IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

No. WD88795

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN, APPELLANTS,

VS.

DENNY HOSKINS, SECRETARY OF STATE OF MISSOURI, RESPONDENT.

On Appeal from the Circuit Court of Cole County, Missouri
The Honorable Brian K. Stumpe, Judge

APPELLANTS' REPLY BRIEF

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I. The trial court exceeded its authority by removing the word "existing" from the summary statement and making it inaccurate

A. The Secretary paints an alternative history for removal of the word "existing"

Tellingly, the Secretary's arguments for removing the word "existing" contain no supporting record citations. *See* Resp. Br. at 35-39. That's because the Secretary is attempting to reverse engineer what occurred below to support his present argument. Fundamentally, the trial court never found that the word existing was insufficient or unfair, because no party presented evidence *or even argument* that it was. Without such finding, the court could not remove the word.

But the Secretary slipped that edit into his proposed judgment and the trial court adopted it. *See* Attachment 2 to Secretary's March 26, 2026 Letter to Boeding; D133:P10; A10. Now, the Secretary points to the trial court decision in *Maggard v. State,* Case No. 25AC-CC09120, to claim HB 1 is the "existing" map and therefore the trial court was only correcting an inaccuracy by removing that word. Resp. Br. at 37-39. This doesn't match the timeline of events. Trial in *this* matter occurred on February 9, 2026; judgment was entered on March 20. The *Maggard* trial occurred on February 10, and judgment was not entered until March 27 – nearly one week later. It would have been *impossible* for the trial

court to rely on the *Maggard* decision to reach the conclusion that the word "existing" was inaccurate (which it is not).

Further, nothing in *this* judgment supports the Secretary's arguments. The Secretary drafted a proposed judgment, which the trial court signed with only minor modifications. D133; A1; Attachment 2 to Secretary's March 26, 2026 Letter to Boeding. The Secretary is now doing his best to impose his own *post hoc* logic on the judgment, but falls far short.

Nothing in the judgment even hints at the arguments the Secretary now makes. In fact, the word "existing" appears *but once* in the entire judgment—when the trial court restated the original summary statement. *See* D133; A1. No reasoning or logic is offered to justify removal of that word. Likewise, the Secretary's counsel never addressed the propriety of keeping or removing the word "existing" at trial. *See generally* Trial Tr.

The reality is the Secretary's proposed judgment gratuitously removed the word "existing" without explanation, analysis, or basis. *See* Attachment 2 to Secretary's March 26, 2026 Letter to Boeding. He did this for reasons that are now obvious based on the arguments being offered in this appeal: he believes the 2022 boundaries are not the "existing" boundaries because HB 1 is not suspended. But that's an argument he never put forward below. Consequently, it was not tested in *this* case, by *these* Plaintiffs.

B. The summary statement is inaccurate without the word "existing" as the caselaw overwhelmingly establishes

The Secretary's reliance on *Maggard* falls well short of engaging with Plaintiffs' arguments. Rather than restate those arguments here, it will suffice to simply say the Constitution, more than one hundred years of caselaw, and common sense establish that submission of signatures for a referendum stays the implementation of the bill upon which the referendum is requested. *See* App. Br. at 36-39. Plaintiffs' position at trial was that "existing" is accurate. Trial Tr. at 14:9-15. The word "existing" tells voters precisely what their vote will do.

According to the Secretary's logic, however, voters are apparently being asked whether they want to repeal a law that has *already been repealed*. After all, if—as the Secretary insists—HB 1 is already in effect, that includes the provisions that repeal the imposition of the 2022 congressional boundaries. *See* D123:P2; A11 (portion of HB 1 repealing three statutes in Chapter 128). The absurdity of this position is self-evident. Indeed, if the Secretary's logic were sound, then the revised language in the summary statement he had the trial court adopt is misleading, unfair, and insufficient because it asks voters whether they want to repeal and replace boundaries, not whether they want to reinstitute boundaries that were already repealed. D133:P10; A10. This Court's decision in *Stickler v. Ashcroft,* 539 S.W.3d 702 (Mo. App. 2017), makes clear that the people are being asked whether to enact HB 1 *in the first instance*.

The Secretary does not even try to engage with the extensive, well-established authority Plaintiffs cited in their opening brief. Instead, he relies *entirely* on *Maggard*. That reliance is misplaced, for several reasons.

First, *Maggard* is currently on appeal. *See Jake Maggard, et al., v. State of Missouri, et al.,* Case No. SC101581. The *trial court* decision in that case would, of course, not be binding on this Court either way. *See Rene v. Royal City Bell, LLC*, 686 S.W.3d 262, 267 n.7 (Mo. App. 2024). Second, the *Maggard* decision is not persuasive authority (and the Secretary does not even try to claim it is). The Missouri Constitution plainly says that referred measures "take effect when approved by a majority of the votes cast thereon, and not otherwise." Mo. Const. art. III, § 52(b); *see also State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 706 (Mo. banc 1952); *State ex rel. Kemper v. Carter*, 165 S.W. 773 (Mo. banc 1914).

And, *even if Maggard* had been correctly decided, the issue in *this* case is what the summary statement should say. Voters will see that summary statement *only* if this referendum appears on the ballot. If this referendum *does* appear on the ballot, then Article III, § 52(b) makes perfectly clear that HB 1 cannot be in effect and that it will not be the "existing" map when voters are asked to cast their ballots.

C. <u>The only party seeking to litigate *Maggard* is the Secretary</u>

Seeking an escape hatch, the Secretary also accuses Plaintiffs of trying to collaterally attack the *Maggard* decision. Resp. Br. at 36. Wrong. Plaintiffs mentioned *Maggard* in their opening brief because they have an obligation to

draw the Court's attention to authority that may be contrary to the position advocated. *See* Rule 4-3.3. As the Secretary's brief makes clear, *Maggard* is the *only* (non-binding) authority that might support the Secretary's tortured logic. So, Plaintiffs addressed it.

Ultimately, it was *the Secretary's* choice to remove the word "existing" from the summary statement in his proposed judgment. By doing so, he injected issues about use of that word into this case. It is therefore appropriate for Plaintiffs to address the issues the Secretary injected, which—by his own admission—turn on whether HB 1 is suspended. Addressing those issues is not a "collateral attack" on *Maggard*.

The Secretary alternatively suggests Plaintiffs put "existing" at issue throughout the litigation. Resp. Br. at 38. But Plaintiffs did not challenge that word. They addressed it because they assumed, correctly, the Secretary had come to have misgivings about its inclusion in the summary statement. The Secretary, by contrast, *never* offered evidence or argument in support of removing the word. The Secretary wholly fails to explain how Plaintiffs opened the door to removal of that word without *either party* challenging it.

Further, the Secretary has cited no authority permitting a trial court to remove unchallenged language from a summary statement at the Secretary's behest. To the contrary, this Court has established that trial courts' revision authority is limited to the language that was actually challenged. *Fitz-James v.*

Ashcroft, 678 S.W.3d 194, 214 (Mo. App. 2023); *Cures Without Cloning v. Pund*, 259 S.W.3d 76, 83 (Mo. App. 2008).

II. The Secretary's burden of proof argument fails under either analytical framework

The Secretary attempts to muddy the waters on burden of proof, but the analysis is straightforward. This Court has two options—both of which the Secretary has endorsed at various points in this litigation: (1) assess the summary statement based solely on a comparison between the language of the underlying measure and the summary statement; or (2) consider documents and information outside the measure's text to evaluate the summary's fairness and sufficiency. Under either framework, the Secretary loses.

If assessing a summary statement is just a matter of comparing the measure's text to the summary's language, this Court's task is straightforward: reverse and enter the judgment the trial court should have entered. This approach also resolves the Secretary's burden of proof arguments. When the inquiry is purely textual, there is no "evidence" and thus no evidentiary "burden"—only legal argument subject to *de novo* review. *See Omohundro v. Hoskins*, 2026 WL 233297, at *3 (Mo. App. Jan. 29, 2026) ("*De novo* review of the trial court's legal conclusions about the propriety of the [Secretary's] summary statement . . . is the appropriate standard of review when there is no underlying factual dispute."). Under this framework, it is irrelevant whether Plaintiffs submitted "evidence of bias" at trial—because the Secretary's own position forecloses such evidence from consideration.

But the Secretary cannot have his cake and eat it too. If he is correct that courts may consider evidence outside the underlying measure, then both parties should have the opportunity to engage in discovery and present evidence to the trial court. But the Secretary blocked that path. He objected to all discovery requests, insisted that ballot title cases involve only "a comparison of the summary statement and the underlying measure," D111:P6; D114:P9-10; Trial Tr. at 78:4-7, and entered a Joint Stipulation agreeing that, "at trial, he will not introduce or rely on any evidence except for Exhibits C-G" and "will not call any witnesses, including any expert witnesses, to provide testimony." D101 (¶¶ 3-4). Having persuaded the trial court to quash Plaintiffs' depositions because no such evidence was needed, the Secretary cannot now complain that Plaintiffs failed to present evidence on issues the Secretary himself insisted were irrelevant.

And the Secretary's response brief illustrates the conundrum he has created. It contains lengthy passages that make broad, vague assertions about compactness metrics and cities that are supposedly split by one map or another, with few—if any—citations to admissible evidence. *See, e.g.*, Resp. Br. at 22-27, 33-35. For example, the Secretary baldly asserts that HB 1 splits fewer cities "along the I-70 corridor outside of St. Louis." *Id.* at 34. Yet the Secretary does not identify a single city previously split that is no longer split—because he cannot. As the only witness who testified (about this issue) at trial explained, the maps do not contain municipal boundaries. Trial Tr. at 33:25-34:6.

The Secretary's reliance on compactness metrics he never introduced at trial is equally improper. His brief references numerous statistical measures—Convex Hull, Schwartzberg, "I-Know-It-When-I-See-It," Population Circle, Perimeter in Miles—that he neither disclosed in discovery nor presented through any witness. Resp. Br. at 26-27. Tellingly, the Secretary notes that "the State submitted expert testimony on compactness metrics and other issues" in several cases tried contemporaneously in Jackson County. *Id.* at 27 n.5. That is precisely the point. The Secretary was represented by the same counsel in both sets of cases. He hired experts in Jackson County because he understood that assertions about compactness and municipal divisions require expert testimony—they are not matters of common knowledge. Having strategically avoided that burden here by entering the Joint Stipulation, the Secretary cannot now change the rules of engagement by having the trial court take judicial notice of undefined information in a post-trial proposed judgment.

The Secretary's burden of proof argument is just a distraction. If the Court applies the bill-only comparison the Secretary advocated throughout discovery, Plaintiffs win because the challenged phrases cannot be gleaned from HB 1's text. If the Court permits external evidence, Plaintiffs still win because the Secretary waived his right to present such evidence—and the only admissible evidence in the record supports Plaintiffs' position. Either way, the judgment must be reversed.

III. Regardless of the evidentiary record—the phrase "more compact" is unfair and insufficient and should be removed

Plaintiffs do not rehash the well-trodden ground of how to assess a summary statement. There are several ways a summary may be unfair and insufficient. Here, the summary is biased, argumentative, and inaccurate.

A. Because the phrase "more compact" is comparative, it is biased and argumentative and Plaintiffs preserved that argument

The Secretary's argument on preservation is self-defeating. In abutting sentences, the Secretary claims Plaintiffs did not preserve their argument regarding the phrase "more compact" while simultaneously conceding Plaintiffs raised this very argument in their Petition.[1] Resp. Br. at 19. This concession is fatal to the Secretary's position. Plaintiffs unquestionably preserved this issue by challenging the identified language in their Petition (D95 at ¶¶ 33-34) and requesting entry of judgment in their favor. *See generally* Trial Tr.

Turning to the merits, the Secretary claims the language is "neutral and not inflammatory" but conspicuously fails to address the substance of Plaintiffs' claim. The fundamental problem is this: the type of comparison the Secretary has made is inherently biased and argumentative. By stating HB 1 creates districts

[1] The Secretary references a statement in the Judgment—which his counsel wrote—that "Plaintiffs did not present evidence or arguments of bias or prejudice created" by the compactness language. Resp. Br. at 19. That contention is impossible to square with the Secretary's repeated assertions that fairness and sufficiency are judged exclusively by looking at the language of the summary statement and bill, both of which were in evidence.

that are "more compact," the Secretary is trying to communicate to voters that HB 1 is *better* than the existing plan. The word "more" necessarily implies the existing plan (2022 map) is inferior because its districts are "less compact"—a value judgment that has no place in a summary statement required to "fairly and impartially summarize[] the purposes of the measure so that voters will not be deceived or misled." *Sedey v. Ashcroft*, 594 S.W.3d 256, 262 (Mo. App. 2020); *see also* § 116.334.1, RSMo.

The Secretary knows this. He conceded his original descriptions of the existing plan as "gerrymandered" and "protect[ing] incumbent politicians" were "argumentative and likely to create prejudice." Resp. Br. at 7; D95; D122; D142; Trial Tr. 80:1-9. The purpose of those statements was to convey to voters that they should *not* prefer the 2022 map. The phrase "more compact" operates in precisely the same manner: it tells voters HB 1 is superior to the current plan on a technical dimension, thereby advocating for the measure rather than neutrally describing it. The summary statement is not the Secretary's campaign platform. If he wishes to advocate in support of HB 1, he will have ample opportunity to do so elsewhere. But the summary statement is not the place for such advocacy.

The Secretary complains Plaintiffs must demonstrate "cherry-picking or inflammatory terminology." Resp. Br. at 36. That is precisely what Plaintiffs have shown. The Secretary elected to emphasize features (which he has misstated or overstated) that he believes favor HB 1. By contrast, the summary statement says *nothing* positive about the existing map for voters to take into consideration.

Indeed, he originally described the 2022 map in entirely pejorative terms. The very act of emphasizing supposedly positive features of the HB 1 map, while telling voters nothing positive about the 2022 map, is quintessential "cherry-picking." It's for the campaign, not the summary statement.

B. Based on the language of HB 1, it is inaccurate to say the districts are "more compact"

Even setting aside the bias inherent in the Secretary's comparative language, the assertion that HB 1 creates "congressional boundaries that . . . are more compact" fails on its own terms. If the Secretary maintains his position that summary statements must be assessed by comparing the underlying measure to the summary—a position that shifted at trial and shifts throughout his brief—then HB 1 cannot support this claim. The bill says *nothing* about the compactness of the districts it creates, let alone the relative compactness of the districts in the existing map. Trial Tr. at 27:24-28:2; *see generally* D123-125; A11. Nor do the maps the Secretary offered into evidence. Compactness is simply not addressed *at all*.

The absence of compactness information is dispositive. Even if one *could* argue that HB 1's districts are "more compact" based on external analysis, there is nothing in HB 1 itself that supports such a characterization. Compactness is not discernible from statutory text. *See* Trial Tr. 21:24-22:7, 22:17-23:1. Because HB 1 contains neither compactness data for either set of districts, nor visual

representations of the districts, the Secretary's claim that the new districts are "more compact" simply cannot be derived from the bill's language.

The trial court erred as a matter of law because the Secretary's comparative claims are not a summary of HB 1's text—much less a fair and sufficient one. The Secretary's position is untenable: he cannot argue discovery was unnecessary because the inquiry is limited to the bill's language, and then turn around and defend summary statement language by relying on information found nowhere in the bill. That is precisely what occurred, and this Court should not countenance it.

C. The evidence demonstrates that HB 1 does not create districts that, on the whole, are more compact

Should the Court consider the evidence, it leads to the same result. Again, the summary statement asserts that HB 1 creates "congressional boundaries that . . . are more compact."[2] *See* D133:P10; A10. The plain language of this phrase conveys that *all* congressional boundaries created by HB 1 are "more compact" than the boundaries in the 2022 map. The Secretary did not offer a different understanding at trial. Nor did he offer any evidence to support such conclusion. Instead, his counsel offered her thoughts on a few districts (to which an objection was sustained). *See* Trial Tr. at 83:12-86:22 (counsel discussing "appendages" on Districts 2 and 3).

[2] Of course, there is no way to determine that a "boundary" is more compact. A boundary is just a line. It is the *districts* that might be more or less compact.

Plaintiffs, by contrast, offered a witness who explained, without objection, that the State's *own* statistical analysis showed "that some districts, if HB 1 is adopted, become less compact, some become more compact, and some are exactly as compact as they were. As they are under the existing plan." Trial Tr. at 44:8-44:11. While the Secretary complains that Mr. Nicholson did not consider various *other* statistical measurements, the Secretary did not bother to offer any evidence about what such measurements might show. There is simply no evidence in the record to substantiate the claim that HB 1's boundaries are, as a whole, "more compact" than those in the 2022 map.

IV. The phrase "keeps more cities and counties intact" is inaccurate, argumentative, and biased and should be removed from the summary statement

A. Like the phrase "more compact," "keeps more cities and counties intact" is comparative and therefore argumentative and biased

The phrase "keeps more cities and counties intact" suffers from the same flaw as "more compact." It is inherently comparative and, thus, argumentative. By telling voters HB 1 will "keep more cities and counties intact"—while simultaneously offering voters *nothing* about the 2022 map (or whatever the Secretary was comparing to HB 1)—the Secretary is not neutrally describing the measure; he is advocating for it. The word "more" necessarily implies the existing plan is inferior, a value judgment that has no place in a summary statement required to be "fair[] and impartial[]." *Sedey*, 594 S.W.3d at 262.

The Secretary knows comparative language is improper. He conceded that describing the 2022 map as "gerrymandered" and "protect[ing] incumbent politicians" was "argumentative and likely to create prejudice." Trial Tr. at 80:3-9. The phrase "keeps more cities and counties intact" operates the same way. The difference is only that the remaining phrases advocate *for* HB 1 rather than *against* the 2022 map. The struck phrases denigrated the existing plan; this phrase promotes the new one. Both statements are inherently improper because they are fundamentally designed to influence (*i.e.*, bias) voters. *Fitz-James*, 678 S.W.3d at 206. The summary statement is not the Secretary's campaign platform.

B. HB 1 does not, in comparison to the 2022 map, keep more cities *and* counties together

Even if comparative language were permissible, this language is wrong. HB 1 contains virtually no information about cities, and it contains no comparative information about the 2022 districts.

As to cities, HB 1 indisputably does not list the cities within each congressional district. D123-125; A11. The Court can see that by reviewing the bill; but, in addition, the only witness to testify explained, without objection, that HB 1 does not show how many cities are kept intact. Trial Tr. at 33:25-34:3. Nor does it reflect how many cities the 2022 map split or kept intact. *Id.* at 34:4-6. Indeed, only "a small minority of the VTDs" in HB 1 "list a city"; that practice "is more unusual than normal." *Id.* at 27:4-7.

As to counties, HB 1 provides slightly more information—but still nothing comparative to any prior map. One can identify which counties are split in HB 1. *Id.* But there is no information about the 2022 congressional districts. Without any information about the 2022 plan's county splits, the word "more" has no foundation in the bill's text.

In short, it is impossible to verify from the language of HB 1 whether it "keeps more cities and counties intact" than the 2022 plan. The bill contains no comparative information. To make this comparison, one must look outside HB 1—which the Secretary himself insisted (and seemingly *still* insists) is

impermissible. Resp. Br. at 39. The Secretary cannot have it both ways. The phrase must be removed.

C. All the evidence supports Plaintiffs

If the Court decides consideration of additional evidence is appropriate, it should still remove the phrase "keep more cities and counties intact" because the Secretary had no basis to include the phrase in the summary. A simple review of the bill proves it, but so does the full record. This issue is closely intertwined with the arguments regarding the trial court's deployment of judicial notice. As discussed in Plaintiffs' opening brief and the following section, no logical or fair application of the rules on judicial notice supports the Secretary's sandbagging. The Court should disregard whatever the trial court purported to judicially notice (which is not in the record).

The *admissible* evidence reflects it is impossible to glean what cities are split by either map from HB 1, or the maps the Secretary offered. Trial Tr. at 34; D131; D132. The Secretary's "evidence" on this point consisted of his counsel attempting to testify about ostensible city splits. Trial Tr. at 85:3-23, 89:11-90:17. The Secretary appears to rely on the St. Louis and Kansas City detail inserts in Exhibit A. *See* D131. Even setting aside that those inserts *still* lack adequate detail on what cities are divided by HB 1, Trial Tr. at 93:18-94:20, there's a more fundamental problem. The statement the Secretary is trying to defend is *comparative*. That means one must tabulate all municipalities split by *both* sets of boundaries (the 2022 map and HB 1). The Secretary offered no evidence that

would allow such comparison. The 2022 map he admitted (Exhibit B) does not contain municipal lines (around St. Louis and Kansas City, or anywhere else). D132. The summary statement is insufficient and unfair because it does not summarize HB 1 and there is no evidentiary basis for the statements in the summary.

Thus, all of the evidence demonstrates it is impossible to justify or verify the veracity of the phrase "keep more cities and counties intact" from HB 1, HB 2909, or the maps associated with them. Consequently, this assertion does not belong in the summary statement. It is inaccurate, unfair, and insufficient.

V. The State's shifting position aside, the record is clear that the State never asked the Court to take judicial notice and, even if it had, it was error for the Court to do so

Regarding judicial notice, this Court can review the trial transcript. Despite his assertions to the contrary (Resp. Br. at 43), at trial, the Secretary never asked the trial court to take judicial notice of unidentified administrative records, ArcGIS, or anything else the trial court purportedly relied on in footnotes 1 and 2 of its judgment. The Secretary's counsel mentioned judicial notice only twice. Once was seemingly to ask the trial court to take judicial notice of maps covered by the parties' stipulation, and which were admitted without objection. *See* Trial Tr. at 81:19-83:14; D131; D132.

The second mention was as follows: "MS. HUNKER: . . . I'll simply state that the Court can take judicial notice of geographical locations of cities and approximate distances between them." *Id.* at 95:5-13. That was not a *request* for the court to take judicial notice of the locations of, or distance between, any particular city or cities. And, even if it had been, such information does not address the accuracy of the statements in dispute for the reasons previously discussed.

The Secretary attempts to justify judicial notice by pointing to a prior hearing on discovery. To avoid answering discovery, the Secretary did, indeed, ask the trial court, for purposes of that hearing, to take judicial notice of "[j]ust that the information [in ArcGIS] ***is out there***." 2/4/2026 Hrng. Tr. at 22:10-23

(emphasis added). As Plaintiffs' counsel advised in response: "I'd like to cross-examine somebody about it but, sure." *Id.* at 22:20-25. The Secretary's counsel doubled down on what she was asking the court to do, insisting "publicly sourced information" *existed*. *Id.* at 23:5-7. The Secretary fails to explain how a request at a discovery conference to judicially notice the existence of the ArcGIS platform supports the trial court taking judicial notice of whatever information might *be in* ArcGIS in its judgment (we still don't know what relevant information is there). It does not.

The overarching issue is this. The Secretary avoided answering discovery and disclosing any facts supporting the assertions in the summary statement. At trial, he offered only two exhibits, called no witnesses, and did not ask the trial court to judicially notice anything. Then, he submitted a proposed judgment that referenced all sorts of poorly defined information that isn't in the record. Now, on appeal, the Secretary wishes to argue about whether that information supports the judgment. This is improper. Plaintiffs had no opportunity to cross-examine anyone on whatever that information shows.

The Secretary's assertion that Plaintiffs waived any issue about judicial notice (Resp. Br. at 42) is flawed, given the manner in which judicial notice occurred. When would Plaintiffs have objected? *There was no request for judicial notice of ArcGIS or other records at trial*. Thus, there was no request to which Plaintiffs needed to object. And, even with respect to Exhibits A and B (which were admitted "for what they are") Plaintiff's counsel *did* object to the Secretary's

counsel improperly testifying about them. Trial Tr. at 81:19-83:1. The trial court sustained an objection to the Secretary's counsel doing just that. *Id.* at 85:3-15.

The Secretary also claims that whatever the trial court judicially noticed was the proper subject of such notice. (Resp. Br. at 42 and 44). His own authority illustrates he is wrong. The Secretary says courts can take judicial notice of "(1) a ***fact*** which is common knowledge" and "(2) a ***fact***, not commonly known, but which can be reliably determined by resort to a readily available, accurate and credible source." *State v. Gay*, 566 S.W.3d 622, 626 (Mo. App. 2018) (emphasis added). The Secretary does not explain what ***facts*** he had the trial court judicially notice. The judgment speaks of "records" and "maps" and "the contents of the ArcGIS system." D133:P7. Those are not facts; they are things that might contain facts.

And the Secretary ignores the requirement that any "facts" he wanted to be noticed *must be put in the record. E.g.*, *Randall v. St. Albans Farms, Inc.*, 345 S.W.2d 220, 223 (Mo. 1961). They are not in the record (*see generally* Trial Tr.), which is why the Secretary's brief does not even attempt to explain what those facts are, or how they support the judgment. Taking judicial notice was error and whatever the information might have been, it cannot support the judgment. This Court should disregard it.

Conclusion

This Court should affirm in part—the original summary statement was flawed—and reverse in part, enter the judgment the trial court ought to have entered, and certify to the Secretary the proposed summary statement set forth in the Conclusion to Plaintiffs' opening brief.

Respectfully submitted

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CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document and the appendix were served on counsel of record through the Court's electronic notice system on April 20, 2026.

This brief complies with the limitations contained in Supreme Court Rule 84.06 and Local Rule 41. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 4,751 excluding the cover, table of contents, table of authorities, signature block, appendix, and this certificate. The font is Georgia 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

/s/ Charles W. Hatfield
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