. *See* First. Am. Pet. ¶¶ 63–72. Plaintiffs seek declaratory and injunctive relief, asking the Court to declare that the Secretary “may not reject a referendum petition sample sheet because the governor has not signed the bill” and that “their referendum sample sheets are valid as to form.” *Id.* ¶¶ 73–74; *see also id.* at 11–12 (prayer for relief a–b). They request this Court to enjoin the Secretary “from rejecting [their] referendum petition sample sheets on the basis that the Governor has not signed House Bill 1” and “from taking any other actions . . . on the basis that [their referendum petitions] do[] not comply with the form proscribed by statute.” *Id.* ¶¶ 75–76, *see also id.* at 12 (prayer for relief d–e).

Plaintiffs in Count II allege that the Secretary of State may not automatically disqualify signatures gathered prior to their referendum petition's approval as to form. *See id.* ¶¶ 79–84. Again, Plaintiffs seek declaratory and injunctive relief. *Id.* ¶¶ 85–86; *see also id.* at 12 (prayer for relief f). They ask this Court to declare that the Secretary's “approval as to form is not required to gather signatures” and that

signatures gathered prior to approval “are not *per se* invalid.” *Id.* ¶¶ 85–86; *see also id.* at 12 (prayer for relief c). They also ask this Court to enjoin the Secretary “from rejecting signatures gathered . . . prior to approval of the referendum sample sheet . . . and/or . . . prior to the governor signing House Bill 1.” *Id.* at 12 (prayer for relief f).

ARGUMENT

I. The Secretary of State’s approval of Plaintiffs’ most recent referendum petition moots any claim that the Secretary wrongly denied previously filed identical petitions.

The Court must dismiss Count I for want of a live controversy. Jurisdiction only extends to “cases and matters.” Mo. Const. art. V, § 14. This requires “[t]he existence of an actual and vital controversy susceptible of some relief,” *L.E.C. v. K.R.C.*, 674 S.W.3d 97, 103 (Mo. App. E.D. 2023) (quoting *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2011)), as “[i]t is well-established that Missouri courts do not determine moot cases or render advisory opinions,” *Friends of the San Luis, Inc. v. Archdiocese of St. Louis*, 312 S.W.3d 476, 483 (Mo. App. E.D. 2010). “A case is moot when an event occurs that makes the court’s decision unnecessary or makes granting effectual relief by the court impossible.” *Id.* “Even a case vital at inception . . . may be mooted by an intervening event which so alters the position of the parties that any judgment rendered merely becomes a hypothetical opinion.” *Id.* (quoting *City of Manchester v. Ryan*, 180 S.W.3d 19, 21 (Mo. App. E.D. 2005)). Because the Secretary of State has approved Plaintiffs’ referendum petition as to form, there is no relief left for this Court to grant on Count I.

A. The Secretary of State approving Plaintiffs' most recent referendum petition renders this case moot.

Count I of Plaintiffs' First Amended Petition—seeking a mandatory injunction requiring the Secretary to accept Plaintiffs' referendum petition as to form—is now moot. On October 14, 2025, the Secretary of State approved as to form Plaintiffs' referendum petition on House Bill 1. *See* Joint Stipulation ¶ 30. Other than the date of submission listed on the cover page, which is not part of the referendum petition, *see* Mo. Rev. Stat. §§ 116.030, 116.332, the referendum-petition sample sheets submitted before the Governor signed House Bill 1 and the one approved as to form on October 14, 2025 are identical. *Compare* Joint Stipulation Ex. 4; *id.* Ex. 5; *id.* Ex. 8, *with id.* Ex. 12. Plaintiffs ask this Court to declare their sample sheets valid as to form and to enjoin the Secretary from rejecting their sample sheets. *See* First Am. Pet. ¶¶ 73–76. But given intervening action by the Secretary, those requests are now “plainly moot”—warranting nothing more than dismissal through a summary order. *Alaska v. U.S. Dep't of Agric.*, 17 F.4th 1224, 1226 (D.C. Cir. 2021) (citation omitted). The Secretary's approval of their most recently submitted referendum petition has given Plaintiffs what they wanted. This Court can offer no more “effectual relief”—any decision would be “unnecessary.” *L.E.C.*, 674 S.W.3d at 103.

B. No exception to mootness applies.

Missouri recognizes two narrow exceptions to mootness. *Hail v. Hail*, 380 S.W.3d 655, 656 (Mo. App. W.D. 2012). First, a court may consider a case if it “becomes moot after” argument and submission. *Id.* (quoting *Jenkins v. McLeod*, 231 S.W.3d 831, 833 (Mo App. E.D. 2007)). But this case has not yet reached that point.

The second exception is 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.” *In re Mo.-Am. Water Co.*, 516 S.W.3d 823, 829 (Mo. banc 2017) (citation omitted). This exception is “very narrow.” *Id.* It too does not apply. Assuming that the methods for filing a referendum petition are of general public interest and importance, the other two requirements are not met.

There is no indication that this kind of controversy will recur. To invoke the public interest exception, Plaintiffs “must point to circumstances which take the possibility of recurrence out of the realm of pure speculation.” *Jackson Cnty. Bd. of Election Comm’rs ex rel. Brown v. City of Lee’s Summit*, 277 S.W.3d 740, 745 (Mo. App. W.D. 2008) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)). Plaintiffs cannot carry this burden. Referendum petitioners in the past have waited until after a bill was signed into law before filing referendum sample sheets. *E.g.*, *ACLU of Mo. v. Ashcroft*, 577 S.W.3d 881, 884 (Mo. App. W.D. 2019). Assuming that future petitioners will preemptively file sample sheets prior to a bill being signed would require an act of pure speculation. *Cf. Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 25 (D.C. Cir. 2015) (explaining that “‘predictions of future events (especially future actions taken by third parties)’ are too speculative”).

Even if the Court believed that this issue is likely to reoccur, Plaintiffs cannot show that it is capable of evading appellate review in the future. “For a case to evade review in future live controversies, the duration of the controversy must be so limited that it is not possible for a claim to be heard and appeals to be exhausted during its

duration.” *Vernon Cnty. Republican Comm. ex rel. Haggard v. Lee*, 692 S.W.3d 439, 443 (Mo. App. W.D. 2024) (quoting *Bernhardt v. McCarthy*, 467 S.W.3d 348, 351 (Mo. App. W.D. 2015)). “Missouri courts have a long history of resolving cases involving election-related issues on an extremely expedited basis, and it is certainly possible for future claims, *if expedited*, to be heard and appeals to be exhausted within the statutory time constraints.” *Id.* (emphasis added). Plaintiffs did not seek expedited review—e.g., a temporary restraining order—by this Court, and it would thus be incongruous to let them claim this issue will evade review. *See Gartner v. Mo. Ethics Comm’n*, 323 S.W.3d 439, 442 (Mo. App. E.D. 2010) (declining to exercise the public-interest exception where future litigants can use expedited review).

A question like this would be practically capable of a review in a future live controversy. For example, in *ACLU of Missouri v. Ashcroft*, after the Secretary rejected the proposed referendum petition as to form, both this Court *and* the court of appeals issued rulings within thirty-two days of the plaintiffs filing their petition and request of a temporary restraining order. *See* 577 S.W.3d at 885–87. Again, unlike Plaintiffs in the present case, the ACLU “noted the urgency of time.” *Id.* at 885. As the Governor has forty-five days to sign the bill before it automatically becomes enacted, Mo. Const. art. III, § 31,¹ this issue *is* capable of review. Therefore, the public-interest exception to mootness does not apply.

¹ The period to return the referendum petition is triggered by “final adjournment of the session of the general assembly which passed the bill,” Mo. Const. art. III, § 52(a),

Finally, Plaintiffs' request that this Court declare valid any signatures gathered prior to submission of the operative referendum petition on September 29, 2025 does not spare Count I from mootness. First, for the reasons explained in the next section, Plaintiffs' concerns regarding signatures are not yet ripe for review. But even if they were, the request for a declaration—and further relief predicated on that declaration—does not speak to the Secretary's accepting referendum petitions as to form. There must be "a real, substantial, presently-existing controversy admitting of specific relief" to warrant a declaratory judgment. *Mo. Soybean Ass'n*, 102 S.W.3d at 25. Indeed, Plaintiffs readily concede that the implications of the Secretary's denying the first three sample sheets as to form are "not an issue . . . at this stage." Plaintiffs' Pretrial Br. at 6. Because the concerns predicated on Count I—that the Secretary accept the referendum petition as to form—are now satisfied in Plaintiffs' favor, the Court has no basis for issuing any judgment on Count I.

In short, the Court should dismiss Count I of Plaintiffs' Amended Petition without prejudice. The Secretary accepted the referendum petition as to form on October 14, 2025—giving Plaintiffs' their desired relief. Further entertaining Count I would produce nothing more than an advisory opinion.

so the relevant time period for the Governor to act is governed by "[w]hen the general assembly adjourns," *id.* art. III, § 31. This is "forty-five days." *Id.*

II. Any controversy regarding signatures is not ripe because Plaintiffs have not finished collecting signatures and the Secretary has not rejected the petition for failure to meet signature thresholds.

Count II of Plaintiffs' Amended Petition also warrants dismissal because it requests relief predicated on concerns that may never happen. For a referendum petition to qualify for inclusion on the ballot, the proponent must collect signatures of "five percent of the legal voters in each of two-thirds of the congressional districts." Mo. Const. art. III, § 52(a). In their requests for relief, Plaintiffs ask this Court to declare that Plaintiffs could gather signatures after filing the initial referendum petition on September 12, 2025. First Am. Pet. at 12 (prayer for relief). They also seek an injunction prohibiting rejection of signatures collected from that date forward solely because they were gathered before the Secretary approved the operative petition as to form on October 14, 2025. *See id.* Plaintiffs, apparently, fear that they will be unable to collect sufficient valid signatures by December 11, 2025—the latest that they can submit the final petition with signatures. *See* Mo. Const. art. III, § 52(a). But that fear, at this point, is entirely speculative.

"Ripeness requires the declaration sought to present a question appropriate and ready for judicial determination." *Parker v. Castle View Country Club, Inc.*, 690 S.W.3d 918, 920 (Mo. App. S.D. 2024) (quoting *Cooper v. State*, 818 S.W.2d 653, 655 (Mo. App. W.D. 1991)). Count II of the Amended Petition turns on a hypothetical, future injury—that the Secretary of State may reject some signatures and prevent Plaintiffs from meeting the necessary signature threshold. But this is "a situation that may never occur," so this case is not ripe. *Local Union 1287 v. Kansas City*

Transp. Auth., 848 S.W.2d 462, 463 (Mo. banc 1993). For one thing, Plaintiffs have not yet submitted any signatures, and the Secretary has not rejected any signatures.

Moreover, nowhere have Plaintiffs alleged that they will be unable to submit a final referendum petition with sufficient signatures if the Secretary rejects signatures collected prior to the submission or approval as to form of the now-approved sample sheet. Plaintiffs could very well gather enough signatures to meet or exceed their threshold without needing to rely on previously collected signatures (again, they have until December 11, 2025, *see* Mo. Const. art. III, § 52(a), and their ground operation has already collected over 100,000 signatures as of mid-October, *see* Joint Stipulation ¶¶ 29, 32). Hence, their concern about not meeting the signature threshold if the Secretary rejects signatures predating a valid referendum petition may never come to pass.

This is quintessentially a claim where the Court should avoid “premature adjudication” of an issue to prevent “entangling [itself] in [an] abstract disagreement.” *Graves v. Mo. Dep’t of Corrs., Div. of Prob. & Parole*, 630 S.W.3d 769, 773 (Mo. banc 2021) (citations omitted). Only if (a) the Secretary rejects these older signatures and (b) that rejection prevents Plaintiffs from meeting the signature threshold will the question presented in Count II “be ready for judicial decision.” *Local Union 1287*, 848 S.W.2d at 463. It is way too early to assume that either—let alone both—of those conditions will occur. Therefore, this Court should dismiss Count II of Plaintiffs’ petition without prejudice.

III. Plaintiffs' claims fail on the merits.

Even if the Court finds jurisdiction, both Counts of the Amended Petition fail as a matter of law. First, for Count I, the Secretary of State rightly rejected Plaintiffs' previously filed petitions because House Bill 1 was not yet a law. Until Governor Kehoe signed House Bill 1 on September 28, 2025, it was merely a bill, not a law. Referendum petitions can only challenge enacted laws, not bills. Mo. Const. art. III, § 49 ("The people . . . reserve power to approve or reject by referendum any act of the general assembly . . ."). Hence, the Secretary correctly rejected the first three referendum petitions submitted as to form. Second, because the first three petitions were invalid, any signatures collected on those petitions are likewise invalid. Missouri law is clear that there must be a valid petition before a referendum proponent can commence collecting signatures. Mo. Rev. Stat. § 116.332.1; *see also* *ACLU of Mo.*, 577 S.W.3d at 890 (describing review under § 116.332 as "during the 'pre-signature collection stage' of the referendum process"). Hence, Plaintiffs' attempts to force the Secretary to accept (prematurely) signatures collected prior to a valid petition must fail.

A. Count I fails as matter of law because the first three referendum petitions were premature.

1. *Referendum petitions may only challenge enacted laws.*

All relevant provisions governing the referendum process make clear that a referendum petition can only be initiated against enacted laws, not bills. As the Missouri Supreme Court has long held, "the intendment of the framers of the [Missouri] Constitution was that all *laws*, except those declared non-referable, should

be subject to referendum.” *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 706 (Mo. banc 1952) (emphasis added). The form for submitting a referendum petition—specifically codified by statute—reflects this law requirement. It limits referendum petitions to “any law passed by the general assembly of the State of Missouri.” Mo. Rev. Stat. § 116.030. Indeed, procedurally, in filing a referendum petition, the petitioner must cite “all sections of existing law or of the constitution which would be repealed by the measure.” *Id.* § 116.050.2(2). Bills, of course, are not “existing law” and they cannot be “repealed”—they have not yet been enacted.

Even putting common-sense syllogisms aside, the statute’s precise language serves a purpose. The statute’s use of “law” (as opposed to “bill”) is no accident, and courts must construe the statute to give effect to the legislature’s chosen words. *See State ex re. Bailey v. Fulton*, 659 S.W.3d 909, 912 (Mo. banc 2023) (“The primary goal of statutory interpretation is to give effect to legislative intent, which is most clearly evidenced by the plain text of the statute.” (quoting *State ex rel. Goldsworthy v. Kanatzar*, 543 S.W.3d 582, 585 (Mo. banc 2018))). “Law” has a specific meaning—a bill signed by the Governor. Mo. Const. art. III, § 31; *see also id.* § 21 (“No law shall be passed except by bill . . .”). As the Missouri Supreme Court has explained, under the current Missouri Constitution, “passage of a bill by the general assembly plus its approval by the governor produces a validly enacted law.” *Brown v. Morris*, 290 S.W.2d 160, 166 (Mo. banc 1956).

Giving full construction to the statutes governing the referendum petition leads to a straightforward conclusion—only an enactment signed by the Governor can

be challenged by a referendum. Hence, no petition filed prior to September 28, 2025, when Governor Kehoe signed House Bill 1, *see* Joint Stipulation ¶ 26, could comport with statutory requirements.

Ultimately prevailing here requires Plaintiffs to articulate somehow that the statute's requirement for a submitted form to seek a referendum on "any law" "interfere[s] with or impede[s]," Mo. Rev. Stat. § 116.030, the constitutional right to a referendum, *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 489 (Mo. banc 2022) (quoting *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982)). They try to get around this impediment by accusing the Secretary of "shortening the 90-day window mandated by the Missouri Constitution." Plaintiffs' Pretrial Br. at 2. Their arguments fail.

Beginning with the constitutional right of referendum, "restrictions on the people's power of [referendum] must be found in the constitution." *Coleman v. Ashcroft*, 696 S.W.3d 347, 352 (Mo. banc 2024). "Legislation to implement the referendum process is presumed to be constitutionally valid." *No Bans on Choice*, 638 S.W.3d at 489. Ultimately, the statutory requirements that a proposed referendum challenge an enacted law pose no such impediment—they straightforwardly apply the Missouri Constitution itself.

The Missouri Constitution reserves to the people the power to "approve or reject by referendum *any act* of the general assembly." Mo. Const. art. III, § 49 (emphasis added). This dispute boils down to whether an "act" of the legislature is a

bill or a law. To answer this question, the Court must interpret Section 49 of the Missouri Constitution.

“This Court’s primary goal in interpreting Missouri’s constitution is to ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted.” *C.S. v. Mo. Highway Patrol Crim. Just. Info. Serv.*, 716 S.W.3d 264, 267 (Mo. banc 2025) (quoting *State v. Honeycutt*, 421 S.W.3d 410, 414–15 (Mo. banc 2013)). The initiative and referendum provisions of the Missouri Constitution, Article III, §§ 49–53, are derived from the initiative and referendum provision of the 1875 Missouri Constitution, Article IV, § 57 adopted in 1908. “This single-paragraph section [was] broken down in the present Constitution into five separate sections, numbered 49 to 53, inclusive.”² The referendum provisions, Sections 49, 52(a), and 52(b), contain a few clarifying words but otherwise are identical to the original provision.³

² *The Constitution of the State of Missouri: Adopted by the People on February 27, 1945, with Annotations and Appendix Comparing the Provisions Therein with the Provisions in the Constitution of 1875, as Amended and in Force on That Date* 55 (Lester G. Seacat, ed., 1945), https://scholarship.law.missouri.edu/mo_constitutions_race/6/.

³ *Id.* at 55–57. Section 49: “The people reserve power to propose and enact or reject laws and amendments to the Constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.” (changes underlined). Section 52(a): no changes. Section 52(b): “The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people shall be had at the general state elections, except when the general assembly shall order a special election. Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise. This

Beginning with the text of Section 49, it states that “[t]he people reserve power to propose and enact or reject laws and amendments to the Constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.” The first part of this provision explicitly allows the people to “reject laws.” Although this refers to the initiative, traditionally “the initiative allows the electorate to *adopt* positive legislation.” *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 794 (2015) (emphasis added). Conversely, the referendum is the “negative check”—allowing voters to approve or reject legislation. *Id.* It would make little sense to allow for the rejection of only laws by initiative while allowing the rejection of bills by referendum. Rather, because the referendum is the people’s tool to reject laws, *see id.*, it makes more sense to use “reject[ing] laws” to inform our understanding of what is an “act of the general assembly.” Meanwhile, if citizens are troubled by the prospect of a certain bill becoming law, then proposing a countervailing initiative would remedy the concern.

At the very least, Section 49’s use of both “reject laws” and “reject . . . any act” is ambiguous. It certainly does not compel, as Plaintiffs suggest, that an unenacted bill qualifies as an “act.” *See* First. Am. Pet. ¶ 26. And sure enough, any potential ambiguity of Section 49 is resolved by Missouri Supreme Court decisions

section shall not be construed to deprive any member of the general assembly of the right to introduce any measure.” (change underlined). None of these changes have any bearing on the question of what may be challenged by a referendum.

contemporaneous with the adoption of this initiative and referendum provision. *Cf. Edwards' Lessee v. Darby*, 25 U.S. (12 Wheat.) 206, 210 (1827) (extolling “the construction of a doubtful and ambiguous law” by an authoritative body).

Specifically, these decisions show that an “act of the general assembly” is an enacted law, not a bill. As one case explained, the original referendum provision “preserved” the Governor’s veto “in the matter of enacting or defeating laws.” *State ex rel. Lashly v. Becker*, 235 S.W. 1017, 1022 (Mo. banc 1921). Thus, it followed that a “legislative act[] so referred [to the people] . . . include[d] the approval and veto power of the Governor.” *Id.* at 1023; *see also id.* (noting that “all legislative authority was vested in a given legislative forum (including the General Assembly and the Governor)”). And, as another case made clear, this understanding of what constituted a legislative act extended to the referendum: “This law is an act of the Legislature, and under [the referendum provision] of the Constitution is subject to the referendum.” *Fahey v. Hackmann*, 237 S.W. 752, 762 (Mo. banc 1922). So, historically construed, an “act” is not an unenacted bill.

The surrounding constitutional text in the referendum provisions reinforces this understanding. Like statutes “passed in the same legislative session as part of the same legislative act, this Court must attempt to harmonize” these referendum provisions, which were all simultaneously adopted in 1945 Constitution. *State ex rel. T.J. v. Cundiff*, 632 S.W.3d 353, 357 (Mo. banc 2021). And the referendum provisions are materially the same as the original referendum and initiative provision adopted in 1908. *See The Constitution of the State of Missouri*, *supra* note 2, at 55–57. None

of the other referendum provisions use “act,” so the meaning of “act” cannot be readily taken from these provisions. *See* Mo. Const. art. III, §§ 52–53. However, the meaning of “act” can be discerned from “harmoniz[ing]” Section 49 with its implementing provisions. *State ex rel. T.J.*, 632 S.W.3d at 357. Notably, in detailing the referendum exceptions and procedures, Section 52(a) uses both “law[]” and “bill.” (None of the other provisions use either these terms in context.⁴) Examining how Section 52(a) uses these terms shows that an “act” can only be a law.

Section 52(a) establishes the procedure for how to refer a law to the people: the signature requirements and the timing. But in doing so, it excepts “laws” dealing with public emergencies and appropriations—not “bills.” *Id.* This word choice is telling. The exception is for the substance of enacted laws. If a public-emergency or appropriations provision—once enacted into law—will ultimately be exempted from a referendum, then it would be absurd and contradictory to allow a referendum petition to proceed before that bill has been signed by the Governor (or has become law if the Governor failed to act within the allotted time). Any other reading—allowing for an unenacted bill to get referred—would disharmonize the meaning of this constitutional provision. Instead, the plain meaning of this provision confirms that a referendum may only be initiated on an enacted law.

⁴ Article III, Section 53 uses “laws,” but it is not in reference to the subject of a referendum petition.

“Bill” is used in the timing sentence of Section 52(a): “Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.” Plaintiffs suggest that the mere use of “bill” makes it synonymous with “act of the general assembly.” Plaintiffs’ Pretrial Br. at 7. But “[c]rucial words must be viewed in context, and courts must assume that words were used purposefully.” *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991). Unlike with “law” in the first sentence, “bill” is not used in reference to the subject of the referendum. Instead, it is part of the restrictive clause (“which passed the bill on which the referendum is demanded”) giving essential information about the time requirements. As the timing provision links filing the referendum petition with the “adjournment of the session of the general assembly,” it stands to reason that the Constitution would link the time with general assembly’s part of the legislative action—“pass[ing] the bill.” See Mo. Const. art. III, § 31 (“Every bill which shall have passed the house of representatives and the senate . . .”). So Section 52(a)’s “bill” does not give meaning to an “act” of the General Assembly.

Finally, the Missouri Supreme Court has recently recognized that the referendum can only be had on a bill “signed [into law] by the governor.” See *No Bans on Choice*, 638 S.W.3d at 491 (determining that a referendum campaign benefitted when “the challenged legislation [was] signed by the governor . . . 113 days before the final adjournment of the legislative session”). All told, statutory and constitutional text, history, precedent, and common sense show that the Missouri Constitution did

not grant a right to pursue referenda against uncoded bills. *Cf. Cummings v. Missouri*, 71 U.S. (1 Wall.) 277, 325 (1866) (“The Constitution deals with substance, not shadows.”). Because only a codified law can predicate a referendum, the Secretary properly concluded that the first three referendum petitions could not proceed. Hence, the Secretary correctly rejected Plaintiffs’ referendum petitions submitted before House Bill 1 was signed into law.⁵

2. *Because the first three petitions did not challenge an enacted law, the Secretary properly rejected the petitions as to form.*

Under the governing statute, the Secretary could not approve the first three petitions as to form because they challenged bills, not enacted laws. As previously explained, the form codified in Section 116.030 requires a “law.” *See* Mo. Rev. Stat. § 116.030 (“on any law passed by the general assembly”); *id.* (form has a blank for “title of law”). “Though the phrase ‘sufficiency as to form’ in section 116.332 is not afforded an express statutory definition, section 116.030 effectively serves as the

⁵ In narrowly arguing here that the Secretary could not approve as to form a referendum petition challenging an unenacted bill unsigned by the Governor, Defendant does not concede that House Bill 1, a congressional redistricting measure, is lawfully susceptible to the referendum process—even after it was signed by Governor Kehoe. Under current precedent, whether a referendum petition can be sought against a particular enactment is a substantive consideration that the Secretary may only consider after the finalized petition with signatures is submitted. *See ACLU of Mo.*, 577 S.W.3d at 892 (“[T]he secretary of state’s authority to review a referendum petition sample sheet for sufficiency as to form does not extend to substantive matters including, without limitation, determining compliance with the Missouri Constitution.”). Defendant also maintains that the U.S. Constitution prohibits the proposed referendum—a question currently being adjudicated in federal court. *See Compl., Missouri General Assembly v. von Glahn*, 4:25-cv-01535 (E.D. Mo. Oct. 15, 2025), ECF No. 1.

definition for the phrase” *ACLU of Mo.*, 577 S.W.3d at 890. The Secretary of State’s review under Section 116.332 is “limited to determining whether the sample sheet is substantially in the form required by section 116.030.” *Id.* at 892.

Part of this review is ensuring “compliance” over the “insertion of required or requested information” in “blank spaces.” *Id.* at 891. One of these blank spaces is for the “title of law.” Mo. Rev. Stat. § 116.030. The statute also requires that the referendum proponent attach to the form “all sections of *existing law* . . . which would be repealed by the measure.” *Id.* § 116.050.2(2) (emphasis added). The first three referendum petitions were not for an enacted law and did not “[i]nclude all sections of existing law . . . which would be repealed by the measure,” so the Secretary of State properly rejected these sample sheets. *Id.* Said differently, there was no “law” with a “title” capable of meeting the form’s requirements prior to the Governor’s signing House Bill 1. *Id.* § 116.030.

Confirming that a petition is sufficient as to form is not a mere clerical act. It helps ensure that “the constitutional requirements [for placing a measure on the ballot] have been met.” *Mo. Elec. Coops. v. Kander*, 497 S.W.3d 905, 913–14 (Mo. App. W.D. 2016) (alteration in original) (quoting *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 828 (Mo. banc 1990)). True, current precedent limits the Secretary’s review of the petition as to form. Specifically, the Secretary cannot reject as to form a petition whose aim may not be lawful. *See ACLU of Mo.*, 577 S.W.3d at 891 (explaining that “the plain and ordinary dictionary meaning of the word ‘form’” precluded substantive legal review of the referendum’s aim); *accord id.*

at 891 (reasoning that “the qualifier ‘as to form’ would be rendered unnecessary and superfluous if review of a sample sheet for ‘sufficiency’ extended to all matters, including substantive and constitutional matters”).⁶ Plaintiffs therefore try to pigeonhole the denials of the first three sample sheets as rejections rooted in substantive legal concerns. *See* Plaintiffs’ Pretrial Br. at 5.

But obvious deficiencies that do not comply with the rules of the statutory form—like attaching an unsigned bill rather than a “law”—are not judgments based on substantive legal considerations and need not be approved. *See ACLU of Mo.*, 577 S.W.3d at 891 (citing a definition of “form” as a “procedure according to rule or rote” (quoting WEBSTER’S THIRD NEW INTERNATIONAL 892 (1993))). Allowing a referendum petition on a bill would not comport with the statutory meaning of “law.” Mo. Rev. Stat. § 116.030. Meanwhile, correctly construing “law” does not render any provision “unnecessary and superfluous.” *ACLU of Mo.*, 577 S.W.3d at 891.

Plaintiffs’ only effort to grapple with the text of Section 116.030 is their assertion that “nothing in the statute governing the form of the sample sheets even references a gubernatorial signature.” Plaintiffs’ Pretrial Br. at 4. But including a reference in the statute to the Governor’s signature would be odd, and even problematic. The statute requires that the petition seek to refer “any law.” Mo. Rev.

⁶ Defendant reserves the right to challenge the validity of these precedents in due course. But because seeking a referendum on an unenacted bill cannot even comply with the rudimentary requirements of submitting a valid petition form, the correctness of cases like *ACLU of Missouri* does not affect Defendant’s entitlement to judgment as a matter of law here.

Stat. § 116.030. Legislation only becomes enacted law after either the Governor signs the bill or the time for the Governor to act on the bill expires. Mo. Const. art. III, § 31. So a statutory reference to the Governor's signature would be both superfluous and potentially confusing given that a bill can become law through the Governor's inaction. *See id.* ("If any bill shall not be returned by the governor within the time limits prescribed by this section it shall become law in like manner as if the governor had signed it."). Hence, contrary to Plaintiffs' suggestions, *see* Plaintiffs' Pretrial Br. at 4–5 & n.2, the Secretary knew his role and acted accordingly in denying as to form petitions that did not comply with the form prescribed by the statute itself.

The effects of Plaintiffs prevailing here also cannot be understated. If unenacted bills can be challenged by a referendum, then even a single legislator's introduction of a bill in a house of the General Assembly could be subjected to a referendum, and the Secretary would be forced to approve the measure as to form. This, of course, does not comport with the form prescribed by the General Assembly. *See* Mo. Rev. Stat. § 116.030. The initiative-petition process is the proper vehicle for citizens looking to preempt enactment of bills. *See* Mo. Const. art. III, § 50. So the Secretary did not exceed his authority under Section 116.332.1 when he rejected the first three referendum petitions as to form.

And beyond labels, rejecting the sample sheets as to form complies with the Constitution. "The legislature inherently has the power to reduce the time to circulate a referendum petition on any particular piece of legislation by delaying the passage of that legislation until the end of the legislative session." *No Bans on Choice*,

638 S.W.3d at 491. The Legislature passing the bill and the Governor signing it are both part of the legislative process. Mo. Const. art. III, § 31. Even though Governor Kehoe did *not* use all allotted time to sign the redistricting bill, the Missouri Supreme Court has recognized that the governor has the practical ability to wait before signing a bill and thus “reduce the time to circulate a referendum petition.” *See No Bans on Choice*, 638 S.W.3d at 491. This is not a mere “procedural formalit[y].” *See id.* at 492. A referendum petition seeking to challenge a bill before this lawmaking process ends is simply not a valid form that the Secretary can approve. Therefore, the Secretary of State correctly rejected as to form Plaintiffs’ referendum petitions submitted before the Governor had signed House Bill 1 into law.

B. Count II fails because Missouri law does not permit gathering signatures prior to a valid referendum petition.

Plaintiffs’ efforts to force the Secretary to accept signatures gathered prior to the existence of a valid referendum petition must also fail. As discussed above, Plaintiffs submitted three referendum petitions before House Bill 1 was signed into law by the Governor. The Secretary of State properly rejected these petitions as to form. Because these petitions were invalid, all signatures collected in support of them occurred “during the ‘pre-signature collection stage’ of the referendum process.” *ACLU of Mo.*, 577 S.W.3d at 890 (emphasis added). Section 116.332.1 specifically requires that a petitioner have submitted a valid sample sheet to the Secretary of State “[b]efore . . . a referendum petition may be circulated for signatures.” If a valid sample sheet must be submitted to allow signature gathering, signatures collected on a sample sheet rejected as to form are *per se* invalid. Hence, under the statute and

because no valid referendum petition yet existed, the Court cannot order the Secretary to count any of the approximately 32,600 signatures gathered prior to September 28, 2025. See Joint Stipulation ¶ 29.

And because the rejection of referendum petitions as to form did not “interfere with or impede a right conferred by the constitution,” not counting those signatures can no more “interfere with or impede” the constitutional right of the referendum. See *No Bans on Choice*, 638 S.W.3d at 489 (quoting *Rekart*, 639 S.W.2d at 608). Nothing in Missouri law prohibits requiring that a proponent submit a valid referendum petition before collecting signatures. The Missouri Supreme Court has held that the signature-circulation time periods under Section 116.332.1 for an initiative are “established by Mo. Const. art. III, § 50.” *Upchurch*, 810 S.W.2d at 517. Section 50 is the form-and-procedure provision for initiative petitions, and its only explicit time requirement is that the initiative petition be “filed . . . not less than six months before the election.” Mo. Const. art. III, § 50; see also *Upchurch*, 810 S.W.2d at 517. Nonetheless, the Supreme Court held it “clear” that the time period was “framed by reference to general elections” and initiative petition sample sheets could only be submitted “after one general election.” *Upchurch*, 810 S.W.2d at 517.

Article III, Section 52(a) of the Missouri Constitution is the referendum-provision analog to Section 50. Section 52(a) also only has one explicit time requirement: Referendum petitions must be “filed . . . not more than ninety days after the final adjournment of the session.” Like with Section 50, Section 52(a)’s time period is equally “clear.” See *Upchurch*, 810 S.W.2d at 517. Here, the time period is

properly framed by reference to “laws.” See Mo. Const. art. III, § 52(a) (excepting emergency and appropriations “laws”). “Although the authority is not semantically explicit, the constitutional provision[] [is] nonetheless plain in meaning.” See *Upchurch*, 810 S.W.2d at 517. Therefore, Section 52(a) permits submission of sample referendum petitions to the Secretary of State from any time after enactment until ninety days after the final adjournment of the session.

This point is illustrated by *State ex rel. Basinger v. Ashcroft*, 677 S.W.3d 562 (Mo. App. W.D. 2023), which operationalized *Upchurch*. There, a petitioner had filed his sample initiative petition for 2024 election two months before 2022 election and thus was outside the time period proscribed by Section 50 as interpreted by *Upchurch*. *Id.* at 567. As a result, the Secretary of State’s obligation to process the initiative petition “did not arise until” after the election. *Id.* Allowing the petitioner in *Basinger* to have counted any signatures collected in the meantime would have defeated the court’s ruling. Besides a different constitutional time period, referendum petitions are no different. Hence, the Missouri Constitution does not allow the Secretary of State to count signatures collected before the enactment of House Bill 1.

Plaintiffs’ only effort to engage with Section 52(a) is to say that the “plain language” requires that a referendum proponent have “at least ninety days to gather signatures.” Plaintiffs’ Pretrial Br. at 9–10. This position disregards the actual text, harmonizing constitutional provisions, and precedent. First, the “plain language” does not grant proponents a right to a firm ninety-day signature-gathering window.

Section 52(a) only sets a due date for petitions to “filed.” Mo. Const. art. III, § 52(a) (emphasis added). Nothing in the text creates a right to ninety days to collect signatures. Finding such a right would require reading out “not more than ninety days” and changing it to “at least ninety days.” *See id.* Even ignoring Plaintiffs’ effort to convert Section 52(a)’s language from “not more than” to “at least” ninety days, it is likewise nonsensical to suggest that the words “be filed” means “gather signatures.” *See id.*

Second, because no law (except for an appropriation act) can “take effect until ninety days after the adjournment,” *id.* § 29, Section 52(a)’s requirement that a referendum petition be filed within ninety days after adjournment is “consistent” with Section 29. *See ACLU of Mo.*, 577 S.W.3d at 888–89; *see also Upchurch*, 810 S.W.2d at 516 (“This Court is required to give due regard to the primary objectives of the constitutional provision under scrutiny, as viewed in harmony with all related provisions.”). Finding a novel right to ninety days for a proponent to collect signatures would break this harmony.

Third, Plaintiffs suggest that this “situation is different” because House Bill 1 was passed on the last day of the legislative session. Plaintiffs’ Pretrial Br. at 10. But “delaying the passage of that legislation until the end of the legislative session” does not alter when a petition is due—constitutionally reducing Plaintiffs’ time to collect signatures. *No Bans on Choice*, 638 S.W.3d at 491. Plaintiffs’ aspirational interpretation of Section 52(a) must give way to the provision’s plain meaning.

As for signatures collected on the fourth referendum petition before the Secretary of State's approval, these too are invalid. In *No Bans on Choice*, the Missouri Supreme Court held that the statutory "prohibition on collecting referendum petition signatures prior to the Secretary's certification of the official ballot title 'interferes with and impedes' the constitutional right of referendum." 638 S.W.3d at 492. The Secretary of State proceeds to certifying the ballot title only after the referendum petition is deemed sufficient as to form, see Mo. Rev. Stat. § 116.334, but while this ballot title certification is ongoing, the petitioner has an approved referendum petition, see *No Bans on Choice*, 638 S.W.3d at 492. But unlike certifying the ballot title, the Secretary's approval of the referendum petition "occur[s] at the beginning of the process." *Coleman*, 696 S.W.3d at 351. This approval is vitally "important" to protecting the "citizens' constitutional power of [referendum] petition." *Id.* at 351–52. It allows the Secretary of State to correct an error in form "with minimum disruption." *Id.* at 351.

Allowing petitioners to collect signatures on a referendum petitions before approval as to form will sow confusion. For example, a voter wanting to sign a referendum petition could (as here) sign an invalid referendum petition. But when later approached with a valid referendum petition over the same law, he could not sign it believing he had already signed a previously valid petition. In this way, his signature could go uncounted. One need look no farther than the record in this case to see the impact of proponents jumping the gun on collecting signatures. Notably, between September 15 and September 28, Plaintiffs collected approximately 32,600

signatures on the first three referendum petitions. Joint Stipulation ¶ 29. Because those petitions are invalid as to form, those signatures cannot count. Yet, signatories may have never realize that they signed an invalid petition. Alternatively, one could imagine a situation where the first petition were valid. But the voter, believing the first petition was invalid, signed a second petition and unwittingly exposed himself to liability for ballot fraud. See Mo. Rev. Stat. § 116.090.1(1). Providing basic ground rules to keep overzealous proponents from gathering signatures on invalid petitions does not “interfere with or impede” the citizens’ right of referendum. See *No Bans on Choice*, 638 S.W.3d at 489. The Secretary’s approval as to form provides a clear line of demarcation to voters for when they can safely sign a referendum petition and have their voice heard, and this Court should not order the Secretary to count any signatures prior to his approval as to form.

At the very least, this Court should hold that signatures collected before submission of a valid referendum petition are invalid and cannot be required to be counted. However, because the referendum process initiates with the Secretary of State’s approval of a petition as to form, the Court should hold that only signatures collected following the October 14 approval as to form must be counted.

IV. Plaintiffs have not shown entitlement to an injunction.

Given the legal deficiencies in both Counts, Plaintiffs’ requests for mandatory-injunctive relief necessarily fail. See *Estate of Hutchinson*, 494 S.W.3d at 608 (explaining that “at the permanent injunction stage, the trial court must finally determine the merits of the claims” (citation omitted)). As the U.S. Supreme Court has explained, “in equity, ‘the broader and deeper the remedy the plaintiff wants, the

stronger the plaintiff's story needs to be.” *Trump v. CASA, Inc.*, 606 U.S. 831, 854 (2025) (quoting Samuel Bray & Paul Miller, *Getting into Equity*, 97 NOTRE DAME L. REV. 1763, 1797 (2022)). The merits favor the Defendant here—and so do the equities.

Plaintiffs have not articulated any harm warranting a mandatory injunction against the Secretary. In just about a month of campaigning, Plaintiffs were able to collect about 100,000 signatures supporting the referendum. See Joint Stipulation ¶¶ 29, 32. They still have until December 11 to collect about 106,000 valid signatures. See Mo. Const. art. III, § 52(a); Joint Stipulation Ex. 1, at 5. Given their collection history, nothing in the record suggests that Plaintiffs will be incapable of meeting their signature requirements—even if the Secretary rejected all signatures gathered prior to October 14. Plaintiffs have therefore failed to establish their burden of showing that “irreparable harm will result if the injunction is not awarded.” *Suppes*, 613 S.W.3d at 847 (citation omitted).

CONCLUSION

After considering the submissions, this Court should enter judgment in favor of Defendant on both Counts in the Amended Petition, as the Plaintiffs' claims fail to present a justiciable controversy. Count I is moot because the Governor has signed House Bill 1, and the Secretary of State has approved Plaintiffs' petition as to form. This Court cannot offer any effectual relief here. Meanwhile, Count II is not ripe. Plaintiffs have not submitted any signatures to the Secretary of State, so the Secretary of State has not acted in any way on these signatures. A decision by the Court at this point would be premature and hypothetical.

But even if the Court were to disagree with these jurisdictional arguments, Plaintiffs' claims still fail on the merits. For their first Count, the right of referendum under the Missouri Constitution only extends to laws, not bills, and so the Secretary of State correctly rejected any referendum petition submitted on House Bill 1 prior to the Governor signing the bill into law. This also dooms their second Count. Under the Missouri Constitution and statutes, Plaintiffs can only collect signatures on a valid referendum petition. This requires it to be submitted on a law and approved by the Secretary of State.

Hence, the Court should either dismiss this case or enter judgment in favor of Defendant.

Dated: October 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on October 31, 2025, the foregoing was filed on the Missouri CaseNet e-filing system, which will send notice to all counsel of record.

/s/ William J. Seidleck
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