

No. 26A_____

**In the
Supreme Court of the United States**

DENNY HOSKINS, *in his official capacity as Missouri Secretary of State,*
Applicant,
v.

RICHARD VON GLAHN,
Respondent.

**APPENDIX TO EMERGENCY APPLICATION FOR STAY AND
ADMINISTRATIVE STAY PENDING APPEAL**

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IN THE SUPREME COURT OF MISSOURI

No. SC101805

**RICHARD VON GLAHN,
APPELLANT,**

VS.

**DENNY HOSKINS, SECRETARY OF STATE OF MISSOURI,
RESPONDENT.**

**On Appeal from the Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge**

APPELLANT'S BRIEF

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INTRODUCTION

This appeal poses the following questions for the Court:

1. Does the people’s reserved power to conduct a referendum on “any act of the general assembly” apply to House Bill 1 (“HB 1”), an act of the General Assembly proposing to change Missouri’s existing congressional districts? (Point I)
2. If the people did reserve that power, does federal law bar them from exercising it? (Points II–IV)
3. In reaching its conclusions, should the Court also consider, or do something about, the potential consequences of the Secretary’s belated certification decision on the November election and, if so, what? (Points V–VIII)
4. Should the partisan political committees be here at all? (Points IX and X)

This appeal continues a disagreement that began when the General Assembly decided to conduct mid-decade congressional redistricting—a practice not previously undertaken, though not precluded by the Constitution. *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. banc 2026). That redistricting was accomplished through HB 1.

Missouri citizens, led by Plaintiff-Appellant, submitted a referendum petition to force a popular vote on HB 1. His “mere physical delivery of referendum petitions” did not “automatically suspend” the bill. *Maggard v. State*, 733 S.W.3d 411, 418 (Mo. banc 2026). But if the petition “is ultimately

determined to be sufficient, article III, section 52(b) applies.” *Id.* Thus, if the petition is sufficient, “HB 1 did not take effect on December 11” 2025 and was instead referred to the people “as of December 9” 2025—and will not take effect unless approved by a majority of voters. *Id.*

So here we are. Plaintiff, as the statutes allow, asks this Court to declare the petition sufficient. That determination turns on the plain language of the Missouri Constitution.

The Secretary and Intervenors ask this Court to do what the Framers did not: add a redistricting exception to Sections 49 and 52(a). Their primary vehicle is a “clear statement requirement” they perceive in the U.S. Constitution’s Elections Clause. But the United States Supreme Court answered this question more than a century ago. In *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916), the Court held that a challenge to a referendum on congressional redistricting was “plainly without substance.” *Id.* at 569. That holding has never been disturbed, and *Moore v. Harper*, 600 U.S. 1 (2023), reaffirmed it. Their Guarantee Clause argument is even weaker: *Davis* rejected the claim that referendum “annihilates representative government,” and *Luther v. Borden*, 48 U.S. 1 (1849), established that such questions are nonjusticiable.

The Missouri Constitution allows a referendum on HB 1 because it is an “act of the general assembly,” and no law negates that clear reservation of right. The only remaining question is practical: what follows if the petition is sufficient?

If sufficient, this Court’s ruling in *Maggard* could not be clearer: HB 1 is not, and has never been, the law. It might become law—but only after the people vote on it in November. The 2026 congressional elections must therefore be conducted using districts that *have been* lawfully enacted. The 2022 and 2024 elections were conducted using those districts, and no one has questioned their validity.

Nevertheless, the State and Intervenor ask this Court to sanction using districts that have never been law. The response is straightforward—and this Court has already provided it. *Maggard* held that a sufficient petition means HB 1 “is suspended, and is not in effect.” 733 S.W.3d at 424. A suspended law is not operative. It does not establish congressional districts. If HB 1 is not in effect, Missouri’s districts are governed by the map that preceded it—the 2022 map, enacted by HB 2909, used in the last two general elections. That is not a new map. It is not judge-drawn. It is existing law that remained in force because HB 1 never took effect.

The consequences that most concerned the trial court—a new primary, ballot chaos, disenfranchised voters—if they came to pass, would result from the Secretary’s tactical delay in determining sufficiency. But those hypothetical problems are not a reason to ignore the law and are extremely overblown.

As a threshold matter, this Court need not fashion a remedy at all—there might never be a challenge to the primary results. The only live question in this Section 116.200 action is whether the Secretary properly rejected the petition. If

he did not, the Constitution supplies the consequence: HB 1 was suspended by operation of Section 52(b), and the 2022 map—enacted by HB 2909—remains in force. No court need draw a line or choose a map. The law operates of its own force.

But if the Court concludes the use of the HB 1 districts means the primaries were improper and some remedy is necessary now, Missouri law already provides one. Congressional candidates must be elected from districts established by state law. If no candidates have been elected in lawful districts, those who “won” the primaries are disqualified because they were not lawfully nominated. Section 115.363 then governs: the political party committees fill vacancies by selecting replacement candidates.

This is not a gap in the law. It is the statute the General Assembly enacted for exactly this situation—candidate disqualification after a primary. The party committees convene and select nominees—likely the same candidates who “won” the primary. The general election proceeds in November on the existing calendar. No new primary. No new map. No special election. No disruption.

This is not a novel remedy or a creative workaround. It is the ordinary operation of Missouri election law applied to the ordinary consequence of an election run in districts that were never the law because the Secretary chose to gamble. The supposed emergency is a product of the Secretary’s own decision to delay—not the referendum. He knew his constitutional arguments by October 2025, when he raised them in federal court. He knew about the risk when

Maggard was decided in May. After more than 300,000 signatures were submitted, he waited until the final statutory day to act. When he finally issued a certificate, he did not even address the signature count. He rejected the petition on the theory that redistricting bills are categorically exempt from referendum—a theory with no footing in the constitutional text and no support in the caselaw.

This Court should not permit that strategy to succeed. *Maggard* is the law. It was unanimous. It was decided a few months ago after full briefing and argument. And it was decided with the practical stakes of this referendum already in view.

The question before this Court is whether the petition is sufficient. That question is easily answered and, once it is, the remaining issues follow from existing law as this Court has interpreted it. The Court should reverse, order the Secretary to certify the referendum petition as sufficient, and direct that the lawful, existing districts be used for the November congressional election.

JURISDICTIONAL STATEMENT

The trial court's judgment released its jurisdiction if a notice of appeal was filed. Rule 81.045; D63:P37; A37. Plaintiff filed his notice of appeal on August 19, 2026. D64. On August 20, 2026, this Court entered an Order that assumed jurisdiction over this appeal under Rule 83.01, without determining whether the appeal invokes this Court's exclusive appellate jurisdiction.

STATEMENT OF FACTS

This case starts where *People Not Politicians v. Hoskins*, No. SC101801, also pending before the Court, leaves off. See Appellants' Brief, Case No. SC101801. Where that case concerns the form of the referendum petition, signature collection, and counting, this case concerns the final steps of the process—the Secretary's review of the petition, his sufficiency determination, and judicial review of that decision. The case was tried on stipulated facts and exhibits, so the Court reviews them *de novo*. *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024).

I. Historical Application of Referendum to Congressional Redistricting

The referendum provisions of the Missouri Constitution have long been understood to apply to congressional redistricting. Missouri conducted a referendum on congressional redistricting in 1922 (with Missourians rejecting a redistricting proposal by large margins). D17-18. This Court reviewed signature sufficiency on a proposed referendum on congressional redistricting in 1952. *State ex rel. Moore v. Toberman*, 250 S.W.2d 701 (Mo. banc 1952). In 1962, this Court declined to overturn an allegedly illegal redistricting bill, reasoning in part that “[t]he people of this state have a remedy for even valid redistricting, which they do not like, through our initiative and referendum provisions.” *Preisler v. Hearn*, 362 S.W.2d 552, 557 (Mo. banc 1962). That understanding remained undisturbed until now.

II. HB 1 and the Launch of the Referendum Campaign

The General Assembly enacted HB 1 in an extraordinary session on September 12, 2025. D63:P1 (¶ 1); A1. HB 1 would repeal Missouri’s existing congressional districting plan—enacted in 2022—and establish eight new congressional districts. *Id.* Plaintiff Richard von Glahn and People Not Politicians (“PNP”) then launched a referendum campaign and von Glahn submitted a referendum sample sheet to the Secretary. D63:P1 (¶ 4); A1; D23; D24. Governor Kehoe signed HB 1 on September 28, 2025. D63:P1 (¶ 3); A1. The relevance of the Governor’s signature and whether signatures collected before the Secretary’s approval are valid are disputed in the Court’s other case (SC101801), but the Secretary approved the sample sheet on October 14, 2025. D23; D24.

The approval letter stated that “after circulation and upon submission of signatures, the Secretary must examine the petition to determine whether ‘it complies with the Constitution and with this chapter.’ § 116.200, RSMo.” D24. It went on to say: “If statutory or constitutional deficiencies become apparent during verification or before certification—such as failure to meet signature thresholds, improper timing under Article III, Section 52(a), or defects affecting the validity of the referendum—the Secretary may decline to certify the petition for placement on the ballot. Any such determination remains subject to judicial review.” D24.

III. The Secretary's Federal Lawsuit and Delayed Review

The very next day (October 15, 2025), the Secretary, General Assembly, and State of Missouri filed suit against Plaintiff and PNP in federal court. D28. They asked the federal court to declare the referendum unconstitutional under state and federal law and to take the unprecedented step of enjoining Plaintiff and PNP “from continuing to seek a referendum on the General Assembly’s redistricting bill.” D28:P23. Because that relief would have prevented timely submission—thereby precluding any referendum campaign—and Missouri law provides a process for reviewing referenda—Plaintiff sought dismissal. *See* D30:P2.

In the federal lawsuit, the Secretary made the same constitutional arguments he would later rely on in his certificate of insufficiency—the “clear statement” and Elections Clause arguments. D28:P14, P17. The Secretary’s constitutional objections were fully developed by October 2025. He claimed that even “a temporary displacement of the recently enacted map” harmed him and the State. D30:P8.

The federal court dismissed the lawsuit, explaining the Secretary could avoid this harm by promptly rejecting the referendum on constitutional grounds: “Fortunately, for the State, Secretary Hoskins has a tool at his disposal that almost no other litigant could boast—the power to declare the petition unconstitutional himself.” *Id.* The federal court also rejected as unpersuasive the Secretary’s claim that drafting a certificate of insufficiency would “require careful

analysis and collaboration between the Secretary and Attorney General,” finding it “hard to imagine that completing this constitutional assessment will impose measurable burden given that the State has completed an exhaustive analysis in briefing this case.” *Id.* The Secretary did not issue a certificate at that time.

IV. Submission of Signatures and the Secretary’s Continued Delay

On December 9, 2025, Plaintiff and PNP submitted more than 300,000 signatures seeking a referendum on HB 1. D38:P3; D63:P2 (¶ 5); A2. This triggered the Secretary’s statutory duty to review the petition. *Maggard v. State*, 733 S.W.3d 411, 416 (Mo. banc 2026). If the Secretary finds the petition insufficient, he “shall issue a certificate stating the reason for the insufficiency.” § 116.150.2, RSMo. The Secretary was required to complete his review “not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election.” § 116.150.3, RSMo. That deadline fell on Tuesday, August 4, 2026—the same day as Missouri’s primary elections.

Once signatures were submitted, Plaintiff and PNP awaited the Secretary’s review. Although the federal court had urged the Secretary to use his “unique self-help remedy,” the Secretary and Attorney General did not promptly act, even though they had already developed the arguments they later relied on. *See* D28; D29; D30:P8. The Attorney General stated in January 2026: “As long as the status quo is the new maps, delay works in our favor.” D38:P4. As of May 2026, the Secretary had not issued a certificate on sufficiency, claiming he was “still doing some research” on the referendum’s constitutionality. D37.

In *Maggard*, decided on May 12, this Court made crystal clear the consequences of a sufficiency determination:

If [] the December 9 referendum petition filing is ultimately determined to be sufficient, article III, section 52(b) applies. In that case, because a “legal, sufficient, and timely” referendum petition was filed on December 9—*before* HB 1 went into effect on December 11—HB 1 did not take effect on December 11, HB 1 was “referred to the people” as of December 9, and HB 1 “shall take effect when approved by a majority of the votes cast thereon, and not otherwise.”

733 S.W.3d at 420 (cleaned up). This Court also observed that the Secretary’s views about HB 1’s effectiveness do not “decide whether HB 1 did (or did not) go into effect on December 11,” and that “chapter 116 does not override the Missouri Constitution.” *Id.* at 419. Despite this guidance, which underscored the importance of prompt action to avoid election-administration difficulties, the Secretary still did not issue a determination.

Instead, the Secretary and Attorney General characterized *Maggard*’s holding in a way that did not accurately reflect it and proceeded to treat HB 1 as in effect. The Secretary sent a letter to local election authorities on May 14, stating, “On May 12, 2026, the Supreme Court of Missouri issued its rulings affirming the constitutionality and *legal effectiveness of House Bill 1*. . . . As of May 12, 2026, House Bill 1 remains in full force and effect until a determination and certification of sufficiency or insufficiency has been issued under the referendum process.” *von Glahn v. Hanaway*, Case No. 26AC-CC00248, Pet., Ex.

22 (emphasis added).¹ In Opinion Letter 3-2026, the Attorney General asserted: “In light of *Maggard*, the Secretary of State’s Office—and all of Missouri’s local election authorities—must continue enforcing HB 1 unless you make a finding of sufficiency as to petition 2026-R004 under § 116.150, RSMo.” *Id.* at Ex. 23. Rather than issuing a certificate under Section 116.150, as the federal court encouraged, the Secretary continued to refuse.

V. The Certificate of Insufficiency

Late in the day on the statutory deadline, with primary elections nearly completed, the Secretary issued his certificate of insufficiency. D27; A38-46. The certificate is unusual. It (1) incorporated an Attorney General opinion by reference, (2) rejected a referendum for reasons other than insufficient signatures, and (3) does not mention signature counts at all. *See* D27; A38-46. It is undisputed the referendum has more than enough signatures. D3; D4; D5; D21:P5 (¶¶ 48, 49). The Secretary rejected the petition solely on constitutional grounds—grounds he knew and had fully briefed in October 2025.

The certificate claims the Secretary “examined for compliance with the Missouri Constitution and Chapter 116, RSMo, Referendum Petition 2026-R004” and found “the referendum petition is insufficient under the Missouri Constitution because the Missouri Constitution does not authorize a referendum

¹ Plaintiff asks this Court to take judicial notice of the pleadings in 26AC-CC00248. *See Moore v. Mo. Dental Bd.*, 311 S.W.3d 298, 305 (Mo. App. 2010) (“Judicial notice of records from other related proceedings involving the same parties can be on the court’s own motion or at the request of a party.”).

on congressional redistricting plans passed by the General Assembly.” D27:P3; A39. On the face of the certificate, the Secretary said he reviewed for compliance *only* with the Missouri Constitution and Chapter 116.

The certificate purports to “incorporate[] by reference” the Attorney General’s opinion to more fully explain the stated grounds for insufficiency. D27:P3; A39.² That opinion articulates the following reasons the referendum petition allegedly violates the Missouri Constitution:

- A clear statement is required to allow referenda on redistricting and there is no such clear statement in the Missouri Constitution. D27:P4-5; A40-41; and
- Redistricting after the decennial census would be impossible if referenda were authorized on redistricting legislation. D27:P7; A43.

These are all the reasons the Attorney General claimed the referendum would violate the Missouri Constitution and is thus insufficient. The opinion *then* goes on to discuss why, even if the referendum is sufficient, *suspending* HB 1 (as *Maggard* states is the natural consequence of a sufficiency determination) would violate federal law. D27:P8; A44. According to the Attorney General, *Maggard*’s holding “would have disastrous consequences.” D27:P7; A43.

² “[O]pinions issued by the Attorney General . . . are entitled to no more weight than that given the opinion of any other competent attorney.” *Gershman Inv. Corp. v. Danforth*, 517 S.W.2d 33, 36 (Mo. banc 1974). Chapter 116 gives the Attorney General no formal role in the decision on sufficiency.

Citing the Elections Clause and the Guarantee Clause of the U.S. Constitution, the letter asserts Missouri is required “to implement the HB 1 map for the 2026 election.” D27:P8; A44. Rounding out the letter, the Attorney General further explains why, in her opinion (citing no relevant law), Missouri “cannot discard the HB 1 map for the November General Election now that the HB 1 map was used for the August Primary Election.” D27:P10; A46.

VI. Procedural History

The same day the Secretary issued his certificate of insufficiency, Plaintiff filed this suit. D2. The Petition was brought under Section 116.200, which allows “any citizen” to “apply to the circuit court of Cole County to compel [the Secretary] to reverse his decision.” § 116.200, RSMo. Plaintiff’s petition alleged the referendum is sufficient and asked the court to reverse the Secretary’s insufficiency determination. D2:P6-8. Based on *Maggard*’s holding, Plaintiff also asked the court to restrain the Secretary and anyone acting in concert with him from taking any further steps to implement or mandate use of HB 1. *Id.* Plaintiff did not ask the court to make any decision about the primary elections or comment on the general election. *Id.* He sought to prevent further use of a measure that, under *Maggard*, had not taken effect.

Despite the statute requiring this case to be placed at the top of the docket (and a subsequent letter from this Court emphasizing that requirement), the case was not resolved promptly. Even though he knew (and later agreed) the case

would be tried on stipulated facts (and thus subject to *de novo* review), the Secretary sought a change of judge on August 6, 2026. D10.

Following that, the Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee moved to intervene. D13. The Republican National Committee is the “national committee of the Republican Party.” D20:P2. The National Republican Congressional Committee is the national congressional committee of the Republican Party. *Id.* The Missouri Republican State Committee is the duly established state committee for the Missouri Republican Party. *Id.* Intervenors claimed an interest in the “safe and secure” conduct of Missouri elections and “in the implementation of House Bill 1” because it directly “affect[s] their respective ability to support and elect Republican candidates in Missouri to the United States House of Representatives.” D2:P4. Over objection, the trial court granted intervention as of right or, alternatively, permissively. D20. The day before trial, Intervenors and the Secretary filed nearly identical trial briefs. D60; D61.

More than two weeks after the Petition was filed, the case was tried on stipulated facts and exhibits. D1:P12. The Joint Stipulation of Facts and Exhibits included five statements of fact and 37 exhibits. D22; Tr. 8-9. Those exhibits do not contain any information about: the identity of who voted in the primaries, which voters were in different districts under the 2022 statutes and HB 1, or that would indicate that any primary result would have been different if the 2022 districts had been used. *See* D23-59.

At trial, the Secretary sought to rely on an affidavit of former Jackson County election official Tammy Brown to support the proposition that it was “logistically impossible to change the map.” D50; Tr. 52:9-17. The Secretary asked the trial court to find that “it is technically not feasible” to change maps. Tr. 54:13-14. The trial court expressly declined. Tr. 54:10-18. Also stipulated to was an affidavit of the current Boone County Clerk indicating it was technologically feasible to use the 2022 districts. D43:P3-4. While all parties agreed to admit the affidavits without hearsay objection, Plaintiff did not agree the Court could make any credibility determinations without the witness being present. Tr. 54:19-55:7. The trial court agreed: “That’s not the way trials work. I’ll just put them in the record.” Tr. 55:15-16. The trial court issued its judgment the same day, signing Intervenors’ proposed judgment with a few modifications (although the Secretary’s and Intervenors’ proposed judgments were remarkably similar). *Compare* A47-85 with A86-96.

Without referencing Section 116.200 or explicitly making a finding that the referendum petition “is insufficient” or “enjoining the secretary of state from certifying the measure” (see § 116.200.2, RSMo), the trial court entered judgment “dismissing” the petition and finding for Defendant. *See generally* D63; A1-37. The trial court concluded Missouri’s referendum provisions in Article III of the Constitution “do not apply to congressional redistricting enacted by the General Assembly pursuant to Article III, Section 45.” D63:P36; A36. It held that the

Secretary's decision not to certify the referendum petition was "lawful" and "HB 1 remains in full force and effect for the 2026 general election." *Id.*

The trial court reached this conclusion through several alternative theories. First, it held Article III, Section 49 does not apply to congressional redistricting because "[a] generic provision that says nothing about congressional redistricting cannot do the work of divesting the General Assembly of the dual mandate the Missouri and U.S. Constitutions assign to it." D63:P9 (¶ 44); A9. Second, the trial court held Article III, Section 7(h)—concerning redistricting for the state senate—applies to all redistricting, including congressional redistricting. D63:P9-10 (¶¶ 46-49); A9-10. Third, the trial court applied a "clear statement rule" ostensibly derived from Elections Clause jurisprudence, holding Missouri's Constitution lacks a "clear statement" to displace the General Assembly's authority over congressional redistricting. D63:P21-22 (¶¶ 100-106); A21-22.

The trial court further held that even if Missouri's referendum provisions apply to congressional redistricting, the Elections and Guarantee Clauses would forbid it. D63:P23-25 (¶¶ 107-122); A23-25. The concern was apparently not with subjecting redistricting bills to a vote, but rather with Article III, Section 52(b)'s suspension feature. The trial court reasoned that allowing "a small fraction of voters" to "freeze a congressional map duly enacted by the General Assembly before any majority of Missourians has voted for or against it" would "invert[] the constitutional design." D63:P23-24 (¶¶ 111-112); A23-24.

Finally, the trial court held that, even if the referendum were sufficient, it would not order changes to the congressional districts to be used at the general election, invoking the “*Purcell Principle*” and *Hadley v. Junior College District of Metropolitan Kansas City*, 460 S.W.2d 1 (Mo. banc 1970). D63:P31-36 (¶¶ 149-171); A31-36. It stated that changes at that stage would cause voter confusion and affect confidence in the electoral process. D63:P31 (¶ 151); A31. It also concluded that using the 2022 congressional districts “is not just ‘impractical,’ it is impossible,” citing the affidavit of Tammy Brown—over Plaintiff’s objection that no credibility determination could be made without live testimony—and its own ruling that “[t]hat’s not the way trials work.” D63:P35-36 (¶ 170); A35-36; Tr. 55:15-16.³ This appeal followed. D64.

³ The Secretary offered no affidavit, let alone live testimony, from anyone in his office on the functionality of MCVR or any other topic. This surely would have been the best source of information, since “MCVR . . . is maintained and administered by the Office of the Secretary of State.” 15 CSR 30-15.030.

POINTS RELIED ON

I. The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Because Article III, Sections 49 and 52(a) of the Missouri Constitution Subject Any Act of the General Assembly to the Referendum Except Emergency Legislation and Appropriations Bills, in that HB 1 is an Act of the General Assembly Without an Emergency Clause and It Does Not Appropriate Funds

Luther v. Hoskins, 730 S.W.3d 567 (Mo. banc 2026)

Smith v. St. Louis Cnty. Police, 659 S.W.3d 895 (Mo. banc 2023)

State ex rel. Randolph Cnty. v. Walden, 206 S.W.2d 979 (Mo. banc 1947)

Mo. Const. art. III, § 49

Mo. Const. art. III, § 52(a)

II. The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Based on Federal “Clear Statement” Requirements Because No Such Requirement Applies to State Constitutional Referendum Provisions and the Missouri Constitution is Clear, in that the Missouri Constitution subjects “any act of the general assembly” to the referendum and HB 1 is an Act of the General Assembly

Moore v. Harper, 600 U.S. 1 (2023)

Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916)

U.S. Const. amend. X

Mo. Const. art. III, § 49

Mo. Const. art. III, § 52(b)

III. The Trial Court Erred in Holding the Elections Clause Invalidates Article III, Section 52(b) as Applied to Congressional Redistricting Because the Elections Clause Does Not Prohibit States from Subjecting Redistricting to the Referendum, in that the United States Supreme Court Has Repeatedly Held the Elections Clause Permits Referenda on Congressional Redistricting Bills

Moore v. Harper, 600 U.S. 1 (2023)

Arizona State Legis. v. Arizona Indep. Redistricting Comm'n, 576 U.S. 787 (2015)

Smiley v. Holm, 285 U.S. 355 (1932)

Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916)

IV. The Trial Court Erred in Holding the Guarantee Clause Invalidates Article III, Section 52(b) as Applied to Congressional Redistricting Because the Guarantee Clause Does Not Preclude Direct Democracy Mechanisms Such as Referenda, in that Congress has not Precluded it or Made a Determination About Missouri's Form of Government

Ketcham v. Blunt, 847 S.W.2d 824 (Mo. App. 1992)

Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916)

Luther v. Borden, 48 U.S. 1 (1849)

§ 116.200, RSMo

V. The Trial Court Erred in Considering Whether Federal Law Would Require a New Primary Election Because that Issue Exceeds the Scope of this Action, in that This Case is an Action for Judicial Review Under Section 116.200, Which is Limited to Consideration of the Secretary's Sufficiency Determination Under Section 116.150

Maggard v. State, 733 S.W.3d 411, 416 (Mo. banc 2026)

Mo. Elec Coops. v. Kander, 497 S.W.3d 905 (Mo. App. 2016)

Ketcham v. Blunt, 847 S.W.2d 824 (Mo. App. 1992)

Union Elec. Co. v. Kirkpatrick, 678 S.W.2d 402 (Mo. banc 1984)

VI. The Trial Court Erred in Concluding that Reversal Would Require a New Primary Election Because No Federal Law Requires Missouri Hold a New Primary Election if House Bill 1 is Suspended in that the Authorities Cited in the Judgment Below Do Not Require a New Primary

Maggard v. State, 733 S.W.3d 411, 416 (Mo. banc 2026)

Prosecuting Att'y, 21st Jud. Cir., ex rel. Williams v. State, 696 S.W.3d 853
(Mo. banc 2024)

State ex rel. Dep't of Health & Senior Servs. v. Slusher, 638 S.W.3d 496

(Mo. banc 2022)

Orthotic & Prosthetic Lab, Inc. v. Pott, 851 S.W.2d 633 (Mo. App. 1993)

52 U.S.C. § 20302

VII. The Trial Court Erred in Concluding that Reversal Would Require a New Primary Election Because State and Federal Law Provide Alternative Remedies for Candidate Disqualification, in that if Reversal Requires Any Remedy, the August Nominees Would be Disqualified and, pursuant to Chapter 115, Party Committees Would Nominate Replacement Candidates Under Existing Law

Brown v. Morris, 290 S.W.2d 160 (Mo. banc 1956)

2 U.S.C. § 2c

§ 115.363, RSMo

§ 115.013, RSMo

VIII. The Trial Court Erred in Concluding Equitable Considerations Bar Using the 2022 Districts for the General Election Because There is No Need to Resort to Equity and Even if There Were the Equities Favor Enforcing the Referendum Provisions, in that (i) the Secretary's Merits Arguments Were Baseless, (ii) He Manufactured the Alleged Problem, (iii) Plaintiff and the Public

Will be Irreparably Harmed, (iv) Plaintiff Did Not Delay, and (v) Using the 2022 Districts is Feasible

Frank v. Walker, 769 F.3d 494 (7th Cir. 2014)

Purcell v. Cape Girardeau Cnty. Comm'n, 322 S.W.3d 522

(Mo. banc 2010)

Brown v. Morris, 290 S.W.2d 160 (Mo. banc 1956)

Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806

(1945)

IX. The Trial Court Erred in Granting Intervention as a Matter of Right Because Intervention as a Matter of Right Requires an Interest in the Subject Matter, a Risk the Litigation Will Impair the Interest, and Inadequate Representation by Existing Parties in that Intervenor's Do Not Have an Interest in the Sufficiency Determination and the Secretary Adequately Represents Intervenor's Interests in Opposing the Referendum's Sufficiency

Toder v. Hoskins, 730 S.W.3d 129 (Mo. App. 2026)

Prentzler v. Carnahan, 366 S.W.3d 557 (Mo. App. 2012)

Committee for Educ. Equal. v. State, 294 S.W.3d 477 (Mo. banc 2009)

State ex rel. Nixon v. Am. Tobacco Co., 34 S.W.3d 122, 127

(Mo. banc 2000)

Rule 52.12

**X. The Trial Court Erred in Granting Permissive Intervention
Because Permissible Intervention Requires the Proposed
Intervenor to Assert Defenses Other than Those of Defendant in
that Intervenors Forwarded the Same Defenses as the Secretary**

Toder v. Hoskins, 730 S.W.3d 129 (Mo. App. 2026)

Prentzler v. Carnahan, 366 S.W.3d 557 (Mo. App. 2012)

Committee for Educ. Equal. v. State, 294 S.W.3d 477 (Mo. banc 2009)

Rule 52.12

ARGUMENT

I. The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Because Article III, Sections 49 and 52(a) of the Missouri Constitution Subject Any Act of the General Assembly to the Referendum Except Emergency Legislation and Appropriations Bills, in that HB 1 is an Act of the General Assembly Without an Emergency Clause and It Does Not Appropriate Funds

Standard of Review. “When a case is tried on stipulated facts, this Court needs to determine only whether the circuit court drew the proper legal conclusions from the facts stipulated, and review is *de novo*.” *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024).

Preservation. Plaintiff preserved this issue by alleging the referendum complied with the Missouri Constitution in his petition, D2:P6-7, and explaining why that was so in his trial brief, D62:P4-16.

* * *

The trial court did not apply the plain and unambiguous language of Article III, Sections 49 and 52(a). Without finding any ambiguity, it proceeded to apply canons of construction that are not supported by Missouri law. That was error.

“The people reserve power . . . to approve or reject by referendum any act of the general assembly, except as hereinafter provided.” Mo. Const. art. III, § 49. And “[a] referendum may be ordered (except as to laws making appropriations

for the current expenses of state government, of the maintenance of state institutions and for the support of public schools) . . . by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a).

It is “improper for this Court to look beyond the plain language . . . and to construe [Article III, Sections 49 and 52(a)] contrary to both the plain language and this Court’s previous construction of the same [provisions].” *Smith v. St. Louis Cnty. Police*, 659 S.W.3d 895, 900-901 (Mo. banc 2023); *see also Spence v. BNSF Railway Co.*, 547 S.W.3d 769, 782 (Mo. banc 2018) (Powell, J., dissenting) (“This Court’s principles of interpretation are not intended to be applied haphazardly or indiscriminately to achieve a desired result.” (cleaned up)). Put simply, “when the plain language . . . is clear, this Court will *not* look beyond it.” *Smith*, 659 S.W.3d at 900-901 (emphasis added). The text of the Missouri Constitution “is interpreted to effectuate its plain, ordinary, and natural meaning.” *Luther v. Hoskins*, 730 S.W.3d 567, 570 (Mo. banc 2026) (cleaned up). “[T]his Court does not utilize canons of construction when the language of a constitutional provision is plain and unambiguous.” *Id.* (cleaned up).

When these well-trodden principles are applied, the question before this Court is easily resolved. Article III, Section 49 reserves to the people the “power to approve or reject by referendum *any act of the general assembly*, except as hereinafter provided.” *Id.* (emphasis added). HB 1 is an act of the General

Assembly. It does not fall within any exception in Article III, Section 52(a). That is the end of the analysis.

A. The Text is Plain and Unambiguous

Missouri voters reserved legislative power to themselves through a 1908 constitutional amendment establishing the referendum right. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 486 (Mo. banc 2022) (citing *Marsh v. Bartlett*, 121 S.W.2d 737, 742 (Mo. banc 1938)). This provision “recall[ed] all legislative power theretofore granted to the end that the whole power to be granted should be subject to the initiative and referendum.” *Marsh*, 121 S.W.2d at 742.

The referendum allows the public “to have some say with regard to the laws which shall be enacted.” 42 Am. Jur. 2d *Initiative & Referendum* § 1. Its purpose “is to suspend or annul laws which are not yet effective in order to provide the people a means of expressing their desire regarding a legislative proposition; a referendum amounts to a veto power over enactments of representative bodies.” *Id.* This Court and courts across the country have recognized this function. See *Toberman*, 250 S.W.2d at 258; *State v. Mata*, 934 N.W.2d 475, 485 (Neb. 2019); *Bernstein Bros., Inc. v. Dep’t of Revenue*, 661 P.2d 537 (Or. 1983); *Wilde v. City of Dunsmuir*, 470 P.3d 590 (Cal. 2020).

To make this power meaningful, courts construe referendum provisions “liberally to the end that [the people’s] right to determine all proper questions by free and open elections shall be secure.” *State ex rel. Voss v. Davis*, 418 S.W.2d

163, 167 (Mo. 1967); *see also* *Rekart v. Kirkpatrick*, 639 S.W.2d 606 (Mo. banc 1982).

Article III, Section 49 directly and unambiguously explains the referendum power's scope: it embraces *any act* of the General Assembly except as otherwise explicitly provided in the Constitution. It states: "The people reserve power to . . . approve or reject by referendum any act of the general assembly, except as hereinafter provided." The operative word is "any"—meaning "one, no matter which, of more than two" or, more simply, "without limit." *Webster's New World College Dictionary* at 64 (5th ed. 2014). This Court has "held the word 'any' to be all-comprehensive and the equivalent of 'every.'" *State ex rel. Randolph Cnty. v. Walden*, 206 S.W.2d 979, 983 (Mo. banc 1947). The Court must apply that text as written, wherever that may lead. *See Smith*, 659 S.W.3d at 901.

HB 1 falls squarely within that text. It is undisputed that the General Assembly passed HB 1 in compliance with the constitutional mandate that "[n]o law shall be passed except by bill." Mo. Const. art. III, § 21. HB 1 says it is an act of the General Assembly on its face. D23:P3. That ends the first step of the analysis.

Next, the Court looks to Section 52(a) to determine whether HB 1 falls within any exception. Section 52(a) supplies only two. The first is laws "necessary for the immediate preservation of the public peace, health or safety." The second is "laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools."

Mo. Const. art. III, § 52(a). The Constitution does not list redistricting. It does not list congressional elections. It does not list any other exception.

HB 1 fits neither exception. It is not a law “necessary for the immediate preservation of the public peace, health, or safety”—it contains no emergency clause. *Maggard*, 733 S.W.3d at 421 n.8.

Whether legislation qualifies as emergency legislation depends on whether the General Assembly included an emergency clause—a legislative determination, not a judicial characterization applied after the fact (though always subject to judicial review). *See State ex rel. Harvey v. Linville*, 300 S.W. 1066, 1068 (Mo. 1927); *State ex rel. Tyler v. Davis*, 443 S.W.2d 625 (Mo. banc 1969).

The General Assembly did not include one because there was no crisis HB 1 was passed to solve. *See Luther*, 730 S.W.3d at 572. If the General Assembly believed HB 1 was necessary for the immediate preservation of public peace, health, or safety, it needed to say so.⁴ It did not.

HB 1 also makes no appropriation. An appropriations bill sets aside a specific amount of money for a specific purpose from the state treasury. *Doyle v. Tidball*, 625 S.W.3d 459, 466 (Mo. banc 2021). HB 1 draws district lines; it does

⁴ The General Assembly did so when it redistricted in 2022. D42:P2. So, when they think it is an emergency to redraw congressional lines, they know how to tell us. This ability to declare an emergency and invoke an exception to the referendum power is one of several reasons the Attorney General’s alleged concerns about applying the referendum power to redistricting bills enacted in response to decennial census should not change the analysis. *See* D27:P6-7; A42-43. The General Assembly has tools to address *actual* emergencies, potentially including the need to comply with federal law.

not appropriate funds. That ends the inquiry. HB 1 is subject to the referendum power.

B. None of the Trial Court’s Observations Justify Disregarding the Constitution’s Plain and Unambiguous Text

The trial court did not apply the unambiguous text of Article III, Sections 49 and 52(a). Instead, it relied on several interpretive approaches to conclude redistricting bills are not subject to the referendum. Because the text is clear, that analysis was error.

1. Article III, Section 7(h) Does Not Apply to Congressional Redistricting

The trial court concluded Article III, Section 7(h)—a provision that comes before, not “*hereinafter*” Section 49—applies to congressional redistricting. D63:P9-10; A9-10. That conclusion violates every rule on reading the Constitution. Section 7(h), by its plain language, does not apply to “acts of the general assembly.” It applies to a “redistricting plan.” One need only read the whole of Section 7 to understand that “redistricting plans” are created by a “bipartisan citizens commission.” Mo. Const. art. III, § 7(c).⁵

Only by reading Section 7(h) without its context and ignoring the meaning of “redistricting plan,” could this Court affirm this reasoning. A “constitutional provision should be considered as a whole.” *Luther*, 730 S.W.3d at 570. The plain

⁵ There is a parallel provision for state house districts. Mo. Const. art. III, § 3. It does not apply to congressional redistricting either.

language of the whole of Article III, Section 7 is the process for drawing state senate districts. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 393 (Mo. banc 2024) (“Article III, section 3 provides the parameters for redistricting the state house, and section 7 of article III incorporates the methods set forth in section 3 to redistricting the state senate.”). Each and every provision of Article III, Section 7—including Section 7(h)—addresses only state senate redistricting. This Court exhaustively explained that process in *Faatz*, 685 S.W.3d at 393-94.

Section 7 does not require, or even allow, an “act of the general assembly” to effectuate state senate redistricting—that’s the point; it took from the state legislature the option to draw their own districts and instead requires commission-created plans and maps. *See* Mo. Const. art. III, § 7(d). That is fundamentally different from acts of the General Assembly drawing congressional districts under Section 45. Section 7(h)’s restriction on referendum of a redistricting plan cannot be exported to apply to redistricting legislation governed by Section 45.

The judgment acknowledges this at one point, but is internally inconsistent: it says “Article III, Section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting,” D63:P6; A6, yet applies Section 7(h)—clearly applicable only to state senate redistricting—to congressional redistricting. D63:P9-10; A9-10. If Section 45 is the only provision directly addressing congressional redistricting, then 7(h) cannot apply to it.

The absence of a similar referendum exemption in Section 45 is significant. That Section provides that “the general assembly shall by law divide the state into [congressional] districts.” Mo. Const. art. III, § 45. Had the Framers intended to exempt congressional redistricting from referendum—a right the people had reserved since 1908—they knew how to do so.

2. *There is No Clear Statement Requirement in Missouri*

Without finding the language ambiguous and notwithstanding this Court’s directive to use plain and ordinary language, the trial court resorted to principles of construction. It concluded that a “clear statement rule” applied in Missouri law. No such rule exists. The trial court’s statement that “the expectation of clarity is not novel in Missouri law,” D63:P7; A7, is true—but that clarity is found through plain and ordinary meaning, not a “clear-statement requirement.”

The trial court never found Article III, Sections 49 and 52(a) ambiguous, and no party identified any ambiguity. Even if there were some way to construe them as ambiguous, the asserted clear-statement rule is not the relevant interpretive canon.

Instead, this Court has long recognized the referendum power must be *liberally construed* to preserve the people’s reserved right. *Rekart*, 639 S.W.2d at 608; *Voss*, 418 S.W.2d at 167. If the plain language were ambiguous, that rule forecloses a construction that narrows the phrase “any act” based on an unenumerated exception drawn from federal case law discussing the limits on

Congress's power under a very different scheme of power distribution. The referendum provisions “should be liberally construed to permit rather than to restrict . . . the exercise of the right.” *Voss*, 418 S.W.2d at 167.

The trial court cited *Luther* for the proposition that “deference due the General Assembly requires that doubt be resolved against nullifying its action.” D63:P5; A5. But *Luther* was addressing whether the General Assembly could enact a mid-decade redistricting bill—not whether the people could subject such a bill to the referendum. The deference principle protects legislative *authority* from judicial overreach; it does not expand that authority at the expense of the people’s reserved referendum power. If anything, the principle cuts the other way: the people reserved the referendum power over *all* legislation subject to narrow exceptions, and courts should not lightly infer that the General Assembly’s enactment of a redistricting bill somehow nullifies that reservation.

The trial court also invoked *State v. Clay*, 481 S.W.3d 531, 537 (Mo. banc 2016), for the proposition that “doubt” must be resolved in favor of the General Assembly. D63:P8; A8. But *Clay* concerned the validity of legislative enactments—whether a statute is constitutional—not whether the people retain their reserved referendum power. The referendum does not “nullify” legislative action in that sense; it is a constitutionally prescribed mechanism through which the people exercise their own reserved legislative power. *Clay* does not override the rule that referendum rights are “liberally construed to make effective the

people’s reservation of that power.” *MPIP v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990).

More fundamentally, there is no ambiguity requiring resort to any tie-breaking canon. The text, structure, and history of the Missouri Constitution all point in one direction: Sections 49 and 52(a) authorize referenda on *all* bills other than emergency legislation and appropriation bills. Canons of construction resolve doubt; they do not create ambiguity where none exists.

3. *The Absence of Historical Practice Does Not Negate a Constitutional Right*

The trial court relied on the alleged historical absence of successful redistricting referenda, observing that “no referendum petition directed at a congressional redistricting plan has ever reached the ballot” since 1945. D63:P10; A10. This does not account for the successful referendum effort in 1922. D39-40. It also does not account for the fact that mid-decade redistricting has never happened before either.

Regardless, the infrequent use of the referendum on congressional redistricting bills after 1945 merely reflects that Missourians use their referendum power judiciously—not that they understood it to exclude redistricting bills. There are many topics on which Missourians have not attempted referenda. The 1952 attempt was rejected only because the petition was untimely, not because the referendum power was unavailable. See *Toberman*, 250 S.W.2d at 705–06 (“[T]his does not mean that Senate Bill 267

was not subject to referendum prior to its effective date.”). The absence of successful referenda does not establish an unenumerated exception to the people’s expressly reserved power.

The trial court’s reasoning is also circular: concluding the absence of practice proves the right does not exist ignores that the absence could just as easily reflect that no other congressional redistricting after 1945 provoked sufficient opposition. Until now, Missouri has redistricted congressionally only following decennial censuses, with relatively little controversy. The 2025 mid-decade redistricting differs from that historical pattern, and it is therefore unsurprising that a new circumstance prompted an infrequently used response.

A properly applied liberal construction does not permit courts to extinguish a constitutional right based on limited use—non-use is not abandonment, and constitutional provisions do not lapse through desuetude. Section 49 reserves power over “any act of the general assembly,” not merely over acts that have previously been challenged.

4. *Chapter 116’s Procedural Limitations Cannot Negate a Constitutional Right*

The trial court’s reliance on statutory limitations in Chapter 116 was also erroneous. D63:P12; A12. The trial court assumed the legislature carefully considered the interplay between Chapter 116 and the referendum provisions of the Constitution. There is no evidence of that.

But even if it did, a statute cannot limit or abrogate a constitutional right. This Court was clear that Chapter 116 is subordinate to the Constitution in *Maggard*, 733 S.W.3d at 419. And this Court has made clear statutory provisions that “interfere with and impede” the exercise of the referendum right are invalid. *No Bans on Choice*, 638 S.W.3d at 489.

The trial court’s concern that Chapter 116 (enacted in the 1980s) limits ballot summaries to 100 words and provides no mechanism for “visual aids” proves nothing about what the Framers intended the referendum power to cover in 1945. As to this very measure (HB 1), the Secretary certified a ballot title (approved by the Attorney General) that did not include visual aids or any of the other things they both now argue are needed to make the title fair. Yet the Secretary, represented by the Attorney General, defended that ballot title as fair and sufficient. The Court of Appeals disagreed and wrote a title which is fair and sufficient as a matter of law. *People Not Politicians v. Hoskins*, 736 S.W.3d 518 (Mo. App. 2026).⁶

⁶ Initially, the Secretary “contested all of the Proponents’ challenges to the fairness of the summary statement” the Secretary had written. *Id.* at 523. At that stage, the Secretary maintained that he had three tries to rewrite a ballot title, but this Court invalidated the statute containing that process. *Nicholson v. State*, 731 S.W.3d 871 (Mo. banc 2026). “Within five days of the *Nicholson* decision, the Secretary” filed an amended answer which “now admitted that [certain phrases in the original statement he had written and initially defended] were argumentative and likely to prejudice voters in favor of the new congressional districts.” *Id.* at 524. But he *never* raised issues about length and visual aids he now brings to this Court. In fact, when the Circuit Court in that case rewrote the statement, the Secretary defended it on appeal as fair and sufficient. The Secretary’s current position is inconsistent with that prior defense.

In all events, if the Secretary thinks this statutory framework is inadequate, his remedy is legislative—the General Assembly cannot define away a constitutional right. “[C]ourts aren’t free to rewrite clear [provisions] under the banner of [their] own policy concerns. If the government doesn’t like [the legislature’s] policy choices, it must take its complaints there.” *Azar v. Allina Health Servs.*, 587 U.S. 566, 581 (2019); *see also Lamie v. U.S. Tr.*, 540 U.S. 526, 542 (2004) (“It is beyond our province to rescue [the legislature] from its drafting errors, and to provide for what we might think . . . is the preferred result.” (cleaned up)).

The trial court’s concern with certification deadlines under Section 116.150.3 was also misplaced. The issue is not the statute’s outer limit but the Secretary’s intentional delay in issuing his certification. As the federal court observed in December 2025, “it is hard to imagine that completing th[e] constitutional assessment will impose any measurable burden given that the State has completed an exhaustive analysis in briefing this case.” D30:P8. The Secretary’s use of the timing provisions in Chapter 116 cannot remove congressional redistricting from the referendum power.

5. *The Repudiation of Gordon Confirms Only the State-Redistricting Exemption*

The trial court similarly drew an unwarranted inference from the Constitutional Convention’s response to *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932). The Convention’s insertion of Section 7(h)—and the

similar provision in Section 3—shows that when the Framers wanted to exempt redistricting from referendum, they did so explicitly and limited it to *state* redistricting. Because the referendum had been successfully used on a congressional redistricting bill in 1922, the Framers were aware it might happen again—yet they did not address that possibility. It is not for the courts to second-guess that choice.

The trial court read the Convention’s action as reflecting “distrust of referenda in the redistricting sphere.” D63:P11-12; A11-12. But that is not what the Framers did. They could have written: “No redistricting plan, whether state or congressional, shall be subject to the referendum.” Instead, they wrote targeted exemptions placed exclusively within the state-redistricting provisions. The absence of comparable language in Section 45 is decisive. If we need to consider anything other than the plain language of each section, the principle of *expressio unius* applies: the express exemption of state redistricting, coupled with the conspicuous absence of any exemption for congressional redistricting, demonstrates the Framers drew the line exactly where they intended.

The historical evidence confirms the Framers’ concerns were specific to the commission-based state-redistricting process they were creating—not to redistricting generally. They exempted from the referendum a process they were simultaneously removing from legislative control. Congressional redistricting, by contrast, remained with the General Assembly and remained subject to the full

suite of popular checks, including the referendum. The Convention's response to *Gordon* therefore confirms only the state-redistricting exemption.

II. The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Based on Federal “Clear Statement” Requirements Because No Such Requirement Applies to State Constitutional Referendum Provisions and the Missouri Constitution is Clear, in that the Missouri Constitution subjects “any act of the general assembly” to the referendum and HB 1 is an Act of the General Assembly Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by alleging that the referendum complied with the U.S. Constitution in his Petition, D2:P7-8, and explaining the non-existence of a “clear statement” rule in his trial brief, D62:P11-15.

* * *

The trial court also refused to deem the referendum sufficient because “federal law independently confirms that Missouri has not ousted the General Assembly’s redistricting authority.” D63:P14-22; A14-22. It appeared to use federal law as an interpretive aid—construing Missouri law to avoid an unconstitutional interpretation, but without finding any ambiguity. It reasoned the Elections Clause requires state constitutions to contain a “clear statement” subjecting redistricting bills to the referendum. That conclusion is not supported

by law and reverses the direction of the relevant doctrine. Even if such a rule existed, Article III of the Missouri Constitution could hardly be clearer.

A. The Elections Clause Permits States to Subject to Redistricting Bills to the Referendum

The trial court's conclusion rests on the proposition that the Elections Clause requires a clear statement in the Missouri Constitution. The trial court *also* concluded the Elections Clause renders Article III, Section 52(b) unconstitutional as applied to redistricting bills. D63:P23-26; A23-26. That latter conclusion is addressed in the following Point.

The Supreme Court has repeatedly held—for more than 100 years—that the Elections Clause does not prohibit a state from subjecting its legislature's redistricting bills to the referendum. *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916); *Hawke v. Smith*, 253 U.S. 221, 230 (1920); *Smiley v. Holm*, 285 U.S. 355 (1932); *Moore v. Harper*, 600 U.S. 1, 23-27 (2023). These authorities are discussed more fully in Point III; none imposes a clear-statement requirement on a state constitution.

Davis considered Ohioans' rejection of a redistricting bill after subjecting it to their constitutional referendum provision. 241 U.S. at 566. The Court held the resulting Elections Clause challenge was “plainly without substance.” *Id.* at 569. The trial court tried to distinguish *Davis* by asserting that the Supreme Court said Ohio law “conclusively made it clear that . . . the referendum constituted a part of the state Constitution and laws applicable to congressional redistricting.” But this

misreads the opinion. The Court noted only that the Ohio Supreme Court’s interpretation of the Ohio Constitution was conclusive. 241 U.S. at 567–68. This Court will likewise determine the meaning of the Missouri Constitution. The Elections Clause does not require a separate statement specifically addressing congressional redistricting.

The trial court acknowledged the relevant provision of the Ohio Constitution applied broadly to “any law, section of any law or an item in any law . . . passed by the General Assembly.” D63:P20 (¶ 96).⁷ That language is functionally identical to the language in Article III, § 49 (adopted roughly 30 years after *Davis* was decided).⁸ If that language was sufficiently clear to validly subject redistricting bills to the referendum power, the language in Article III, § 49 undoubtedly is as well.

B. No Case Has Ever Held that a State Must Specifically Mention Redistricting in its Referendum Provisions

The trial court discussed various instances in which the Supreme Court has “deploy[ed] an array of clear statement rules” to *Congress*. D63:P15-18; A15-18.

⁷ *Smiley*, which reaffirmed *Davis*, again noted the Ohio referendum provision covered “any law enacted by the general assembly.” 285 U.S. at 371.

⁸ Thus, the Framers must be presumed to have been aware of *Davis*’s holding. See, e.g., *State v. Onyejiaka*, 671 S.W.3d 796, 800 n.6 (Mo. banc 2023). They would also have been aware of this Court’s decision in *State ex rel. Carroll v. Becker*, 45 S.W.2d 533 (Mo. banc 1932), which approvingly discussed *Davis*’s holding.

But notably absent from that survey—or any of the Secretary or Intervenors’ briefing—is *any* case applying such a rule to the states.

Where the Supreme Court has deployed a clear-statement rule, it has been to prevent *Congress* from intruding on traditional state authority. *See Bond v. United States*, 572 U.S. 844, 858 (2014); *Sackett v. EPA*, 598 U.S. 651, 680 (2023). That is consistent with how federalism works. When the United States Constitution does not give Congress a power (or deny it to the States *specifically*), those powers are “reserved to the States respectively *or to the people*.” U.S. Const. amend. X (emphasis added). The argument that federal law requires a clear statement to deprive the people of their referendum right is inconsistent with that allocation of authority. It is *federal* law that must clearly state any intention to deprive the people of the referendum. No such provision exists.

The trial court’s extensive catalog of federal clear-statement rules—requiring clarity before Congress delegates major questions to agencies, applies statutes extraterritorially, repeals jurisdiction, or abrogates sovereign immunity—does not address state constitutional referendum provisions. Those rules concern statutory construction of congressional enactments; the Missouri Constitution is not a federal statute, and no clear-statement rule governs its interpretation.

The only case the trial court (and the Secretary and Intervenors) cite for the proposition *state* law must contain a clear statement to subject redistricting bills to the referendum power is *United States v. Gradwell*, 243 U.S. 476 (1917).

That case is irrelevant. It had nothing to do with redistricting. And it confirms that electing congressional representatives is a matter left to the states.

Gradwell involved indictments charging conspiracies to defraud the United States by bribing voters during a congressional election. *Id.* Trial courts dismissed the indictments for failure to state a federal crime. *Id.* at 479. The issue was the scope of (i) Congress's power over state elections and (ii) the particular statute in question. The Court explained: "it has been [Congress's] policy to leave such regulations almost entirely to the states, whose representatives Congressmen are." *Id.* at 482. The Court noted that Congress had historically left control over congressional elections to the states, and when it deviated from that policy, it did so clearly and unmistakably. The Court refused to read a revenue law to criminalize election activity:

With it thus clearly established that the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870, it would be a strained and unreasonable construction to apply to such elections this § 37, originally a law for the protection of the revenue

Id. at 485.

Gradwell does not support the notion that drafters of state constitutions must use magic language to subject redistricting bills to the referendum. It stands for the proposition that the U.S. Government must use clear language to prevent

such regulation by the states.⁹ And there has been no argument Congress has done so. *Cf. Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991) (if Congress meant to interfere in Missouri’s decision to require its judges to retire at 70, it must do so with “a plain statement that judges are excluded [from the ADEA]”). As the Supreme Court explained in *Davis*, Congress has explicitly recognized the referendum to be part of state legislative power when it comes to redistricting. 241 U.S. at 568. It remains true that “[a] state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to enactment of laws.” *Moore*, 600 U.S. at 26. Those include the Governor’s veto power and the right to a referendum.

C. The Missouri Constitution Is More Than Clear

Even if there *were* a “clear statement” requirement relevant to how Missourians govern themselves and elect their congressional representatives, Article III satisfies it.

As discussed in Point I, Article III, Section 49 subjects *all* acts of the General Assembly to the referendum, except as otherwise provided in the Constitution. The text is clear: the referendum applies to everything other than

⁹ The two federal district court cases cited, D63:P19 (¶ 91); A19, make this unmistakably clear. *See United States v. Caldwell*, 2026 WL 2186515, at *3 (D.N.J. July 29, 2026) (“In practice, the [Elections] Clause functions as a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices. If it decides to do so, Congress exerts its preemptory authority through positive and clear statutes.”); *United States v. Oregon*, 828 F. Supp. 3d 1092, 1095-96 (D. Or. 2026) (similar).

the categories the people excluded. That was emergency legislation and appropriations bills. Mo. Const. art. III, § 52(a). The people knew how to exclude categories of bills from the referendum power. They did not exclude redistricting bills. The judgment cannot be upheld on the basis of a “clear statement” requirement.

III. The Trial Court Erred in Holding the Elections Clause Invalidates Article III, Section 52(b) as Applied to Congressional Redistricting Because the Elections Clause Does Not Prohibit States from Subjecting Redistricting to the Referendum, in that the United States Supreme Court Has Repeatedly Held the Elections Clause Permits Referenda on Congressional Redistricting Bills

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by alleging that the referendum complied with the U.S. Constitution in his Petition, D2:P7-8, and explaining why the Elections Clause does not prohibit applying the referendum power to redistricting bills in his trial brief, D62:P11-15, 19.

* * *

Venturing beyond whether the referendum petition complied with the Missouri Constitution and Chapter 116 (*see* §§ 116.120.1, RSMo, 116.150.1, RSMo), the trial court engaged in constitutional avoidance, claiming that reading Article III, Sections 49 and 52(b) according to their plain language would violate the Elections and Guarantee Clauses. D63:P23-26; A23-26. This was improper. The Secretary did not claim to base his insufficiency determination on the federal constitution. And although he can review for compliance with the Missouri Constitution, the Court of Appeals has held the Secretary cannot deem a

referendum insufficient on federal constitutional grounds. *Missouri Elec. Coops. v. Kander*, 497 S.W.3d 905, 920 (Mo. App. 2016). Finally, where “there is no ambiguity in the challenged provision, this Court cannot ‘avoid’ the constitutional question; rather, the Court must face it head-on.” *State v. League of Women Voters of Missouri*, 730 S.W.3d 591, 603–04 (Mo. banc 2026).

There is no constitutional conflict to avoid. The Elections and Guarantee Clauses do not prevent states from applying the referendum to redistricting bills. The Supreme Court has repeatedly rejected these contentions. Plaintiff addresses the Elections Clause in this Point and the Guarantee Clause in the following.

A. The Elections Clause Allows Referenda on Redistricting Bills

Because the trial court’s conclusion would invalidate one of the most cherished provisions in the Missouri Constitution—used by citizens to keep their representatives in check for more than a century—it is best to start with what the Supreme Court has actually said. The judgment gave limited attention to those cases, which reject Elections Clause challenges to referenda on redistricting bills.

This line of authority began with *Davis*. It involved an Elections Clause challenge to Ohio’s use of the referendum power to reject a redistricting bill. The Supreme Court easily dispensed with that challenge:

To the extent that the contention urges that to include the referendum within state legislative power for the purpose of apportionment is repugnant to § 4 of article 1 of the Constitution and hence void . . . we again think the contention is plainly without substance

241 U.S. at 569.

The Court explained the Ohio constitution made the referendum “part of the legislative power of the state,” and Congress had done nothing to prohibit its use in redistricting. *Id.* at 567-68. Congress had recognized that where state law treats the referendum as part of legislative power, “the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts.” *Id.* at 568. That remains the law. 2 U.S.C. § 2a(c); *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 804-13 (2015).

The Supreme Court has repeatedly confirmed *Davis*’s validity. In *Hawke v. Smith*, 253 U.S. 221 (1920), while explaining why ratification of constitutional amendments was *not* subject to referendum, the Court expressly distinguished *Davis* and confirmed “the referendum provision of [a] state Constitution, when applied to a law redistricting the state with a view to representation in Congress, [i]s not unconstitutional.” *Id.* at 230-31.

In *Smiley v. Holm*, 285 U.S. 355 (1932), the Court rejected an Elections Clause challenge to gubernatorial veto of a redistricting bill, reaffirming *Davis*: “[T]here is nothing in article 1, s 4, which precludes a state from providing that legislative action in districting the state for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power.” *Id.* at 372-73.

Nothing has changed. The Supreme Court exhaustively reviewed this line of authority in *Moore v. Harper*, 600 U.S. at 23-30, and reaffirmed: “The

reasoning we unanimously embraced in *Smiley* commands our continued respect: A state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to the enactment of laws.” *Id.* at 26. This is because “[l]egislatures, the Framers recognized, are the mere creatures of the State Constitution, and cannot be greater than their creators.” *Id.* at 27. The Elections Clause arguments advanced by the Secretary and Intervenors lack any support.

B. Suspension of Laws Is a Basic Feature of the Referendum Power

The Secretary and Intervenors acknowledge that *Davis* and its progeny permit referenda on redistricting bills. They therefore contend that the problem with Article III, Section 52(b) is not that it allows voters to reject a redistricting bill, but that it *suspends* the bill until voters have their say. D60:P40; D61:P20-21. This ignores the plain meaning of “referendum.” Suspension of a referred bill is, and has always been, a fundamental feature of the referendum power.

A referendum is not advisory; it is the people’s right to decide whether the measure becomes law. Referenda apply only to proposals where there is some level of desire by the people to review them. In Missouri, that is the submission of signatures. That submission means the act is “referred to the people” and it “shall take effect when approved by a majority of the votes cast thereon, and not otherwise.” Mo. Const. art. III, § 52(b); *see also Maggard*, 733 S.W.3d at 420 (“If the December 9 referendum petition filing is ultimately determined to be sufficient . . . HB 1 did not take effect on December 11 [2025].”).

The Supreme Court is well aware of this. *Davis* explained this very feature:

By an amendment to the Constitution of Ohio, adopted September 3d, 1912, the legislative power was expressly declared to be vested not only in the senate and house of representatives of the state, constituting the general assembly, but in the people, in whom a right was reserved by way of referendum to approve or disapprove by popular vote any law enacted by the general assembly. And by other constitutional provisions the machinery to carry out the referendum was created. Briefly they were this: Within a certain time after the enactment of a law by the senate and house of representatives, and its approval by the governor, upon petition of 6 per centum of the voters, the question of *whether the law should become operative was to be submitted to a vote of the people, and, if approved, the law should be operative; and, if not approved, it should have no effect whatever.*

241 U.S. at 566 (emphasis added). When the Supreme Court reaffirmed *Davis* in *Moore*, it remained aware of these features. See *John Doe No. 1 v. Reed*, 561 U.S. 186, 219-22 (2010) (Scalia, J., concurring) (discussing the suspension feature of referendum power).

This is how the referendum works: “[Its p]urpose is to suspend or annul a law which has not gone into effect and . . . require [voters’] approval before it become operative as a law.” *Toberman*, 250 S.W.2d at 706. This feature is not unique to Missouri; suspension is inherent in the referendum power. See, e.g., *Assembly of State of Cal. v. Deukmejian*, 639 P.2d 939 (Cal. 1982); *State Nat. Bank v. Bd. of Councilmen of City of Frankfort*, 269 S.W. 726 (Ky. 1925); *Bernstein Bros.*, 661 P.2d 537. A referendum is “the process of referring a state legislative act . . . to the people for final approval.” Black’s Law Dictionary.

No authority supports the Elections Clause argument the Secretary and Intervenors advance; it has been repeatedly rejected. The trial court's judgment does not accurately apply precedent. For example, it cites *Moore* for the proposition that "state law may not be wielded to 'arrogate' the 'power vested in state legislatures to regulate federal elections.'"

But *Moore* actually held: "We hold *only* that state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures." 600 U.S. at 29 (emphasis added). That statement concerned the bounds of judicial review, not the referendum power. Similarly, the judgment cites *Davis* for the proposition that the "Elections Clause forbids any arrangement that would so thoroughly 'annihilate' the General Assembly's redistricting authority"—but that word appears in the Court's description of the losing party's Guarantee Clause argument, which the Court *rejected*. 241 U.S. at 569. The cited passage therefore does not establish the proposition attributed to it.

Stripped of paper-thin legal dressing, the Secretary and Intervenors' contention is simply that they do not like the *consequences* of applying the referendum to redistricting bills, so *it must* be illegal. "Gone here is any pretense of [constitutional] interpretation; all that's left is a suggestion [the Court] should proceed without the law's guidance to do as [it] think[s] best. But that's an invitation no court should ever take up." *Bostock v. Clayton Cnty., Ga.*, 590 U.S.

644, 680 (2020). The referendum petition is sufficient, and Article III, Section 52(b) provides that HB 1 is suspended.

IV. The Trial Court Erred in Holding the Guarantee Clause Invalidates Article III, Section 52(b) as Applied to Congressional Redistricting Because the Guarantee Clause Does Not Preclude Direct Democracy Mechanisms Such as Referenda, in that Congress has not Precluded it or Made a Determination About Missouri’s Form of Government

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by alleging that the referendum complied with the U.S. Constitution in his Petition, D2:P7-8, and explaining why the Guarantee Clause does not prohibit applying the referendum power to redistricting bills in his trial brief, D62:P20-21.

* * *

The trial court’s alternative conclusion that the Guarantee Clause invalidates Section 52(b) is also unsupported by the governing authorities. D63:P24-26; A24-26. Its reasoning relies on general statements about a “republican form of government” and unsupported assertions—including that “[t]he ‘immediate suspension’ of HB 1 would leave Missouri with no congressional map whatsoever for the imminent general election.” D63:P25 (¶ 121); A25. That assertion is inconsistent with *Maggard*: if the referendum petition is sufficient, HB 1 was suspended on December 9, 2025, and did not take

effect, leaving the 2022 congressional districts in effect. *Maggard*, 733 S.W.3d at 420; *see* §§ 128.461-128.469, RSMo.

A. Guarantee Clause Arguments Are Non-Justiciable

The Guarantee Clause provides: “The United States shall guarantee to every State in this Union a Republican Form of Government.” U.S. Const. art. IV, § 4. *Davis* is a useful starting point. There, the Supreme Court rejected a Guarantee Clause challenge to subjecting a redistricting bill to the referendum power:

[That contention] must rest upon the assumption that to include the referendum in the scope of the legislative power is to introduce a virus which destroys that power, which in effect annihilates representative government, and causes a state where such condition exists to be not republican in form, in violation of the guaranty of the Constitution. Const. § 4, art. 4. But the proposition and the argument disregard the settled rule that the question of whether that guaranty of the Constitution has been disregarded presents no justiciable controversy, but involves the exercise by Congress of the authority vested in it by the Constitution.

241 U.S. at 569.

The Attorney General states that “[t]here is no mystery about what is a ‘Republican Form of Government.’” D27:P9; A45. As discussed below, the Supreme Court disagrees. Its decisions also recognize that this question is not one state election administrators or this Court can decide. The Supreme Court held over 100 years ago that what constitutes a “republican form of government” is a question left to Congress. *Davis* is one of several cases to so hold. *See Luther*

v. Borden, 48 U.S. 1, 42 (1849); *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 151 (1912); *Baker v. Carr*, 369 U.S. 186, 224 (1962). The Fifth Circuit has characterized Guarantee Clause arguments as “not only incorrect, [but] absurd,” in part because they are nonjusticiable. *Deer Park Indep. Sch. Dist. v. Harris Cnty. Appraisal Dist.*, 132 F.3d 1095, 1099 (5th Cir. 1998).

B. The Secretary’s Decision Remains Subject to Judicial Review

The judgment acknowledges this. D63:P24-25 (¶ 117); A24-25. But it reaches an incorrect conclusion, reasoning that because such issues are nonjusticiable, the Secretary’s decision to reject the referendum on this basis is unreviewable in a court of law. That is wrong.

Under this theory, the Secretary could reject *any* referendum or initiative petition by claiming it would eliminate a republican form of government—and the courts would be powerless to intervene. This is not academic: these Guarantee Clause arguments cannot be logically limited to redistricting. If having citizens refer legislation for approval causes Missouri to stop being a republic, then there can be *no* referenda or initiatives, on anything.

The theory that the Secretary has unreviewable power to deny the people a vote fails for several reasons. First, the Constitution says “the *United States* shall guarantee.” U.S. Const. art. IV, § 4. That means *Congress*—not the Missouri Secretary of State—decides what causes a state to cease being a republic. *Luther*, 48 U.S. at 42. If referendum and initiative powers were incompatible with republican government, Congress would presumably have acted against the 20+

states that have them—particularly given the Supreme Court’s holdings in *Davis* and its progeny.

Second, the Secretary’s role is limited. The Missouri Constitution gives him no role in the referendum process other than receiving petitions and signatures; his role is purely statutory and administrative. *Ketcham v. Blunt*, 847 S.W.2d 824, 830 (Mo. App. 1992). “[I]t is the courts who are charged with the ultimate judicial determination as to whether, under the Constitution and laws, the petition is sufficient or insufficient for the ballot.” *Id.*

Third, the statutes define the scope of the Secretary’s review authority: he examines whether the petition “complies with the Constitution of Missouri and with this chapter.” § 116.120.1, RSMo. This is limited to review for compliance with Missouri’s constitutional requirements—not a judicial-style analysis of whether the measure, if enacted, would violate federal law. *See Missouri Elec. Coops.*, 497 S.W.3d at 920 (“The sufficiency determination the Secretary of State is required to conduct plainly does not include whether an initiative petition complies with the *Federal* Constitution.”).

Regardless, Section 116.200 authorizes any citizen to bring suit challenging the Secretary’s sufficiency determination. At that point, courts conduct *de novo* review to “decide[] [whether] the petition is sufficient.” § 116.200.2, RSMo; *Ketcham*, 847 S.W.2d at 830. This is a matter of “original evidence.” *Id.* The question for this Court is simply whether the referendum petition is sufficient. The Secretary and Intervenor’s Guarantee Clause arguments are nonjusticiable.

C. Even If This Issue Were Justiciable, There Is No Basis to Conclude Subjecting Redistricting Bills—or Any Other Bills—to the Referendum Power Destroys the Republican Form of Government

Neither the Secretary, Intervenors, nor the judgment offers any convincing explanation of how subjecting redistricting bills to the referendum is inconsistent with republican government. The judgment recites that such government’s key feature “is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies.” D63:P23; A23. All of that remains true in Missouri—and has been for the more than 100 years the referendum power has existed. If the referendum is sufficient, Missouri will use the 2022 congressional districts, which were *enacted by the General Assembly*.

The Supreme Court’s precedents do not treat the question of what constitutes a “Republican Form of Government” as self-evident. “No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated.” *Minor v. Happersett*, 88 U.S. 162, 175 (1874). Neither the Secretary nor Intervenors identify a *single case* in which a court has invalidated *anything* under the Guarantee Clause.

Ultimately, their argument is that a “small minority” of voters can suspend a law. That feature was also present in *Davis*, and was approved by the United States Supreme Court. 241 U.S. at 566. Accordingly, it offers no basis to depart from *Davis*’s conclusion. The trial court’s observation that “HB 1 passed

overwhelmingly in both chambers of the General Assembly” does not address whether a majority of Missourians approve of what the General Assembly is attempting. D63:P24; A24. Indeed, voters just rejected two key legislative proposals that also enjoyed broad support in the General Assembly by *overwhelming* margins in every single county.¹⁰ Article III, Section 52(b) is not unconstitutional.

¹⁰ See <https://www.kansascity.com/news/politics-government/election/article316780169.html> (last visited Aug. 20, 2026).

V. The Trial Court Erred in Considering Whether Federal Law Would Require a New Primary Election Because that Issue Exceeds the Scope of this Action, in that This Case is an Action for Judicial Review Under Section 116.200, Which is Limited to Consideration of the Secretary's Sufficiency Determination Under Section 116.150

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this argument by seeking judicial review under Section 116.200, D2:P1, and arguing the Secretary was not permitted to review anything other than the referendum's compliance with the Missouri Constitution and Chapter 116, D62:P17-18.

* * *

Points I-IV of this brief address the reasons the Secretary and Intervenors contend the referendum petition is insufficient. Those contentions are foreclosed by controlling precedent from this Court and the United States Supreme Court. The referendum petition is sufficient. That should be the end of this matter.

But the trial court *also* addressed issues beyond the sufficiency dispute, including underdeveloped theories about the consequences of conducting the general election under the lawful 2022 districts rather than the HB 1 districts used for the primary. That was error.

Consequences of sufficiency are not grounds for a finding of *insufficiency*. “[C]onsequentialists urge that [laws] should be construed to produce sensible, desirable results, since that is surely what the legislature intended. But it is precisely because people will differ over what is sensible and what is desirable that we . . . expect court to observe what has been written.” Antonin Scalia & Bryan A. Garner, *Reading Law*, at 22 (2012). That the Constitution suspends HB 1 upon submission of a sufficient petition may create administrative inconvenience or electoral complications. But that does not make the referendum petition any less sufficient or the consequences flowing from sufficiency any less mandatory. The law does not permit the Secretary to deny the people their constitutional right to suspend a law and vote on a referendum simply because honoring that right proves awkward.

Nor does the statute allow those considerations. The scope of a Section 116.200 action is narrow and concerns sufficiency. The Secretary and Intervenor’s arguments about general-election consequences do not address whether this referendum petition satisfies constitutional and statutory requirements—which it does. Plaintiff did request an injunction ordering the Secretary to cease using HB 1. D2:P8. That injunction is a consequence mandated by Article III, Section 52(b). *Maggard*, 733 S.W.3d at 420. Because the referendum is sufficient, HB 1 did not take effect. *Id.* The Secretary may not use a measure that did not take effect to conduct State business. That is contrary to the rule of law.

Although *Maggard* explained that HB 1 might have been suspended as of December 2025, the Secretary chose not to determine sufficiency and instead instructed election officials to use the HB 1 districts. But Plaintiff raised no claim about the primary elections and did not ask for a ruling prescribing how to conduct the general election. *See generally* D2. Nor did he need one. The general election must be conducted using actual law, not a proposed law that never became effective. That means using districts the General Assembly approved in 2022, not the HB 1 districts. The consequences of the Secretary's decision to use districts that were not in effect for the primary are addressed through established procedures, as explained in Point VII; they are not part of the sufficiency determination and do not justify refusing to order certification.

“The judiciary’s authority to determine pre-election challenges to [] ballot measures is extremely limited. Before the people vote on an initiative, courts may consider only those threshold issues that affect the integrity of the election itself, and that are so clear as to constitute a matter of form.” *Sweeney v. Ashcroft*, 652 S.W.3d 711, 720 (Mo. App. 2022) (cleaned up). The courts’ duty is limited to determining “whether the constitutional requirements and limits of power, as expressed in the provisions relating to the procedure and form of [referenda], have been regarded.” *Id.* (cleaned up).

This holds true in a Section 116.200 action. “It is that the [] petition is *sufficient* or *insufficient* that the secretary of state certifies, and it is that ultimate question that the court adjudicates.” *Ketcham*, 847 S.W.2d at 831. Anything else

“is quite beside the point. If . . . the [petition] is sufficient, [] the people have the right to put the proposition on the ballot.” *Id.* at 831. “The pre-election judicial review authorized by this section must necessarily be tailored, therefore, to the Secretary of State’s sufficiency determination, a subject addressed by section 116.120.1.” *Mo. Elec. Coops.*, 497 S.W.3d at 920.

Even in those limited instances where some level of inquiry into constitutionality is permitted, courts “will not look behind the face of the petition to determine its constitutionality prior to its being voted on by the electorate.” *Id.* at 912 (quoting *Union Elec. Co. v. Kirkpatrick*, 678 S.W.2d 402, 405 (Mo. banc 1984)). Such inquiry may be undertaken only “to the extent necessary to determine whether constitutional and statutory requirements pertaining to the form of the petition have been satisfied.” *Id.* (cleaned up).

The Secretary and Intervenors’ arguments about how a sufficiency determination may affect the general election are not matters of sufficiency, form, or apparent from the “face of the petition.” The inquiry is whether the petition complies with constitutional and statutory requirements—not whether enforcing the people’s constitutional right to vote on a referendum will be administratively convenient. The election consequences are addressed through the procedures discussed in Point VII and provide no basis to deny the petition’s sufficiency.

Furthermore, Chapter 116 is not the proper vehicle for addressing the validity of elections. “In contrast to a *pre*-election challenge under [Chapter 116],

chapter 115 allows registered voters to contest the result of *any* election on *any* question *after* an election has been held.” *Dotson v. Kander*, 464 S.W.3d 190, 194 (Mo. banc 2015) (cleaned up; citing § 115.553.2, RSMo). Such actions deal with “irregularities,” and “ensure that the results of each election are valid.” *Id.* Violation of election laws—which would surely include failure to use the legally operative districts—constitutes an irregularity. *Id.* Appeals in such actions come straight to this Court. *Lucas v. Ashcroft*, 688 S.W.3d 204, 213 (Mo. banc 2024). Under Section 115.557, anyone may bring such action within 30 days of the official announcement of election results. *Id.* at 233 (Gooch, J., concurring in part and dissenting in part).

All of this illustrates that it was error for the trial court to refuse to overturn the Secretary’s *sufficiency* determination based on alleged consequences for the primary elections and nominees for the general election. On that basis, the Court should reverse.

VI. The Trial Court Erred in Concluding that Reversal Would Require a New Primary Election Because No Federal Law Requires Missouri Hold a New Primary Election if House Bill 1 is Suspended in that the Authorities Cited in the Judgment Below Do Not Require a New Primary

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by explaining in his trial brief that if the referendum petition is found sufficient, a new primary election is not necessary. D62:P31-34.

* * *

The trial court's primary-election analysis was unnecessary. Plaintiff never asked for a new primary election or claimed reversal of the Secretary's certification decision would require one. *See generally* D2. Plaintiff sought reversal of the Secretary's insufficiency determination and, under *Maggard*, an order restraining the Secretary from taking further steps to implement HB 1. D2:P6-8. The trial court nonetheless addressed whether federal law would require a new primary to use the 2022 districts—and reached incorrect conclusions.

The judgment erroneously concluded a new primary was necessary because: (1) using the 2022 districts for the general election without running a new primary would violate Article I, Section 2; (2) the Equal Protection Clause

bars use of different districts in the general election than in the primary; and (3) UOCAVA would require a new primary. None of these conclusions has any basis in law. D63:P26-30; A26-30.

A. Using the 2022 Districts for the General Election Would Not Violate Article I, Section 2

The trial court cited *United States v. Classic*, 313 U.S. 299, 318 (1941), for the proposition that where state law makes “the primary an integral part of the procedure of choice,” then “the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Article I, § 2.” D63:P27; A27. True. But every Missourian who voted in the August 4 primaries *had their votes counted*. Those votes produced a slate of nominees who—absent disqualification as discussed in Point VII—will compete in November. *Classic* merely held that it was a federal crime for election commissioners to “willfully alter[] and falsely count[] and certif[y]” ballots during a primary. *Id.* at 307. It said nothing about altering districts after a primary.

The trial court nonetheless concluded restraining the Secretary from using the HB 1 districts for the general election would “violate[] the right of Missouri voters to have their ballot counted.” D63:P28 (¶ 139); A28. It reasoned that relief would “ignore” primary votes, “stripping the *nominees* of the mandate their voters conferred.” *Id.*¹¹ This reasoning conflates concern for voters with concern

¹¹ The judgment makes refers to “[m]ore than 1.2 million Missourians” voting in the primaries. D63:P28 (¶ 139); A28. There is no evidence in the record, and the

for candidates—and does not explain how using the lawful 2022 districts would cause ballots to go uncounted. Votes were counted. Nominees were chosen.

The judgment also invokes *Smith v. Allwright*, 321 U.S. 649 (1944). D63:P28; A28. But *Allwright* stands for the unremarkable proposition that states cannot bar voters from casting primary ballots on the basis of race. *Id.* at 661-62. It does not prohibit using different districts at the general election than were used at the primary. In sum, none of the cases cited by the trial court addressed whether different districts can be used for the general election than were used in the primary—let alone held that this would violate Article I, Section 2.

Reading Article I, Section 2 this way would produce absurd results, which courts should not do. *State ex rel. Dep't of Health & Senior Servs. v. Slusher*, 638 S.W.3d 496, 500 (Mo. banc 2022). It would mean courts could not remedy even the most blatant violations of law after a primary has occurred, even where the law provides otherwise. It would reward and incentivize a late certification decision by treating the courts as unable to act. Article I, Section 2 does not mandate such a result.

trial court made no findings, as to how many people who voted in the primaries would cast a vote in a *different* congressional district in the general if the 2022 districts are used.

B. The Equal Protection Clause Does Not Bar Use of Different Districts
in the General Election

The trial court also reasoned that requiring the general election to be conducted under different districts than the primary would violate the Equal Protection Clause. D63:P29-30; A29-30. This conclusion rested entirely on a single case: *Gray v. Sanders*, 372 U.S. 368 (1963). D60:P54-56; D61:P24-25. That conclusion, too, was wrong.

Gray involved Georgia’s “county unit” system for tabulating primary votes for statewide offices. *Id.* at 370. That system—resembling nothing in Missouri law—awarded votes based on the number of representatives to which each county a candidate won was entitled. *Id.* at 371. The plaintiff alleged rural counties impermissibly received massively disproportionate voting power compared to urban counties. *Id.* The Court agreed: “[O]nce the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.” *Id.* at 381. This was a one-person-one-vote case.

The trial court did not explain how using different, lawful, districts in the general election than were used in the primary would violate this principle. Neither the Secretary nor Intervenors claim that either the HB 1 districts or the 2022 districts accord one class of persons more voting power than another. *Gray* demands “equal weight among voters within a designated unit”; it does not speak to whether a designated unit may be lawfully *changed* between elections.

The trial court also reasoned that “hundreds of thousands of Missourians” would be required to vote in a different district than where they cast their primary ballots, and that such voters “would possess materially less voting power” than those who remained. D63:P29 (¶ 145); A29. But the parties did not stipulate to these facts, and the record contains no evidence supporting them. This Court owes no deference to factual assertions included in Intervenor’s proposed judgment without support in the record. *Orthotic & Prosthetic Lab, Inc. v. Pott*, 851 S.W.2d 633, 639 (Mo. App. 1993); *see also Prosecuting Att’y, 21st Jud. Cir., ex rel. Williams v. State*, 696 S.W.3d 853, 862 (Mo. banc 2024). The Secretary and Intervenor offered no evidence about who voted in the primary, how many people would move districts, or whether *any* primary result would have differed.

C. UOCAVA Does Not Require a New Primary Election

Finally, the trial court concluded—without explanation—that UOCAVA would preclude Missouri from holding a new primary election if HB 1 is suspended. That reasoning rests on two incorrect premises: it assumes a new primary would be required (it would not), and it misapprehends what UOCAVA actually does.

UOCAVA’s sole concern is ensuring overseas and military voters receive ballots with enough time to participate. The 45-day deadline requires “state election officials to transmit absentee ballots no fewer than 45 days before any federal election.” 52 U.S.C. § 20302(a)(8)(A); D63:26-27; A26-27. That is all

UOCAVA does—it “establishes a ballot-transmission deadline.” *United States v. Georgia*, 892 F. Supp. 2d 1367, 1373 (N.D. Ga. 2012).

Moreover, Congress anticipated this very scenario. A state may seek a waiver of the 45-day requirement when it faces “undue hardship”—including specifically when “[t]he State has suffered a delay in generating ballot[s] due to a legal contest.” 52 U.S.C. § 20302(g)(2)(B)(ii). UOCAVA is no barrier to enforcing the Missouri Constitution.

Nonetheless, Plaintiff is cognizant of the September 8, 2026 deadline to strike or remove candidates from the ballot. § 115.127, RSMo. Thus, if the Court believes it is necessary or prudent to consider the impact of its decision in this case on the upcoming general election, Plaintiff discusses the correct remedy. As explained in the following section, federal and Missouri law supply a straightforward answer: because the primary elections used districts that were not in effect, the candidates elected are disqualified, leaving party nominating committees to select candidates for the general election.

VII. The Trial Court Erred in Concluding that Reversal Would Require a New Primary Election Because State and Federal Law Provide Alternative Remedies for Candidate Disqualification, in that if Reversal Requires Any Remedy, the August Nominees Would be Disqualified and, pursuant to Chapter 115, Party Committees Would Nominate Replacement Candidates Under Existing Law

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. This section addresses arguments raised by the State and intervenors. Plaintiff preserved this issue by asking for a determination of sufficiency. Plaintiff also addressed Missouri's disqualification statutes in his trial brief, D62:P32-33.

* * *

If this Court chooses to address the consequences of its decision in this case on the general election, it should reject the contention that a new primary would be necessary. State and federal law contemplate situations where party nominees elected at the primary are “disqualified” and new nominees must be chosen. That is what federal and Missouri law mandate here.

If the Secretary had promptly followed *Maggard's* holding or the federal district court's advice in *General Assembly v. von Glahn*, this issue would not have arisen. The governing statutes nevertheless provide a remedy.

A. House Bill 1's Districts Were Not "Established by Law"

In States like Missouri that are apportioned more than one congressional representative, those representatives "shall be elected only from Districts" that are "established by law." 2 U.S.C. § 2c. Stated differently, representatives *cannot* be elected from Districts "established" by unilateral action of the Secretary.

In Missouri, congressional districts are established by the General Assembly through the normal legislative process. *See* Mo. Const. art. III, § 45. Every law in Missouri is passed by bill through both chambers of the General Assembly. *See* Mo. Const. art. III, § 21. After the bill is passed and signed by the presiding officers of the respective chambers, it goes to the Governor for his signature or veto, or to the people via referendum. Mo. Const. art. III, § 30; Mo. Const. art. III, § 31. As this Court has explained:

Section 31 clearly provides that constitutional requirements for action by the legislative body have been met when a bill has 'passed both houses' of the general assembly. The bill is then ready for consideration by the executive or the voters on referendum. Section 31 is a complete formula and its provision that a bill shall become a law when its terms are satisfied is positive and mandatory.

Brown v. Morris, 290 S.W.2d 160, 166–67 (Mo. banc 1956).

In 2022, Missouri established congressional districts using this formula. § 128.346.3, RSMo; §§ 128.461-468, RSMo. The legislature proposed different

districts in HB 1, § 128.346.4, RSMo, but that revision has not become effective.¹² See *Maggard*, 733 S.W.3d at 420. The districts in HB 1 were not “established by law.”

Accordingly, for purposes of choosing candidates for Congress, the August primary elections were likely legally ineffective. The districts used in August were not “established by law” and therefore cannot support the election of representatives under the HB 1 districts. If any nominees are elected in November under the HB 1 districts, they will not have been elected from Districts “established by law” and thus will not be eligible representatives.

B. The Remedy: Party Nominating Committees May Select Candidates

The relevant statutory framework is as follows. Generally, a candidate is placed on the official ballot at the general election by “receiving the greatest number of votes at a primary election . . . unless removed or replaced as provided by law.” Mo. Const. art. VIII, § 24. Because the August primary election used districts that were not “established by law,” the ordinary rule does not supply eligible candidates. *See id.*

Under the Secretary’s view, the Court faces a choice between (i) declining to apply *Maggard* and denying the people their referendum right or (ii) denying Missourians their full voice in Congress. Missouri law supplies another option. It

¹² The Revisor of Statutes has acknowledged and alerted anyone who reviews the statutes that the submission of a referendum has, at a minimum, cast the validity of those districts in doubt. Revisor’s Note, § 128.348, RSMo.

allows the Court to honor *Maggard* and the State to ensure that representatives are elected from districts established by law in November, avoiding vacancies in Missouri's congressional delegation.

While a general election candidate must normally win a primary election, Missouri law contemplates situations where there is no party candidate following a primary election. Section 115.363 governs when “[a] party nominating committee may select a party candidate.” Subsection 3 provides that a party nominating committee “may select a party candidate for election to an office on the general election ballot . . . [i]f the person nominated as the party candidate is disqualified at or before 5:00 p.m. on the tenth Tuesday prior to the general election[.]” § 115.363.3(2), RSMo.

Chapter 115 defines “disqualified” as “a determination made by a court of competent jurisdiction, the Missouri ethics commission, an election authority or any other body authorized by law to make such a determination that a candidate is ineligible to hold office or not entitled to be voted on for office.” § 115.013(7), RSMo. Two elements of this definition are satisfied here.

First, this Court is a “court of competent jurisdiction” authorized to make a disqualification determination. Second, the candidates elected using districts that *were not the law* are “not entitled to be voted on for office” because they were nominated from districts that were not “established by law” under 2 U.S.C. § 2c. A candidate is not entitled to be voted on for an office—a congressional seat representing a particular district—when that district does not lawfully exist.

Because HB 1 was suspended as of December 9, the candidates are disqualified under the plain meaning of § 115.013(7), triggering the party nominating committee process under § 115.363.3(2).

The August primary election was legally ineffective for selecting candidates because the districts used in that election were not “established by law.” The candidates were disqualified on the day of that election, an event occurring before the tenth Tuesday before the general election. Because the August primary election did not lawfully select candidates for Missouri’s congressional districts, the candidates certified by the Secretary as the winners of that election must be considered disqualified. In this situation, Section 115.363.3(2) permits party nominating committees to select the party candidate for each district, using the 2022 districts.

The procedure is straightforward: If this Court directs the Secretary to certify the referendum for placement on the ballot in November, the Secretary will know that all candidates for Congress elected in the August primary are disqualified,¹³ and that party nominating committees must replace those candidates. The Secretary and the party nominating committees can proceed in the normal course under Missouri law to timely select new nominees for each

¹³ Given the background that led us here, if this Court engages in the issue of the consequences of its decision on the primary election, the Court may want to make it extremely clear the nominees are disqualified.

party in each district, who will stand for election in November, under the 2022 districts.

Those lawful districts must be used by local election authorities to conduct the November general election. The Secretary's concerns about the Missouri Centralized Voter Registration system ("MCVR") do not change that the 2022 districts are available in MCVR. *See* D21. As explained in the following section, the trial court's contrary "finding" is not supported by competent evidence and warrants no deference.

C. This Court Owes No Deference to the Trial Court's Unsupported Findings on MCVR, which Are also Irrelevant

The trial court declined to enforce the mandate of Article III, Section 52(b) and *Maggard* based, in part, on a "finding" that it is impossible to make changes to MCVR. D63:P36 (¶¶ 170-171); A36. This Court need not rely on that assertion and it is not relevant here.

First, this case was tried on stipulated facts, so this Court owes no deference to the trial court's factual determinations. *Coleman*, 696 S.W.3d at 357. The trial court adopted Intervenor's proposed judgment with minimal changes, entering it within hours of trial. *Compare* A47-85 with D63; A31-37. As a result, the judgment contains references to facts the parties did not stipulate to and that were never put in evidence. D63; A31-37. Reliance on such facts is improper. *See Orthotic & Prosthetic Lab, Inc.*, 851 S.W.2d at 639.

Second, the trial court expressly stated it could not make a finding on the technical feasibility of altering MCVR. *See* Tr. 54:10-55:16. The purported “finding” on MCVR’s limitations was drawn from an affidavit of a former election official. D63:P36; A36; D26. The trial court received no live testimony on this issue and made no credibility determination—indeed, it acknowledged it could not properly resolve the technical question. No deference is warranted where a trial court merely reviews an affidavit this Court can read for itself. *Pitts v. Garner*, 321 S.W.2d 509, 514 (Mo. 1959).

Third, the Secretary’s office maintains and administers MCVR. 15 CSR 30-15.030. Trial was in Cole County, and the Secretary could have offered a witness to explain and be cross-examined about the technical capabilities of MCVR. Instead, he offered an affidavit from a former election official, which does not provide a reliable basis for resolving the issue. Ms. Brown’s assertions are contradicted by the affidavit of Brianna Lennon, the current Boone County Clerk and Election Authority, who confirms the 2022 districts remain active and available for the November 2026 election. D21 ¶¶ 14-18.

Finally, whether MCVR is “locked,” is irrelevant. No one is asking to unlock the HB 1 districts and “redraw” them (a word the judgment uses). The issue is whether to use the 2022 districts (which were used for the 2024 election and are lawfully in place), or the HB 1 districts (which are not the law). This involves switching districts that are already in MCVR, not redrawing districts. If the Court directs, the Secretary can make any necessary changes in MCVR.

D. The Timing of the Secretary's Decision Does Not Bar Relief

While the statutory procedure to nominate new candidates may seem unusual, it is straightforward. Party nominating committees are an imperfect substitute for primary elections. But nothing precludes them from appointing the same candidates who won the invalid primary elections.

And it is the Secretary who heedlessly proceeded with primary elections using districts that, under *Maggard*, were not in effect. 733 S.W.3d at 420. It is the Secretary who intentionally delayed his certification until the statutory deadline. It is the Secretary who ignored a federal court's admonishment to timely "declare the petition unconstitutional himself," which would have allowed this issue to be resolved in time to avoid the use of party nominating committees. D30. These circumstances should not prevent the Court from applying the governing law.

These circumstances should not prevent relief. If the Court directs the Secretary to certify the referendum as sufficient, state law permits party nominating committees to select new candidates to run under the established 2022 districts. The Court need not choose between the law and this State's representation in Congress.

VIII. The Trial Court Erred in Concluding Equitable Considerations Bar Using the 2022 Districts for the General Election Because There is No Need to Resort to Equity and Even if There Were the Equities Favor Enforcing the Referendum Provisions, in that (i) the Secretary’s Merits Arguments Were Baseless, (ii) He Manufactured the Alleged Problem, (iii) Plaintiff and the Public Will be Irreparably Harmed, (iv) Plaintiff Did Not Delay, and (v) Using the 2022 Districts is Feasible

Standard of Review Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by raising the doctrine of unclean hands in his trial brief and otherwise explaining why the Secretary’s equitable arguments were meritless. D62:P21-25, 27-29.

* * *

Finally, the trial court stated it would “not enter any changes to the General Assembly’s duly enacted map for the ongoing 2026 election,” invoking the “*Purcell Principle*” and *Hadley v. Junior College District of Metropolitan Kansas City*, 460 S.W.2d 1 (Mo. banc 1970). D63:P31-36; A31-36. To reiterate: the relief sought would not change “the General Assembly’s duly enacted map.” There is only one “duly enacted map”—the one still in the statutes and used to run the 2024 election. Equitable principles cannot displace the Missouri Constitution or this Court’s *Maggard* decision.

And there is no need to resort to equity here. As explained in Point VII, Missouri statutes provide the applicable process: party nominating committees will select candidates, who will run in districts established by law—the 2022 districts. This matter is governed by statutes, not equity. If equitable principles apply, the relevant considerations still favor enforcing the referendum: the “*Purcell* Principle” does not apply; *Hadley* sets no bright-line rule; the Secretary’s unclean hands bar him from invoking equity; and all relevant factors support enforcing citizens’ right to the referendum.

A. A Decision Reversing the Secretary’s Certificate of Insufficiency Will Not “Make Changes” to “the Map”

The trial court appears to have proceeded on the assumption that “judicially ordered changes to the map” (which “map” is unclear) would create problems. D63:P31 (¶ 151); A31. The trial court also referenced “the General Assembly’s duly enacted 2025 Plan.” *Id.* (¶ 149). The General Assembly did not “duly enact” a “Plan.” It passed a “bill,” which, under *Maggard*, did not go into effect. 733 S.W.3d at 420. As discussed elsewhere, redistricting “plans” come from a committee and govern state-level elections. The courts are not “order[ing] changes to the map.” The only map in legal effect for this election cycle is the one enacted in 2022. § 128.346.3, RSMo. The Secretary’s decision to run the primaries on a map *not* in effect cannot change that.

Purcell is often invoked when an in-effect apportionment plan is invalidated close to an election, resulting in there being *no* valid apportionment

plan in existence. *See, e.g., Gonidakis v. LaRose*, 599 F. Supp. 3d 642 (S.D. Ohio 2022). That is also what happened in *Hadley*. 460 S.W.2d at 1-2. In that scenario, the legislature (or some other body) must *create* entirely new districts from scratch. That takes time. But that is *not* what needs to occur here. The 2022 districts exist, were previously used, and are ready to be used now. D43:P3-4. No one needs to create a new district.

B. *Purcell Does Not Apply Here and, Even If It Did, Would Not Require Disregarding Section 52(b)*

The “*Purcell* Principle” governs whether *federal* courts should interfere with state-law processes close to an election. It provides “federal courts ordinarily should not enjoin a state’s election laws in the period close to an election.”

Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Mem.) (Kavanaugh, J., concurring). It has no bearing on “the authority of state courts to apply their own constitutions to election regulations,” but is limited to policing “federal intrusion on state lawmaking processes.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Mem.) (Roberts, C.J., concurring).

“There is a profound difference between compelling a state to depart from its rules close to the election (*Purcell*) and allowing a state to implement its own statutes” or constitution. *Frank v. Walker*, 769 F.3d 494, 497 (7th Cir. 2014); *see also Gonidakis*, 599 F. Supp. 3d at 665 (*Purcell* instructs federal courts to give “the widest berth possible” when “the State, through its legislative or judicial branch, has begun” to address election matters). That is how federalism works.

State courts have recognized *Purcell* does not govern them and does not *compel* them to ignore violations of state law. *Matter of Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022); *Martin v. Simon*, 6 N.W.3d 443, 451-52 (Minn. 2024); *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020) (Appel, J., concurring).

Notably, the Secretary previously admitted *Purcell* has no relevance here. In his trial brief in *Maggard*, he told the court that *Purcell* “does not override [his] . . . statutory obligations to review PNP’s referendum petition for legal sufficiency and to certify PNP’s petition if it is legally sufficient.” Def. Tr. Br. at 14 n.6, *Maggard v. State*, No. 25AC-CC09120 (Feb. 9, 2026). It is the performance of those very obligations this Court is now reviewing under Section 116.200.

The Secretary has thus waived any reliance on *Purcell*. See *Rose v. Sec’y, State of Georgia*, No. 22-12593, 2022 WL 357823, at *13 (11th Cir. Aug. 12, 2022) (Rosenbaum, J., dissenting) (reasoning party waived *Purcell* by telling trial court he would not rely on it); *Rose v. Raffensperger*, 143 S. Ct. 58, 59 (2022) (Mem.) (reversing Eleventh Circuit’s decision because it “applied a version of the *Purcell* principle that respondent could not fairly have advanced himself in light of his previous representations to the district court”).

Finally, even if *Purcell* was relevant, it “is not a hard-and-fast rule” that would require ignoring Article III, Section 52(b). *Ams. for Citizen Voting Pac v. Wolfe*, No. 26-CV-786, 2026 WL 1329715, at *3 (E.D. Wis. May 12, 2026); see also *Black Voters Matter Fund v. Raffensperger*, 478 F. Supp. 3d 1278, 1323

n.30 (N.D. Ga. 2020). *Purcell* allows federal courts to order late changes to election rules where the underlying merits clearly favor the plaintiff, irreparable harm would occur, the plaintiff has not delayed, and changes are feasible. *Id.* (quoting *Milligan*, 142 S. Ct. at 881). That is all true here.

C. *Hadley* Does Not Support Ignoring Section 52(b)

The Secretary and Intervenors also rely on *Hadley*, 460 S.W.2d 1. The Secretary describes this as “Missouri’s *Hadley-Purcell* principle.” D60:P22. But *Hadley* did not establish a general principle.¹⁴

Hadley arrived at this Court on February 25, 1970, after the United States Supreme Court invalidated Missouri’s statutory process for apportioning trustees for junior college districts. 460 S.W.2d at 1-2. Elections were scheduled for April 7. This Court issued its opinion on March 5 (33 days before such elections). *Id.*

It held that due to imminent elections, “it would be unwise” to try to implement the United States Supreme Court’s mandate “with respect to those elections.” *Id.* at 2. This Court explained that “under certain circumstances . . . equitable considerations *might* justify . . . withholding the granting of immediately effective relief.” *Id.* (quotations omitted; emphasis added). It identified various factors to consider, including the proximity of the election, the

¹⁴ *Hadley* has been cited exactly *once* since it was decided—and only to describe the history of the statutes involved. *State ex rel. Enright v. Connett*, 475 S.W.2d 78 (Mo. banc 1972). It therefore did not establish a general “doctrine.”

mechanics and complexities of state law involved, what making the necessary changes would actually entail, and “general equitable principles.” *Id.*

Because the statutory apportionment scheme had been invalidated, relief would necessarily require crafting a *new* apportionment plan and implementing it—unless the offensive provisions could be severed and candidates could run at large (which the courts would have to take time to sort out). There was not enough time to accomplish that. *Id.* at 2-3. So, this Court allowed the elections to proceed and encouraged the political branches to promptly devise a new plan. *Id.*

Hadley did not announce a bright-line rule that prohibits changes to election rules at any particular time. To the contrary, it stated each case should be decided on its facts and general equitable principles. *Id.* at 2. The facts and circumstances here are very different.

Most notably, in *Hadley* state courts had upheld an *in-effect* apportionment plan and the United States Supreme Court invalidated it at the last minute. *Id.* at 1-2. Here, HB 1 was *never* in effect, and the record is clear the Secretary tactically delayed his certification decision in order to invoke *Purcell*.

And there is no need to develop new districts. Missouri *has* lawful congressional districts. They were enacted, and used, in 2022. *See* §§ 128.461–128.469, RSMo. They are ready to be used again. Also, after *Hadley* was decided, the General Assembly adopted a statute allowing changes affecting an election to be made up to eight weeks before an election (here, September 8). § 115.125,

RSMo. This Court expedited proceedings so that deadline can be met. *Hadley* does not preclude relief.

D. The Secretary's Unclean Hands Bar Him from Invoking Equity

The Secretary seeks equity, explicitly invoking “general principles of equity” to displace Article III, Section 52(b). But he who seeks equity must do equity. *Milanko v. Austin*, 241 S.W.2d 881, 884 (Mo. 1951) (“For a long time, as a corollary of the auxiliary maxim that he who seeks equity must do equity, courts of equity have granted relief upon such conditions as are just and proper and demanded by the exigencies of the circumstances.”). The exigencies here are the Secretary’s intentional delay in addressing the referendum petition, which produced the timing of this litigation.

One application of this ancient maxim is the doctrine of unclean hands—a “general equitable principle” that must factor into the analysis. The doctrine “closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). “Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim.” *Id.* at 815. “[W]here a suit in equity concerns the public interest . . . this doctrine assumes even wider and more significant proportions,” because “it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public.” *Id.*

This Court deployed the doctrine in *Purcell v. Cape Girardeau County Commission*, 322 S.W.3d 522 (Mo. banc 2010), to reject a claim for violation of the sunshine law asserted by a county commissioner who induced his colleagues to hold a closed meeting he later sued over. *Id.* at 524. “[T]he law strives to prevent opportunistic behavior,” and “[a] party who participates in inequitable activity regarding the very issue for which it seeks relief will be barred by its own misconduct from receiving any relief.” *Id.* (cleaned up).

If ever there was a case to apply the doctrine, this is it. The Secretary used the discretion afforded by the certification schedule in Chapter 116 to wait until the last day and did not address the signature count. He did not raise his constitutional arguments in the many cases filed against him since September. He later acknowledged that “delay work[ed] in [his] favor.” D38:P4. He then invoked *Purcell* based on timing to which the delayed certification contributed. The Court should not allow those circumstances to determine the outcome at the expense of Missouri citizens.

E. All Facts and Circumstances Favor Enforcing Citizens’ Right to Use the Referendum

Apart from the unclean-hands analysis, the equitable factors overwhelmingly favor enforcing the Missouri Constitution, requiring use of the lawful 2022 districts, and allowing Missourians to decide whether HB 1 should take effect. The factors discussed by Justice Kavanaugh in *Milligan* provide a useful framework. 142 S. Ct. at 881 (Kavanaugh, J., concurring).

First, the merits are “entirely clearcut in [Plaintiff’s] favor.” *Id.* The analysis in Points I-V speaks for itself. The Secretary’s arguments are contrary to longstanding precedent. He has not cited a *single* case that supports his positions on sufficiency.

Second, Plaintiff and Missourians will suffer irreparable harm if this Court requires use of the HB 1 districts for the general election. The entire purpose of the referendum is to suspend a law and allow voters to approve it before it is used. *Toberman*, 250 S.W.2d at 706. Like the initiative, it “is a tool for everyday, ordinary citizens to override legislatures held in the thrall of wealthy patrons.” *Brown v. Carnahan*, 370 S.W.3d 637, 673 (Mo. banc 2012) (Fischer, J., concurring) (cleaned up). “The people, from whom all constitutional authority is derived, have reserved” this power to themselves. *MPIP*, 799 S.W.2d at 827.

Ignoring this most cherished of rights and foisting the HB 1 districts on Missourians before they have had their say would be devastating. It would send the message that their reservation of power is meaningless and can be overridden by the whims of a few elected officials. The situation will be even worse if they reject HB 1 while simultaneously being required to elect congressional representatives under it. This would upend Missouri’s constitutional framework.

Third, Plaintiff has not delayed. He repeatedly sued the Secretary seeking relief. As explained in the other case pending before this Court (SC101801), he sued in September 2025 to require the Secretary to process approximately 100,000 signatures the Secretary had not sent to local election authorities.

Despite that immediate suit, the trial court did not resolve the case for eight months. Writ relief was denied. Plaintiff then sued for a fair ballot title. *See People Not Politicians*, 736 S.W.3d 518. He filed an amicus brief in *Maggard*, which held that a determination on suspension of the law would have to await the Secretary's statutory certification decision. Throughout this process, third parties were permitted to intervene, and use procedural devices to slow the process down. Plaintiff therefore acted promptly to protect the referendum right.

Fourth, use of the 2022 districts is feasible. They are the *only* districts in legal effect. They were used in 2022 and remain in MCVR. D43:P3-4. They can be used with limited administrative effort. *Id.* To the extent there are arguable impediments in the MCVR system, the Secretary controls it and should be ordered to address them. *See* 15 CSR 30-15.030. This is not a case where new districts must be developed. This case will be resolved by the September 8 deadline, such that ballots can be changed.

For all these reasons, every equitable factor supports enforcing the Constitution and ensuring Missourians can meaningfully exercise the power they reserved to themselves. That is what the Court should do.

IX. The Trial Court Erred in Granting Intervention as a Matter of Right Because Intervention as a Matter of Right Requires an Interest in the Subject Matter, a Risk the Litigation Will Impair the Interest, and Inadequate Representation by Existing Parties in that Intervenor's Do Not Have an Interest in the Sufficiency Determination and the Secretary Adequately Represents Intervenor's Interests in Opposing the Referendum's Sufficiency

Standard of Review. This Court reviews a decision granting intervention as of right under the *Murphy v. Carron* standard and will affirm unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Johnson v. State*, 366 S.W.3d 11, 18 (Mo. banc 2012).

Preservation. Plaintiff preserved this issue by opposing intervention as of right. D12:P4-7.

* * *

The trial court permitted the Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee (the “Republican Committees”) to intervene as of right. That was error. Rule 52.12(a)(2) requires a proposed intervenor to establish: (1) an interest in the subject matter; (2) that disposition may impair that interest; and (3) inadequate representation by existing parties. *State ex rel. Nixon v. Am. Tobacco Co.*, 34

S.W.3d 122, 127 (Mo. banc 2000). The Republican Committees do not satisfy these requirements.

A. The Republican Committees Lack a Cognizable Interest

This Court has made clear that the importance of a case is not a license for unlimited intervention. The key is “a direct claim upon the subject matter such that the intervenor will either gain or lose by direct operation of judgment.” *Nixon*, 34 S.W.3d at 128. A sufficient interest requires “a concern, more than mere curiosity, or academic or sentimental desire.” *In re Liquidation of Prof'l Med. Ins. Co.*, 92 S.W.3d 775, 778 (Mo. banc 2003). The Republican Committees’ asserted interests—safe and secure elections, supporting and electing Republican candidates, and mobilizing Republican voters—are downstream political interests of the kind Missouri courts have held insufficient, especially in this kind of litigation. D17.

In *Committee for Educational Equality*, this Court held that proposed intervenors who “merely reasserted the State’s defenses” and “asserted no claim, defense, or interest unique to themselves” could not intervene—warning that allowing such intervention “would open the floodgates” and “[n]o public policy is served by allowing intervention premised on a taxpayer’s mere interest in the subject matter of a suit.” 294 S.W.3d at 487. The Court of Appeals has applied that same principle to ballot-measure proceedings. *Prentzler v. Carnahan*, 366 S.W.3d 557, 564 (Mo. App. 2012); *Toder v. Hoskins*, 730 S.W.3d 129, 136 (Mo. App. 2026) (holding that an intervenor’s “interest in the proposed amendment

itself, not in the fairness and sufficiency of the Secretary's title summary, which is the issue in th[e] case," was insufficient). Tellingly, the trial court's order granting intervention cites none of these cases.

Consider the trial court's identified interests. First, the court noted the Republican Committees "have an interest in ensuring that Missouri elections are conducted in a safe and secure manner and in accordance with law." D20:P4. But that interest is identical to the Secretary's—and shared by nearly every civil, policy, and political organization in the state. Such a diffuse interest cannot satisfy Rule 52.12.

Second, the court explained the Republican Committees have a legally cognizable interest "in the implementation of" HB 1 because, under HB 1, they have a better "ability to support and elect Republican candidates." D20:P4. But *Toder* and *Prentzler* rejected this type of political interest. In *Prentzler*, proposed intervenors were "signatories and supporters" of an initiative petition who wanted the initiative to qualify for the ballot. 366 S.W.3d at 562. The Court of Appeals held those interests "consequential, remote or conjectural" and intervention improper. *Id.* at 563-64. *Toder* reached the same result. 730 S.W.3d at 136. The Republican Committees' claimed interest is in the underlying measure—not the sufficiency of the referendum—and that is inadequate.

The trial court's reliance on *Johnson* was misplaced. There, individual legislators up for election sought to intervene in litigation that directly concerned "the constitutionality of the proposed legislation itself." *Id.* The *Johnson*

intervenors had “a direct economic interest” in their election. *Id.* By contrast, the Republican Committees’ interests are political and ideological—precisely the type of interests courts have held insufficient. *See La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) (“intervention by right will not be granted for purely ideological, economic, or precedential reasons”).

The sufficiency determination is the subject of this action. *See generally Maggard*, 733 S.W.3d at 419. A sufficiency finding will not, by virtue of the judgment itself, cause direct harm to the Republican Committees. *Nixon*, 34 S.W.3d at 128 (intervenor must “either gain or lose by direct operation of judgment”).

The trial court cited out-of-state cases involving political parties, but each is distinguishable. In those cases, the challenged law directly regulated *how* political parties participated in elections—reporting requirements, poll watcher restrictions, mail-in ballot rules, or voter purge laws. *See La Union del Pueblo Entero*, 29 F.4th at 306; *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 685 (7th Cir. 2023); *Mi Familia Vota v. Hobbs*, 2021 WL 5217875, at *1 (D. Ariz. Oct. 4, 2021). Those intervenors were asserting their own rights that a judgment could vindicate. Here, by contrast, the Republican Committees claim nothing more than a political interest in the outcome of a future election.

Following the trial court’s logic, any organization with an ideological interest in a future election gets a seat at the sufficiency stage of a referendum. That would “open the floodgates” this Court warned of. 294 S.W.3d at 487.

B. The Secretary Adequately Represents the Republican Committees’
Position

Intervention is also improper if an existing party adequately represents the intervenor’s interests. The Secretary and Republican Committees filed nearly identical briefs the day before trial. D60; D61. *Committee for Educational Equality* is dispositive: because the intervenors there “merely reasserted the State’s defenses,” their intervention was improper. 294 S.W.3d at 487. The same is true here.

X. The Trial Court Erred in Granting Permissive Intervention Because Permissible Intervention Requires the Proposed Intervenor to Assert Defenses Other than Those of Defendant in that Intervenors Forwarded the Same Defenses as the Secretary

Standard of Review. This court reviews a grant of permissive

intervention for abuse of discretion. *Johnson*, 366 S.W.3d at 18.

Preservation. Plaintiff preserved this issue by opposing a grant of permissive intervention. D12:P3-4.

* * *

The same framework controls permissive intervention. Rule 52.12(b) does not permit a proposed intervenor to join merely by reasserting the existing defendant's position. *Johnson*, 366 S.W.3d at 21. And “permissive intervention is appropriate only where the proposed intervenor can show an interest unique to itself.” *Toder*, 730 S.W.3d at 135. Comparison of the Secretary and the Republican Committees’ trial court briefs immediately demonstrates permissive intervention was inappropriate. D60; D61.

There is reason to think the Republican Committees simply have *no* cognizable interest in these proceedings. Section 116.190 “does not give private parties who support the Secretary of State’s” decision “any role in litigation concerning” that decision. *Toder*, 730 S.W.3d at 136. And courts are loath to recognize a “private civil action [or defense] unless such appears by clear

implication to have been the legislative intent.” *Id.* (quoting *Sullivan v. City of Univ. City*, 677 S.W.3d 844, 850 (Mo. App. 2023) (alteration in original)).

That framework is consistent with the statute. Missouri law places a tight timeline on § 116.200.1 challenges. *E.g.*, *Coleman*, 696 S.W.3d at 353–54, 371–72. The Secretary’s role is simply to prepare a referendum for “consummation,” which “is reached when the measure has been adopted or rejected at the polls.” *State ex rel. Drain v. Becker*, 240 S.W. 229, 232 (Mo. 1922), *overruled on other grounds by Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27 (Mo. banc 2015). Inviting any party with an interest in the underlying referendum would complicate that process.

The Republican Committees’ interests do not fit within Section 116.200 proceedings. Their asserted interests concern the underlying referendum, not the Secretary’s sufficiency determination.¹⁵ This Court should reverse the trial court’s grant of intervention.

¹⁵ The Committees’ arguments were also raised far too late. They could have raised their arguments at any time; they do not turn on some late-stage action by the Secretary. The Secretary did not address signatures, his latest-in-time task. There is no “justification for delaying to the very end of the process claims regarding the form of the petition” or—under the Republican Committees view of § 116.200.1—federal constitutional challenges to the substance of a ballot measure. *Coleman*, 696 S.W.3d at 353–54, 371–72.

CONCLUSION

The Circuit Court's judgment must be reversed and the Court should enter the Judgment that ought to have been entered: order the Secretary to "certify [the Petition] as sufficient and attach a copy of the judgment." § 116.200, RSMo; Rule 84.14; *Coleman*, 696 S.W.3d at 354. The Court should then make clear that, pursuant to *Maggard*, the districts in HB 1 are not the law and may not be used in the upcoming congressional elections. To the extent the Court believes it necessary, it should also declare all nominees selected in the August primary using the Secretary's invalid congressional districts "disqualified" so that the party committees may nominate lawful candidates.

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 August 25, 2026.

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No. SC101805

**In the
Supreme Court of Missouri**

RICHARD VON GLAHN,

Appellant,

v.

DENNY HOSKINS, in his official capacity as Missouri Secretary of State,

Respondent,

REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE, and MISSOURI REPUBLICAN STATE COMMITTEE,

Intervenors-Respondents.

Appeal from a Bench Trial by the Circuit Court of Cole County
The Honorable Daniel R. Green, No. 26AC-CC00440

BRIEF OF RESPONDENT

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INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Richard von Glahn’s demands are legally wrong and, frankly, crazy. The Circuit Court found that they are “unprecedented” and “impossible to implement.” *See, e.g.*, D63, ¶¶ 167–71. And even von Glahn admits that his demands are “awkward.” Appellant’s Br. 71. That minimization might be “good English”—“but only because there is a figure of speech called understatement.” *MCI Telecommunications Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 228 (1994). Even *Democracy Docket*, a leftwing media entity founded by the Democratic Party’s leading lawyer, Marc Elias,¹ calls von Glahn’s legal challenge “a long shot.” *See* D55, p. 5, Jen Rice & Yunion Rivas, *Missouri blocks anti-gerrymander referendum from November ballot in attempt to silence voters*, DEMOCRACY DOCKET (Aug. 4, 2026).

Indeed, von Glahn demands one of the greatest changes imaginable to an ongoing election. He claims that approximately 3.3% of Missouri voters can temporarily repeal a duly enacted congressional map—even before the People vote on whether to reject the map. Appellant’s Br. 71–72; D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. That is why von Glahn thinks “he is entitled to the immediate suspension” of Missouri’s duly-enacted congressional map—even though the Primary Election already occurred. *See* D2, ¶ 42. Von Glahn accordingly demands that the 2026 General Election proceed under a different map. Appellant’s Br. 75–98. This is unthinkable. Even after being explicitly challenged on this

¹ Elias’s firm, the Elias Law Group, represented plaintiffs in *Healey v. State*, 732 S.W.3d 827 (Mo. banc 2026)—another unsuccessful challenge to HB 1.

point below, von Glahn cites no judicial precedent—in any State or at any time—that has ever awarded such a drastic remedy. Moreover, von Glahn is flatly incorrect to argue that the Missouri Constitution permits referenda on congressional maps like House Bill 1.

The Circuit Court rightly rejected von Glahn’s extreme arguments. This Court should affirm—for at least four reasons. *First*, the U.S. and Missouri Constitutions vest authority over federal redistricting solely with the People’s elected representatives in the General Assembly. U.S. Const. art. I, § 4; *id.* art. IV, § 4. Even assuming the U.S. Constitution allows States to permit referenda against federal election maps, *but see Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 824–50 (2015) (Roberts, C.J., dissenting), longstanding precedent requires a “positive and clear” statement in any law or state constitutional provision purporting to divest a state legislature of its redistricting authority, *see United States v. Gradwell*, 243 U.S. 476, 485 (1917). Von Glahn simply cannot identify any language in the Missouri Constitution showing that Missourians made a conscious choice to depart from the U.S. Constitution’s default rule and subject congressional redistricting to referenda. *See Maggard v. State*, 733 S.W.3d 411, 414 n.7 (Mo. banc 2026) (reserving the question of whether the Missouri Constitution permits referenda on congressional maps).

Rather, Article III, Section 7(h) of the Missouri Constitution explicitly provides that “[n]o redistricting plan shall be subject to the referendum.” That plain text clearly captures this case. Moreover, Missouri law obviously does not envision referenda on congressional maps. If it did, why would local election officials and the Secretary of State have until *the day of the primary election* to make a certification decision? *See* §§ 115.341, 116.150.3,

RSMo. And why would voters be expected to vote on redistricting plans, which are enormously complex, with only a 100-word summary statement and no images of the competing maps? See § 116.334, RSMo. The idea of holding a referendum on a congressional map under such conditions is absurd. This reinforces that Missouri never made a “positive and clear” choice to allow such votes. See *Gradwell*, 243 U.S. at 485.

Second, even if the Missouri Constitution does envision referenda on federal congressional maps, the U.S. Constitution preempts Article III, Section 52(b) of the Missouri Constitution—which would freeze an enacted congressional map *before* the People vote. In von Glahn’s world, a small minority of Missourians—five percent of voters in two-thirds of Missouri’s congressional districts (or about 3.3%)—have the right to force the use of their preferred congressional map for an election cycle. See D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. The U.S. Supreme Court has *never* suggested such an arrangement is consistent with the U.S. Constitution’s Elections Clause. And frankly, von Glahn’s proposed regime would be unworkable. *Every* time redistricting occurs, the minority political party could easily gather the signatures needed to freeze a congressional map for one election cycle—a small price to pay for one or more congressional seats. And imagine if this maneuver occurred after the decennial Census, when Missouri could gain or lose a seat. A referendum campaign could force Missouri to use an outdated congressional map with the wrong number of seats. Also, if von Glahn can demand a referendum on a congressional map, what’s to stop him—or anyone else—from attempting to enact a congressional map via initiative petition? In that world, voters might need to select from six or seven competing maps based on 100-word summary statements. Von Glahn cannot cite any State

that has ever permitted such an outrageous arrangement for redistricting—even though his counsel expressly argued below that initiatives may proceed on congressional maps if referenda can. Trial Tr., p. 63:19–21. Fortunately, the U.S. Constitution’s Elections Clause prohibits these absurd possibilities—which would annihilate the General Assembly’s authority over redistricting and give small political minorities an uncheckable power over the majority.

Third, even if referendum campaigns can freeze congressional maps by submitting a sufficient number of signatures, von Glahn’s demanded remedy would violate the U.S. Constitution and federal law. At trial, von Glahn proposed forcing the winners of the Primary Election to run in his preferred congressional districts for the General Election. D62, pp. 31–34; Trial Tr., p. 28:22–25. Now, for the first time on appeal, von Glahn proposes disqualifying all the nominees that voters selected under the HB 1 map and requiring political parties to select new nominees to run in the General Election. Appellant’s Br. 81–86. However, von Glahn cannot cite a single judicial decision that has ever awarded either of these remedies. It is no wonder why. Changing Missouri’s congressional map after the Primary Election would violate the right to vote of hundreds of thousands of Missourians. *See* U.S. Const. art. I, § 2. It would also violate the Equal Protection Clause of the Fourteenth Amendment by weighing some votes more heavily than others based on where voters live. *See* U.S. Const. amend. XIV, § 1. To avoid violating the U.S. Constitution, this Court should affirm the Circuit Court’s holding that the 2026 General Election must be conducted under the same map that governed the Primary Election. *See* D63, ¶¶ 133–47.

Finally, it is far too late for this Court to order the use of a new congressional map for the 2026 General Election. Missouri courts and federal courts refuse to change election rules in the middle of an ongoing election cycle. *See Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1, 2–3 (Mo. banc 1970); *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (holding that it was too late to change Texas’s congressional map for 2026 elections nearly *ten* months ago). Indeed, this Court already applied this rule and held that it was too late to change election district lines shortly *before* the end candidate filing. *Hadley*, 460 S.W.2d at 2–3. Here, candidate filing *ended five months ago* and the Primary Election is already over. §§ 115.121.2, 115.341, 115.349.1, RSMo. As the Circuit Court expressly found, trying to change congressional maps *now* would be catastrophically disruptive and technically “impossible”—as Missouri’s election administration system will be locked and cannot be altered. *See* D63, ¶¶ 170–71; D50, ¶¶ 6–19, *Brown Aff.*²

Indeed, litigants challenging the HB 1 map since September 2025 recognized that the window to change the congressional map for Missouri’s 2026 elections closed long ago. Von Glahn and People Not Politicians (“PNP”) characterized prior lawsuits as “time-sensitive election case[s]” because of their “impact” on “the 2026 election” and the need to avoid “chaos in August.” D44, pp. 1–2, *Mot. to Expedite, State ex rel. People Not*

² Election officials have previously confirmed this point. *See* D54, Letter of Missouri Association of County Clerks and Election Authorities; D51, pp. 11–14, Amicus Br. of Brianna Lennon, *Maggard v. State*, No. SC101581 (Mo., filed April 10, 2026); *see also* D52, pp. 13–16, Amicus Br. of Kurt Bahr, *Maggard v. State*, No. SC101581 (Mo., filed April 28, 2026); D53, p. 109:1–17, Trial Testimony of Shawn Kieffer, *Healey v. State*, No. 2516-CV31273 (Mo. Cir. Ct., Feb. 19, 2026).

Politicians v. Limbaugh, No. WD88821 (Mo. App. W.D., filed April 1, 2026). In other cases, opponents of HB 1—including opponents represented by von Glahn’s counsel—all stated that they needed judicial resolution of HB 1’s status before the candidate-filing period opened *last February*.³ Many of these plaintiffs acknowledged that equitable principles would eventually require Missouri courts “to favor the status quo in a legal dispute during the lead-up to an election.” *See, e.g.*, D48, p. 16, SIS Mot. for Prelim. Inj., *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026) (quotation omitted). Likewise, Boone County Clerk Brianna Lennon previously argued that any change to Missouri’s congressional map (even “*before* the August primary”) “will result in chaos, confusion, and unnecessary expense.” *Compare* D51, pp. 6–7, 11–14, Amicus Br. of Brianna Lennon, *supra*, with D43, Lennon Aff; Lightfoot & Lennon Amicus Br. (filed Aug. 24, 2026). Now, Missouri completed the August primary weeks ago, § 115.121.2, RSMo, Missouri’s candidate filing period closed many months ago, § 115.349.1, RSMo, and absentee voting in Missouri’s General Election starts in a couple weeks, §§ 115.121.1, 115.284.5, RSMo. Von Glahn cannot now ignore these previous representations.

The Circuit Court correctly rejected von Glahn’s attempt to demand a referendum on a duly-enacted congressional map. *See* D63, p. 36. It also correctly refused to change

³ *See* D46, p. 2, Mot. to Expedite, *Luther v. Hoskins*, No. SC101412 (Mo., filed Dec. 31, 2025); D47, pp. 1–3, Pls.’ Opp’n. to a Continuance, *Wise v. State* and *Healey v. State*, Nos. 2516-CV29597, 2516-CV31273 (Mo. Cir. Ct., filed Dec. 15, 2025); D48, p. 16, SIS Mot. for Prelim. Inj., *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026).

Missouri’s congressional map in the middle of an ongoing election—especially when Missourians completed the Primary Election weeks ago. *Id.*, p. 37. Von Glahn has failed to highlight any fault in the Circuit Court’s well-reasoned order. This Court should affirm.

STATEMENT OF FACTS

On September 12, 2025, the General Assembly passed House Bill 1, which provided for the boundaries of Missouri’s eight congressional districts. HB 1 passed by a margin of 21 to 11 in the Senate and 90 to 65 in the House of Representatives. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025). Governor Kehoe signed HB 1 into law on September 28, 2025.

In response, a group known as People Not Politicians (“PNP”) initiated a referendum campaign to challenge the HB 1 map. Appellant Richard von Glahn is the executive director of PNP and the “proponent of the referendum that is the subject of this action.” D2, ¶ 2; D21, ¶ 2.

The Missouri General Assembly, the Secretary of State, and the Attorney General perceived a problem with von Glahn’s undertaking: A referendum on the HB1 congressional map is in tension with the U.S. Constitution’s Elections Clause. *See* U.S. Const. art. I, § 4. The Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the *Legislature* thereof.” *Id.* (emphasis added). Yet a referendum on a congressional map divests the General Assembly of legislative authority and relies instead on a statewide vote.

Over ten months ago, to help clarify this disparity before PNP submitted its referendum petition, the Secretary of State (alongside the General Assembly) sued PNP and von Glahn. Among other things, the Secretary sought a declaratory judgment resolving the validity of von Glahn’s referendum petition. *See* D28, p. 22, *Mo. Gen. Assembly v. von Glahn*, No. 4:25-cv-1535 (E.D. Mo., filed Oct. 15, 2026). He argued that the U.S. Constitution’s Elections Clause forbids subjecting congressional maps to referenda absent a clear statement in the Missouri Constitution. *Id.* ¶¶ 67–69. The Secretary also noted that the Missouri Constitution includes no such clear statement. *Id.* ¶¶ 72–74. Indeed, Article III, Section 45 contemplates only the General Assembly’s legislative authority over redistricting. *Id.*

Despite the Secretary’s effort to obtain clarity last fall, the federal district court dismissed his lawsuit as premature. It explained that under Chapter 116, RSMo, the Secretary of State has “both the authority and duty” to assess “the constitutionality of [von Glahn’s] final petition” before courts may consider the question. *Mo. Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *4 n.4 (E.D. Mo. Dec. 8, 2025) (citing § 116.120, RSMo). The court also expressly recognized the Secretary’s authority to “declare [PNP’s] petition unconstitutional.” *Id.* at *4. Moreover, the court noted that von Glahn and his attorneys expressly agreed that Secretary Hoskins has “authority as Secretary of State to reject [von Glahn’s] petition as unconstitutional during post-submission review and to defend that decision based on the very same constitutional arguments” that the State “advance[d]” in its lawsuit. *Id.* at *1, *4 n.4 (citing §§ 116.120, 116.200, RSMo).

Von Glahn then submitted his referendum petition on December 9, 2025. This submission triggered the Secretary’s duty to review the referendum petition for timeliness, legality, and sufficiency under Chapter 116. *See Maggard*, 733 S.W.3d at 416 (“Section 116.120.1 provides the secretary ‘shall examine the petition to determine whether it complies with the Constitution of Missouri and with this chapter [116].’” (emphasis added)). Section 116.150.3 required the Secretary to complete this review process by August 4, 2026—the same day as Missouri’s Primary Election. Chapter 116 provided an extensive timeline for reviewing the referendum petition because it vested the Secretary and local election officials with substantial duties. It required Missouri’s 116 local election officials to painstakingly check submitted signatures. *See* §§ 116.120–116.140, RSMo. Chapter 116 also empowers the Secretary to independently check the validity of signatures. § 116.140, RSMo. At the end of the exhaustive signature-review process, Chapter 116 provides that, “if the secretary of state finds it sufficient, the secretary of state shall issue a certificate setting forth that the petition contains a sufficient number of valid signatures to comply with the Constitution of Missouri and with this chapter.” § 116.150.1, RSMo. But “[i]f the secretary of state finds the petition insufficient, the secretary of state shall issue a certificate stating the reason for the insufficiency.” § 116.150.2, RSMo.

While the Secretary and Missouri’s 116 local election authorities were busy reviewing the signatures on PNP’s referendum petition, the Secretary of State and the Attorney General recognized that HB 1 would become effective pending the Secretary’s ultimate certification decision under Chapter 116. Yet in late December 2025, two plaintiffs challenged HB 1’s statewide effectiveness. *Maggard*, 733 S.W.3d at 413. They

sought a declaratory judgment and “an injunction preventing use of HB 1’s congressional map until voters approve the map through the referendum process.” *Id.* However, this Court unanimously rejected their claims, holding that “the December 9 referendum petition filing did not automatically suspend HB 1 under article III, sections 49, 52(a), or 52(b) of the Missouri Constitution.” *Id.* at 421.

After this Court’s ruling, Missouri’s local election officials implemented the HB 1 map in Missouri’s Centralized Voter Registration database. *See, e.g.*, D50, ¶¶ 4, 18. State and local election officials also prepared ballots under the new map and then completed the August Primary Election. *Id.* ¶ 4. Roughly 1.2 million voters participated in the August 4 congressional primaries, and they selected Republican and Democratic nominees in each of Missouri’s eight congressional districts. *See* D63, ¶ 15; *see also* Official Results, State of Missouri – Primary Election, August 04, 2026.⁴

On August 4, 2026, the Secretary of State released his certificate of insufficiency as to PNP’s referendum petition. D27. The Secretary’s certificate identified “[t]he grounds for the insufficiency” as the fact that the Missouri Constitution “does not authorize a referendum on congressional redistricting plans passed by the General Assembly.” *Id.*, p. 3. The Secretary’s certificate attached a letter from the Attorney General, which explained that a referendum on a congressional map would be in tension with the clear statement rule in the U.S. Constitution’s Elections Clause. *Id.*, pp. 4–10. Thus, to divest the General Assembly of its redistricting authority, in contravention of the Elections

⁴ <https://enr.sos.mo.gov/>

Clause’s plain text, the Missouri Constitution would need to speak with a clear statement. *Id.*, pp. 4–5. However, the Attorney General explained that the Missouri Constitution includes no such clear statement. *Id.*, pp. 5–7. Rather, “Article III, section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting.” *Id.*, p. 5 (quoting *Luther v. Hoskins*, 730 S.W.3d 567, 571 (Mo. banc 2026)). “And Article III, Section 45 contemplates only that ‘the *general assembly* shall by law divide the state into [congressional] districts.’” *Id.* (alteration original) (quoting Mo. Const. art. III, § 45). The Attorney General’s letter also noted that, even if the Missouri Constitution *did* authorize referenda on congressional maps, the HB 1 map could not be displaced absent a majority vote in light of the U.S. Constitution’s Elections Clause. *Id.*, pp. 8–9. Moreover, the Attorney General noted that a last-minute alteration to Missouri’s congressional map would likely force a violation of UOCAVA or of Article I, Section 2 of the U.S. Constitution. *Id.*, pp. 9–10.

A couple hours after the Secretary’s decision, von Glahn filed suit under § 116.200.1, which provides that “[a]fter the secretary of state certifies a petition as sufficient or insufficient, any citizen may apply to the circuit court of Cole County to compel him to reverse his decision.” § 116.200.1, RSMo. Yet von Glahn’s challenge was not just limited to the Secretary’s decision to certify PNP’s referendum petition as insufficient for the ballot in November 2026. He also alleged that “he is entitled to the immediate suspension of the use and implementation of HB 1.” D2, ¶¶ 42–43; *id.* at 8. Elsewhere, he alleged that the Circuit Court should “restrain[] the Secretary from taking further steps to implement or use the congressional districts in HB 1 to ensure that ... the

correct congressional districts are utilized to conduct the 2026 general congressional election.” *Id.* ¶ 45. Von Glahn’s Petition lacked further clarity on precisely what he meant—which was particularly confusing since Missouri completed the Primary Election on August 4, 2026. *See* § 115.121.2, RSMo. The court and the State were left to guess, for example, whether von Glahn envisioned a new Primary Election under “the correct congressional districts,” D2, ¶ 45, or whether von Glahn demanded a General Election that proceeds under a different congressional map than the map used for the Primary, *id.*

Von Glahn waited until the night before trial (after Respondents filed their trial briefs) to apprise the court about what he meant by “immediate suspension of the use and implementation of HB 1.” D2, ¶¶ 42–43; *id.* at 8. He assured the Circuit Court that “[n]o one is asking” Missouri “to run new primaries.” D62, p. 31. Instead, he demanded an order changing Missouri’s congressional map solely for the General Election. *Id.*, pp. 31–34. Von Glahn cited no judicial decision that has ever forced an election under different maps for the primary and the general elections. *See id.* Instead, he claimed that such an order would be permissible in light of exceptional circumstances where voters do not consider the same candidates for the primary and general elections. *See id.*, p. 32 (“Voters die. People turn 18. People are convicted of crimes and lose their right to vote. People move to different districts.”).

Perhaps unsurprisingly, the Circuit Court rejected von Glahn’s claims on every conceivable ground. First, it held that the Missouri Constitution’s referendum provisions do not apply to congressional redistricting. D63, ¶¶ 28–106. The court reached this conclusion solely under the Missouri Constitution. *Id.* ¶¶ 28–70. Then, the court

separately cited the clear statement rule in the U.S. Constitution's Elections Clause as an alternative basis for its holding. *Id.* ¶¶ 71–106.

Second, the court held that *even if* “Missouri’s referendum provisions could somehow be read to encompass congressional redistricting,” the “Elections Clause and the Guarantee Clause forbid the application of Article III, Section 52(b) to a congressional map enacted by the General Assembly.” *Id.* ¶¶ 107–22. The court found that both Clauses forbid temporary suspension of a Missouri congressional map that has satisfied bicameralism and presentment. *Id.* A “small minority of voters” cannot “nullify a congressional map enacted by the People’s elected representatives without any majority vote.” *Id.* ¶ 120.

Third, the court held that the U.S. Constitution also forbids changing Missouri’s congressional map between a completed Primary and General Election. *Id.* ¶¶ 123–48. Such a change would impinge both the right to vote in congressional elections, U.S. Const. art. I, § 2, and the Equal Protection Clause, U.S. Const. amend. XIV, § 1. Indeed, changing the map before the General Election would clearly disadvantage the votes of hundreds of thousands of Missourians forced to vote in different districts between the primary and general elections. D63, ¶¶ 123–48.

Fourth, the court noted that *even if* it were wrong on the first three bases for its judgment, it would still decline to change the HB 1 map before the 2026 election in light of the *Hadley-Purcell* principle. *Id.* ¶¶ 149–71 (citing *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1, 2 (Mo. bane 1970)). The court noted that, in *Hadley*, “even a *proven* violation of the U.S. Constitution could not justify disrupting an ongoing

election” by redistricting shortly before the end of the candidate filing period. D63, ¶ 163 (emphasis in original). The court also cited several cases in which “courts have rejected attempts to change district boundaries after a primary.” *Id.* ¶¶ 168–69 (agreeing that “[p]rimary elections for offices chosen by the electorate in separate geographical districts obviously make no sense” (quoting *Terrazas v. Slagle*, 821 F. Supp. 1154, 1159 (W.D. Tex. 1992))).

The court also made several factual findings buttressing its refusal to change Missouri’s congressional map. The court found that “changing the maps at this late juncture is not just ‘impractical,’ it is [logistically] impossible”—in light of changes that would need to be made to the Missouri Centralized Voter Registration (“MCVR”) database. *Id.* ¶ 170. The Circuit Court also found that, “Candidate filing closed months ago. Over 1.2 million Missourians voted in the August 4 primary. *Id.* ¶ 15. Nominees have been selected. Campaigns for the general election are underway.” *Id.* ¶ 165. Also, the Circuit Court found that “revert[ing] Missouri to the plan the General Assembly repealed in HB 1 ... would move hundreds of thousands of voters into different districts for the imminent 2026 general election compared to the districts in which they cast their ballots in the August primary elections.” *Id.* ¶ 20. The court further emphasized that “Plaintiff has not demonstrated how State officials could reverse course and implement some entirely new map, how nominees selected by voters in one set of districts would campaign in different ones, or how voters would make sense of a last-minute overhaul of the districts they just voted in.” *Id.* ¶ 165. Absent any explanation from von Glahn, *id.*,

and with a finding that changing the maps is “impossible,” *id.* ¶ 170, the Circuit Court “decline[d] to order an unprecedented remedy that is impossible to implement,” *id.* ¶ 171.

STANDARD OF REVIEW

This is an appeal from a bench trial with both stipulated facts and facts that were disputed below. This Court will affirm the Circuit Court’s judgment “unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.” *Maggard*, 733 S.W.3d at 413–14 (quoting *Luther*, 730 S.W.3d at 570).

The Court reviews legal questions *de novo*. *Maggard*, 733 S.W.3d at 414. That said, a stringent legal standard applies to Appellant’s underlying demand for an injunction against enforcement of the HB 1 map. *See* D2, ¶¶ 42–43, 45; *id.* at 8. “[T]he General Assembly has the power to do whatever is necessary to perform its functions except as expressly restrained by the Constitution.” *Luther*, 730 S.W.3d at 571 (quoting *Liberty Oil Co. v. Dir. of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991)). And “[c]onstitutional limitations on the legislative power are ‘strictly construed in favor of the power of the General Assembly.’” *Id.* (quoting *Bd. of Educ. of City of St. Louis v. City of St. Louis*, 879 S.W.2d 530, 533 (Mo. banc 1994)). This Court will “not hold HB 1 unconstitutional ‘unless it clearly contravenes a constitutional provision.’” *Id.* (quoting *City of St. Louis v. State*, 682 S.W.3d 387, 396 (Mo. banc 2024)); *accord Healey*, 732 S.W.3d at 837 (“The [HB 1] map will be upheld unless it plainly and palpably affronts fundamental law embodied in the constitution, and doubts will be resolved in favor of the constitutionality of the map.” (cleaned up)).

The Circuit Court’s factual findings are reviewed for clear error. *See Faire v. Burke*, 252 S.W.2d 289, 290 (Mo. Div. 1 1952).

Resisting that standard, Appellants insist that this Court reviews the Circuit Court’s factual findings *de novo* because this case “was tried on stipulated facts and exhibits.” Appellant’s Br. 17. With respect to the stipulated facts, “this Court’s review is *limited to* determining whether the circuit court properly declared and applied the law.” *Maggard*, 733 S.W.3d at 414 (emphasis added). That means this Court cannot second-guess stipulated factual findings. *See id.*; *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024) (noting lack of disputed facts). It does not mean this Court can freely reject them and impose its own factual findings—like von Glahn seemingly thinks. *See* Appellant’s Br. 17.

Regardless, the parties did contest—and did not stipulate to—some factual questions below. The most important factual dispute—on which the Circuit Court received competing written evidence—concerned whether it is technically feasible to apply any map other than the HB1 map for the 2026 General Election. *See* D63, ¶¶ 170–71. The Circuit Court ultimately credited the affidavit of Jackson County election official Tammy Brown and found it would be impossible to implement a new map for the 2026 General Election. *Id.* This Court cannot set aside that factual finding unless it holds “a definite and firm conviction that the [circuit] court made a mistake.” *State v. Carter*, 415 S.W.3d 685, 689 (Mo. banc 2013).

ARGUMENT

This Court should affirm for several, independently-sufficient reasons. First, congressional maps are not subject to the Missouri Constitution’s referendum provision. Second, even if they were, the U.S. Constitution would invalidate Article III, Section 52(b) as-applied to congressional maps. Third, Article I, Section 2 of the U.S. Constitution and the Equal Protection Clause forbid changing Missouri’s congressional map in between a completed Primary Election and an upcoming General Election. Also, von Glahn’s new argument on appeal—that political parties can simply nominate sixteen new candidates for the general election—lacks any foundation in law or precedent. Finally, Missouri’s *Hadley-Purcell* principle subverts von Glahn’s demand for a last-minute alteration to Missouri’s congressional map.

I. Congressional maps are not subject to the Missouri Constitution’s referendum provisions. (Response to Points Relied On I and II)

A. The U.S. Constitution’s Elections Clause requires a clear statement to divest the Missouri General Assembly of its redistricting authority.

The Elections Clause of the U.S. Constitution provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in *each State by the Legislature thereof*.” U.S. Const. art. I, § 4 (emphasis added). The term “Legislature” was “not . . . of uncertain meaning when incorporated into the Constitution”: It referred to “the representative body which made the laws of the people.” *Hawke v. Smith*, 253 U.S. 221, 227 (1920).

The term “Legislature” maintains this same meaning throughout the U.S. Constitution. See *District of Columbia v. Heller*, 554 U.S. 570, 579–81 (2008)

(presumption of consistent usage). Elsewhere, the U.S. Constitution consistently and unequivocally uses the term “Legislature” in reference to State legislative bodies, such as the Missouri General Assembly. See U.S. Const. art. I, §§ 2, 3, 8; art. II, § 1; art. IV, §§ 3, 4; art. V; art. VI; amend. XIV, §§ 2, 3; amend. XVII; amend. XVIII, § 3; amend. XX, § 6; amend. XXII, § 2. As just one example, consider Article I, Section 3 of the U.S. Constitution, which provides that “[t]he Senate of the United States shall be composed of two Senators from *each State*, chosen *by the Legislature thereof*.” U.S. Const. art. I, § 3 (emphasis added). This phrasing is starkly similar to the Elections Clause. *Compare id.*, with U.S. Const. art. I, § 4 (...shall be prescribed in each State by the Legislature thereof.”). And throughout American history, virtually everyone understood Article I, Section 3 to require selection of Senators by state legislatures instead of statewide elections. See, e.g., *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804 n.16 (1995). Indeed, that is why the Seventeenth Amendment was necessary to change this regime. The new Amendment explicitly provided that “[t]he Senate of the United States shall be composed of two Senators from each State, *elected by the people thereof*.” U.S. Const. amend. XVII (emphasis added). This change would have been unnecessary if the “the people” and “the Legislature” were fungible terms. Likewise, when the Elections Clause uses the term “Legislature” “in each State,” the Clause expressly vests the Missouri General Assembly with authority over redistricting. U.S. Const. art. I, § 4.

Here, as in several other contexts where the U.S. Constitution bestows a specific authority on a designated body, that power cannot be taken away absent a clear statement. See, e.g., *Edmond v. United States*, 520 U.S. 651, 658 (1997) (rule guarding President’s

authority over appointments); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000) (major questions); *Felker v. Turpin*, 518 U.S. 651, 660–61 (1996) (jurisdiction stripping statutes); *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (in the federalism context, “[i]f Congress intends to alter the usual constitutional balance ..., it must make its intention to do so unmistakably clear ...” (internal quotation omitted)); *Sossamon v. Texas*, 563 U.S. 277, 285 (2011) (abrogation of sovereign immunity must be “unmistakably clear”). For example, courts require clear statements before finding that Congress gave away its powers, see *West Virginia v. EPA*, 597 U.S. 697, 723 (2022), before finding that Congress infringed the President’s authority to remove federal officials, see *Collins v. Yellen*, 594 U.S. 220, 250 (2021), or before concluding that the courts were stripped of jurisdiction, see *Felker*, 518 U.S. at 660–61.

Constitutional clear statement rules are also ubiquitous amongst textualist jurists and scholars. That is because of the common sense notion that “extraordinary” rearrangements of constitutional structures are usually “explicitly decreed rather than offhandedly implied.” ANTONIN SCALIA, A MATTER OF INTERPRETATION 29 (1997) (In these circumstances, “a ‘clear statement’ rule is merely normal interpretation”); *West Virginia*, 597 U.S. at 736 (Gorsuch, J., concurring) (“[C]lear-statement rules help courts ‘act as faithful agents of the Constitution.’” (quoting Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 169 (2010))).

In the same way, in reading the Missouri Constitution’s referendum provisions, Mo. Const. art. III, §§ 49, 52(a), 52(b), courts cannot presume a major reordering of the delicate balances struck by the framers of the Elections Clause, U.S. Const. art. I, § 4. Just as all

other parts of American government are protected by clear statement rules before courts find their power stripped, state legislatures are treated no differently under the Elections Clause. *See, e.g., United States v. Gradwell*, 243 U.S. 476, 485 (1917) (Congress may abrogate a state legislature’s Elections Clause authority only “by positive and clear statutes”); *United States v. Oregon*, 828 F. Supp. 3d 1092, 1095–96 (D. Or. 2026) (same, citing *Gradwell*, 243 U.S. at 485); *United States v. Caldwell*, No. CV 26-2025 (ZNQ) (JTQ), 2026 WL 2186515, at *3 (D.N.J. July 29, 2026) (same, citing *Gradwell*, 243 U.S. at 485); *see also Carson v. Simon*, 978 F.3d 1051, 1059–60 (8th Cir. 2020) (“By its plain terms, the Electors Clause vests the power to determine the manner of selecting electors exclusively in the ‘Legislature’ of each state,” and this power is not divested “by means of a general statute in the [state] election code.”).

United States v. Gradwell, 243 U.S. 476, is instructive. That case involved federal prosecutions of defendants in Rhode Island and West Virginia for election fraud. *Id.* at 477–78. In Rhode Island, fourteen defendants had bribed voters during the congressional election in 1914. *Id.* at 478. In West Virginia, twenty defendants participated in an extensive conspiracy to influence a U.S. Senate election in 1916. *Id.* The defendants incited and facilitated voting by “a large number of persons who had not resided in the state a sufficient length of time to entitle them to vote under the state law.” *Id.* The defendants also procured 400 of these individuals “to vote more than once.” *Id.*

The United States indicted these thirty-four defendants under the U.S. Criminal Code, citing statutes with general language that were facially broad enough prohibit the plainly unlawful acts of the defendants. *Id.* at 478–79. Specifically, the Rhode Island

defendants were indicted on “the charge that the defendants conspired ‘to defraud the United States,’ in violation of § 37 of the [federal] Criminal Code.” *Id.* at 479. Section 37 contained broad language prohibiting conspiracy “to defraud the United States in *any* manner for *any* purpose.” *Id.* (emphasis added) (quoting U.S. Criminal Code § 37). The West Virginia defendants were likewise indicted on “the charge that three candidates for the nomination for Senator of the United States were ‘injured and oppressed,’ within the meaning of § 19 of the [U.S.] Criminal Code, by a conspiracy on the part of the defendants to compass their defeat by causing illegal voting for an opposing party candidate at the primary election.” *Id.* Section 19 prohibited conspiracy “to injure, oppress, threaten, or intimidate *any* citizen in the free exercise of enjoyment of *any* right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.” *Id.* at 479–80 (emphasis added) (quoting U.S. Criminal Code § 19).

Despite the broad language of Sections 37 and 19, federal district courts in Rhode Island and West Virginia both dismissed the indictments. *Id.* at 479. The courts held that the indictments “fail[ed] to set forth any offense under the laws of the United States.” *Id.*

On appeal, the U.S. Supreme Court affirmed in an opinion applying the Elections Clause’s clear statement rule. *See id.* at 480–89. In interpreting Sections 37 and 19, the Supreme Court’s opinion begins with the premise that the Elections Clause presumptively vests regulatory authority over elections “in each state by the *legislature* thereof.” *Id.* at 482 (emphasis added) (quoting U.S. Const. art. I, § 4). The Supreme Court then surveyed the history of the Elections Clause since the founding, noting Congress’s extremely limited intrusions on the authority presumptively vested in state legislatures. *Id.* at 482–85; *see*

also id. at 484 (quoting James Madison’s prediction that the authority of “state legislatures” to regulate elections “will probably never” be impinged). The Supreme Court also emphasized that whenever Congress has displaced state legislative authority, “it has done so by *positive and clear statutes*”—such as election laws in effect from 1870 until 1894. *See id.* at 483–85 (emphasis added). Comparatively, Section 37’s broad language—prohibiting “defraud[ing] the United States in any manner for any purpose,” *id.* at 479—was still not a “positive and clear” statement because its text did not explicitly reference election fraud, *id.* at 485.

The Supreme Court also adopted a strict reading of Section 19, finding no application to fraud and repeat voting in West Virginia’s primary election. *Id.* at 486–89. The Supreme Court explained that Congress, through Section 19, “has shown no disposition to assume control of such primaries or to participate in them in any way, and that it is not for the courts, in the absence of such legislation, to attempt to supply it by stretching old statutes to new uses, to which they are not adapted and for which they were not intended.” *Id.* at 488–89. The Supreme Court then affirmed dismissal of all the indictments. *Id.* at 489.

In light of *Gradwell*, multiple courts—even just this year—have invoked the Elections Clause’s clear statement rule. *See, e.g., United States v. Oregon*, 828 F. Supp. 3d at 1095–96; *United States v. Caldwell*, 2026 WL 2186515, at *3. This case is even easier than *Gradwell*. *Gradwell* dealt with Congress’s authority—expressly vested by the Elections Clause—to “at any time by Law make or alter such [Election] Regulations” “prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4. If Congress—

the body with textual authority to override state legislatures under the Elections Clause—must act with clear statements, then so too must other actors.

This is observed in other cases involving state-level alterations to the Elections Clause’s assignment of powers. For example, in *Ohio ex rel. Davis v. Hildebrandt*, a “conclusive” decision by the State supreme court made it “clear that ... the referendum constituted a part of the state Constitution”—and the U.S. Supreme Court “pass[ed] ... consideration” on whether the Ohio Supreme Court’s determination was correct. 241 U.S. 565, 568 (1916); compare *Maggard*, 733 S.W.3d at 414 n.7 (emphasizing that whether a congressional map is subject to the Missouri Constitution’s referendum provisions is an open question). Likewise, in *Arizona State Legislature v. Arizona Independent Redistricting Commission* (“AIRC”), Arizonians had specifically “amended the Arizona Constitution to remove congressional redistricting authority from the State Legislature.” 576 U.S. 787, 796–97 (2015).

In his brief, von Glahn criticizes the Circuit Court’s decision in light of *Hildebrandt*. Appellant’s Br. 51–52. But *Hildebrandt* is beside the point. The question here is whether the Missouri Constitution *has* authorized referenda on congressional maps—not whether it *can* authorize such referenda. The point is that Missouri Constitution *would* speak through a “positive and clear” statement if it upset the careful balance set by the framers of the Elections Clause. *Gradwell*, 243 U.S. at 485. The U.S. Supreme Court has repeatedly imposed constitutional clear statement rules *even when* the avoided interpretation would not itself violate the Constitution. For example, the Elections Clause explicitly grants Congress authority to override state election laws, see U.S. Const. art. I, § 4, but Congress

must still speak through a “positive and clear” statement to achieve that result, *Gradwell*, 243 U.S. at 485. Likewise, even though federal and state legislatures *can* enact civil statutes that apply retroactively, the U.S. Supreme Court cites the Ex Post Facto Clause to establish a broad presumption against retroactivity for both criminal *and* civil laws. See *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994). And even though the U.S. Supreme Court has not enforced the non-delegation doctrine in nearly a century, see *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), courts do “not assume” major delegations of power “to an agency without a clear statement to that effect,” *Biden v. Nebraska*, 600 U.S. 477, 506 (2023). The examples could go on. See Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. at 171–72 (collecting examples).

It also does not matter that von Glahn thinks there is “No Clear Statement Requirement in Missouri.” Appellant’s Br. 42–44. The Elections Clause’s clear statement rule is imposed by the U.S. Constitution, which protects the General Assembly from being stripped of its power. See U.S. Const. art. I, § 4. And this Court is bound by the U.S. Constitution’s requirements both as a matter of federal and state constitutional law.⁵ See

⁵ Later in his brief, von Glahn makes a passing argument that “the Secretary cannot deem a referendum insufficient on federal constitutional grounds.” Appellant’s Br. 57–58, 67. However, this argument is not raised in any Point Relied On. “Errors raised for the first time in the argument portion of the brief and that are not raised in the point relied on need not be considered ...” *Vallejo-Davila v. Osco Drug, Inc.*, 872 S.W.2d 511, 515 (Mo. App. W.D. 1994) (citing *Berger v. Huser*, 498 S.W.2d 536, 539 (Mo. Div. 2 1973)).

In any event, to obtain the ripeness dismissal of the State’s federal lawsuit last fall, von Glahn explicitly conceded in federal district court that “Denny Hoskins has the

U.S. Const. art. VI; Mo. Const. art. I, § 4 (“Missouri is a free and independent state, subject only to the Constitution of the United States.”). At any rate, clear statement rules are familiar to this Court, and von Glahn is wrong to suggest otherwise. *See Tuttle v. Dobbs Tire & Auto Ctrs., Inc.*, 590 S.W.3d 307, 311 (Mo. banc 2019) (requiring “express text” for a Missouri statute to apply extraterritorially); *Ramirez v. Mo. Prosecuting Att’ys*, 694 S.W.3d 432, 436 (Mo. banc 2024) (requiring an “express statutory exception” for a new abrogation of sovereign immunity); *see also Luther*, 730 S.W.3d at 571 (“[T]he General Assembly has the power to do whatever is necessary to perform its functions except as *expressly restrained* by the Constitution.” (emphasis added) (quoting *Liberty Oil*, 813 S.W.2d at 297)).

Thus, even assuming that the Elections Clause “does not preclude” a State from delegating redistricting authority to a referendum, changes to Elections Clause authority must at least be specific to “safeguard limits imposed by the Federal Constitution.” *Moore v. Harper*, 600 U.S. 1, 25, 35 (2023). The U.S. Constitution’s framers made “a deliberate

authority as Secretary of State to reject [von Glahn’s] petition as unconstitutional during post-submission review and to defend that decision based on” the Elections Clause. *Missouri Gen. Assembly v. Von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *1 (E.D. Mo. Dec. 8, 2025). Also, the federal court “expressly found that [von Glahn] affirmatively waived these points, precluding any argument to the contrary in future litigation (to say nothing of the ethical ramifications of counsel breaching their duty of candor to this tribunal).” *Id.* at *4 n.4. Thus, von Glahn is estopped from “from playing fast and loose with the judicial process.” *Vacca v. Missouri Dep’t of Lab. & Indus. Rels.*, 575 S.W.3d 223, 225 (Mo. banc 2019). The federal district court also expressly distinguished *Missouri Electric Cooperatives v. Kander*—the only case that von Glahn cites to support his argument. *Missouri Gen. Assembly v. Von Glahn*, No. 4:25-CV-1535-ZMB, 2026 WL 1290477, at *4 (E.D. Mo. May 11, 2026) (distinguishing *Kander*, 497 S.W.3d 905 (Mo. App. W.D. 2016)).

choice” to vest redistricting power in state legislatures, and this Court cannot permit the vagaries of broad language in state law to transfer that power in ways that the framers of state law did not intend. *Id.* at 34; *Gradwell*, 243 U.S. at 485, 488–89. The Elections Clause requires “positive and clear” statements to displace state legislative authority, and it forbids “stretching old [enactments] to new uses, to which they are not adapted and for which they were not intended.” *Gradwell*, 243 U.S. at 485, 488–89.

B. The Missouri Constitution contains no clear statement divesting the General Assembly of redistricting authority.

Although the Elections Clause requires a “positive and clear” statement to divest the General Assembly of its redistricting authority, *Gradwell*, 243 U.S. at 485, no such clear statement exists in the Missouri Constitution or Missouri law. “Article III, section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting.” *Luther*, 730 S.W.3d at 571. And Article III, Section 45 contemplates only that “the *general assembly* shall by law divide the state into [congressional] districts.” Mo. Const. art. III, § 45 (emphasis added). Also, this Court has never held that referenda on congressional maps are permissible. *See Maggard*, 733 S.W.3d at 414 n.7 (reserving that question). Instead, the Court has repeatedly affirmed the General Assembly’s “plenary legislative power” to redistrict under Article III, Section 10 and Article III, Section 45. *Luther*, 730 S.W.3d at 571–74. Moreover, none of the Missouri Constitution’s referendum provisions mentions election laws or congressional redistricting. *See* Mo. Const. art. III, §§ 49, 52(a), 52(b).

To be sure, the language of Article III, Section 49 is broad, “reserv[ing] power to approve or reject by referendum any act of the general assembly.” Mo. Const. art. III, § 49. But broad language—including the word “any”—is insufficient to overcome a clear statement rule. *See Gradwell*, 243 U.S. at 479–90; *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 220 n.4 (2008) (noting that clear statement rules “may counteract the effect of expansive modifiers,” such as terms like “any” and “all civil actions”) (collecting cases); *see also State v. Liberty*, 370 S.W.3d 537, 548 (Mo. banc 2012) (adopting a narrow reading of “any” because the term was “ambiguous”).

In *Gradwell*, for example, Section 37 of the U.S. Criminal Code prohibited conspiracy “to defraud the United States in *any* manner for *any* purpose.” 243 U.S. at 479 (emphasis added) (quoting U.S. Criminal Code § 37). Yet despite the broad language in Section 37, the U.S. Supreme Court applied the Elections Clause’s clear statement rule, and held that “it would be a strained and unreasonable construction to apply” Section 37 to election fraud because that would undermine state legislative authority. *Id.* at 485; *see also id.* at 489–90 (“[I]t is not for the courts, in the absence of such legislation, to attempt to supply [election regulations] by stretching old statutes to new uses, to which they are not adapted and for which they were not intended.”). Likewise, Article III, Section 49’s use of the word “any” cannot serve as a “positive and clear” statement sufficient to rip redistricting authority away from the General Assembly. *Gradwell*, 243 U.S. at 485.

Unsurprisingly, since the Missouri Constitution was ratified in 1945, no court has endorsed a referendum challenging a congressional map. One group sought a referendum on a congressional map in 1952, but its referendum petition was discarded because the

group's petition lacked sufficient signatures in any event. See *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 702 (Mo. banc 1952). Then, most recently in *Maggard*, this Court underscored that its opinion should not be understood to endorse referenda against congressional maps. See 733 S.W.3d at 414 n.7 (“[T]his opinion presupposes without deciding HB 1 is subject to the right of referendum.”).⁶

It is also obvious that the General Assembly has never contemplated a referendum on a congressional map at least since the enactment of Chapter 116, RSMo. Chapter 116 was enacted in 1980, and it is the General Assembly's “framework for exercising the right of referendum” in Missouri. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 487 (Mo. banc 2022); *Maggard*, 733 S.W.3d at 415–16 (“The General Assembly enacted the statutory initiative and referendum certification process in chapter 116 in 1980 ... after then secretary of state, James Kirkpatrick, proposed a statutory certification process.”). Chapter 116 establishes detailed procedures for referenda and ballot initiatives. But those procedures are obviously incompatible with referenda on congressional maps.

For example, Chapter 116 limits a referendum's summary statement to just 100 words. § 116.334.1, RSMo. Chapter 116 also contains no provision for photographs to accompany a summary statement. See § 116.334, RSMo. Redistricting is an enormously

⁶ Appellant cites unreasoned dicta from *Preisler v. Hearnese*, 362 S.W.2d 552, 557 (Mo. banc 1962). Appellant's Br. 17. But “an unexplained aside” in an opinion is entitled to little weight. See *Kisor v. Wilkie*, 588 U.S. 558, 597–98 (2019) (Gorsuch, J., concurring). And *Maggard* vitiated any persuasive value that *Preisler* holds by expressly noting that the availability of referenda on congressional maps is an open question. See *Maggard*, 733 S.W.3d at 414 n.7.

complicated endeavor—where legislators consider legal issues like compactness, geography, population, communities of interest, and countless other factors. *See Healey*, 732 S.W.3d at 839–52. Because redistricting takes expertise, the line-drawing power in other States is consistently vested in state legislatures or plainly transferred to expert commissions. *See AIRC*, 576 U.S. at 798. If the General Assembly had the slightest inkling that Chapter 116 would facilitate referenda and initiatives on congressional maps, it would not force average people to consider competing maps with virtually no information. In von Glahn’s world, many voters would select a competing congressional map without viewing either of the maps at issue. They could not possibly know—to give just one obvious example—where counties would be placed under the competing maps. Voters would not even know which districts *they* would be placed in under the competing maps. That is absurd.

As another example, Chapter 116 sets the presumptive deadline for the Secretary’s certification decision on the same day as the August Primary Election. *Compare* § 116.150.3, RSMo, *with* § 115.121.1–2, RSMo. Sometimes, Chapter 116 imposes a deadline even *after* the August Primary if local election authorities return their signature verifications to the Secretary less than two weeks before the Primary. *See* § 116.150.3, RSMo.⁷ The General Assembly would have never imposed this timeframe if it believed

⁷ “The secretary of state shall issue a certificate pursuant to this section not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election *or* two weeks after the date the election authority certifies the results of a petition verification pursuant to subsection 2 of section 116.130, *whichever is later.*” § 116.150.3, RSMo (emphasis added).

that referenda on congressional maps are possible. Von Glahn criticizes the Secretary for rendering a certification decision according to Chapter 116's deadline. But the Secretary followed the law perfectly. See § 116.150.3, RSMo. The problem is with von Glahn's project, not with Chapter 116.

Von Glahn has no response to these glaring problems. In fact, von Glahn's counsel all-but admitted at trial that Chapter 116 makes no sense in the context of referenda and initiatives on redistricting. Trial Tr., pp. 23:23–24:11, 62:21–63:18. His only response? “[W]e don’t care what the General Assembly thinks the Constitution means.” *Id.*, p. 24:2–3. He later added that “to assume our Legislature would make a logical choice is a major fallacy.” *Id.*, p. 63:15–17. His brief takes the same view of the General Assembly. See Appellant's Br. 45. But courts cannot so easily dismiss the understanding of “a coordinate branch of our government.” *Preisler v. Doherty*, 284 S.W.2d 427, 431–32 (Mo. banc 1955). Chapter 116 is also especially probative of the Constitution's meaning because its architect was former “secretary of state, James Kirkpatrick”—the longest-serving Secretary of State in Missouri history. *Maggard*, 733 S.W.3d at 415–16 (citing Off. Manual of the State of Mo. 14 (James C. Kirkpatrick & Kenneth M. Johnson eds., 1982)). Thus, Chapter 116 was enacted with heavy input from the executive branch and the legislative branch. And Chapter 116 simply illustrates the obvious: The Missouri Constitution lacks any “positive and clear” statement authorizing referenda on congressional maps. *Gradwell*, 243 U.S. at 485.

The potential harm does not end with referenda. The Missouri Constitution provides for initiative measures in the same provision where it provides for referenda. See Mo.

Const. art. III, § 49. So if a referendum were permitted, virtually any group could use the initiative process to propose congressional maps. In von Glahn’s brave new world, map-drawing would be left not to deliberative and democratically accountable legislators or given to expert independent commissions. Instead, various special interests groups from around the country could easily force their maps before voters through the State’s initiative process. Voters would be “educated” on the competing maps via dark-money-funded advertising and 100-word summary statements about each proposal. And if the General Assembly tries its hand at redistricting, dark-money-funded groups could easily gather signatures for a referendum, thus freezing implementation of a new map until the next election. That, in turn, will predictably lead to apportionment paralysis and invite one-person, one-vote or Voting Rights Act violations if the State is forced to use an old map in the interim. *See Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). The potential for chaos is endless—which goes to the lack of a clear statement in the Missouri Constitution and Missouri law.

Von Glahn has no response to the initiative problem in his brief. Indeed, at trial, von Glahn’s counsel openly acknowledged that his reading necessarily means Missourians “can” redistrict via “initiatives as well.” Trial Tr., p. 63:19–21. Counsel argued only that the Circuit Court should not consider the implications of von Glahn’s theory because an initiative is “not what we’re doing here.” *Id.*, p. 63:21–24. That is cold comfort. If the framers and the General Assembly had even considered the possibility that referenda and ballot initiatives could apply to congressional redistricting, they would have devised a different (and more sensible) system.

Von Glahn tries to dismiss any consideration of these practical realities as consequentialist reasoning at odds with textualism. See Appellant’s Br. 71 (citing Antonin Scalia & Bryan A. Garner, *Reading Law*, at 22 (2012)). But even Justice Scalia said that he was “a textualist, not a nut.” See Nina Totenberg, *Justice Scalia, the Great Dissenter, Opens Up*, NPR (April 28, 2008);⁸ *Heidbrink v. Swope*, 170 S.W.3d 13, 17 (Mo. App. E.D. 2005) (“Missouri’s Constitution, like the federal constitution, is not a suicide pact.”). That is partly why “extraordinary” rearrangements of constitutional structures must be “explicitly decreed rather than offhandedly implied.” ANTONIN SCALIA, *A MATTER OF INTERPRETATION* 29 (1997).

Without any clear statement, Von Glahn also cites one example of a 1922 referendum on a congressional map. See Appellant’s Br. 44. This referendum was held over two decades before the 1945 Constitution, and nearly six decades before the General Assembly enacted Chapter 116—the modern “framework for exercising the right of referendum” in Missouri. *No Bans*, 638 S.W.3d at 487; *Maggard*, 733 S.W.3d at 415–16. The 1922 referendum was never the subject of litigation, and no Missouri court has ever endorsed it. Moreover, in 1922, Missouri statutory law (unlike Chapter 116 today) forbade the Secretary of State from analyzing the substantive constitutionality of referenda. Compare *State ex rel. Kemper v. Carter*, 165 S.W. 773, 780 (Mo. banc 1914), with *Maggard*, 733 S.W.3d at 418 (“chapter 116 went into effect in January 1981” and is “a

⁸ <https://archive.is/OVAP0>

statutory process that did not exist when *Kemper* was decided”).⁹ Thus, in 1922 (unlike today), the Secretary of State had no occasion to weigh the constitutionality of a referendum on a congressional map. The 1922 referendum thus lacks even an implicit endorsement from any Missouri official—legislative, executive, or judicial. At best, the 1922 referendum shows the practice of one group of private citizens over a century ago.

Moreover, the Missouri Constitution has changed in the last century. Unlike the 1875 Missouri Constitution, the 1945 Constitution specifically addresses congressional redistricting. Article III, Section 45 of the 1945 Constitution contemplates only that “the *general assembly shall* by law divide the state into [congressional] districts.” Mo. Const. art. III, § 45 (emphasis added). Also, Article III, Section 7(h) provides that “[n]o redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 7(h). There was no comparable language in the 1875 Constitution, which governed in 1922.

Unsurprisingly, no congressional plan has been subjected to a referendum vote since 1922—a fact that should surprise the Court if von Glahn’s legal theory is right, given the strong incentives of the minority party to challenge redistricting plans adopted by the majority party. Also, no one has *ever* attempted to do redistricting by initiative petition. Thus, the 1922 example is hardly a line of established, unbroken practice about the meaning of the Missouri Constitution’s referendum provisions. Moreover, *even if* such

⁹ *Accord von Glahn*, 2025 WL 3514277, at *1, 4 n.4 (recognizing the Chapter 116 “authority” of the “Secretary of State to reject [PNP’s] petition as unconstitutional during post-submission review”); *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2026 WL 1290477, at *4 (E.D. Mo. May 11, 2026) (same).

practice existed, it would not be sufficient to overcome the Elections Clause’s clear statement rule. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015) (even “long-established practice” cannot overcome a clear statement rule); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *5 (E.D. Mo. Nov. 10, 2025) (same).

Von Glahn has thus failed to provide a “positive and clear” statement in the Missouri Constitution authorizing referenda on congressional maps. *Gradwell*, 243 U.S. at 485.¹⁰ This Court should affirm.

C. The Missouri Constitution forbids referenda on redistricting plans, including congressional maps.

Even if the Elections Clause did not impose a clear statement rule (it does), the Missouri Constitution’s plain text forbids referenda on “redistricting plan[s],” which

¹⁰ One final point merits brief attention: An amicus brief advances a new argument not raised in the Circuit Court or in any of von Glahn’s Points Relied On. The amici claim that federal law somehow “*require[s]* this Court” to hold that the Missouri Constitution permits referenda on congressional maps. *See* Amicus Br. of Campaign Legal Center et al. at 16–18 (emphasis in original) (filed Aug. 25, 2026). However, this Court can summarily reject this argument because an amicus cannot raise arguments that were never preserved in the Circuit Court or in any Point Relied On. *See Brainchild Holdings, LLC v. Cameron*, 534 S.W.3d 243, 246 n.7 (Mo. banc 2017).

In any event, neither of the federal statutes cited by amici, 2 U.S.C. §§ 2a(c) and 2c, purport to alter the Elections Clause’s clear statement rule. Section 2c has nothing to do with referenda on congressional districts. It simply bans the use of at-large congressional districts in certain circumstances. *See* 2 U.S.C. § 2c. Also, Section 2a(c)’s language simply says that redistricting should occur “in the manner provided by the law thereof.” 2 U.S.C. § 2a(c). Section 2a(c) never creates an affirmative obligation for State courts to artificially find a right to referendum in state law. Rather, the Elections Clause’s requirement for a “positive and clear” statement still governs, and nothing in federal law purports to alter that constitutional rule. *Gradwell*, 243 U.S. at 485.

includes congressional maps. Article III, Section 7(h) explicitly provides *in full*: “No redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 7(h). This “plain and unambiguous” language is easily broad enough to encompass any redistricting plan. *Luther*, 730 S.W.3d at 570–71. And even von Glahn acknowledges that “when the plain language ... is clear, this Court will *not* look beyond it.” Appellant’s Br. 36 (emphasis and alteration in original) (quoting *Smith v. St. Louis Cnty. Police*, 659 S.W.3d 895, 900–01 (Mo. banc 2023)).

Von Glahn argues that the Court should ignore plain text because Subsection 7(h) is located in a Section that also discusses redistricting for state senate districts. See Appellant’s Br. 40–42, 47–49. Von Glahn insists that if the framers intended to exempt congressional redistricting, “[t]hey could have written: ‘No redistricting plan, whether state or congressional, shall be subject to the referendum.’” *Id.* But this alternative only serves to prove the State’s point. The term “redistricting plan” is broad enough to encompass congressional maps. And the mere fact that this broad language is found in Subsection 7(h) does not undermine the applicability of that provision to all forms of “redistricting plan[s].” Mo. Const. art. III, § 7(h).

In any event, history explains *why* this broad ban on redistricting referenda is located in Subsection 7(h). The framers of the 1945 Constitution adopted Subsection 7(h) to overrule the only Missouri Supreme Court decision that had ever endorsed a referendum on a redistricting plan of any kind. In *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932), this Court—in a fractured decision—held that referenda could be used to challenge a redistricting plan for the Missouri Senate. The delegates at the Missouri

Constitutional Convention specifically referenced this decision as warranting adoption of Article III, Section 7's ban on referenda of redistricting plans. *See* Debates of the 1943–1944 Constitutional Convention of Missouri 7016 (2008). But that fact—which simply explains the placement of Subsection 7(h)—does not justify ignoring the “plain language” of the provision. Again, “when the plain language ... is clear, this Court will *not* look beyond it.” Appellant’s Br. 36 (emphasis and alteration in original) (quoting *Smith*, 659 S.W.3d at 900–01). Subsection 7(h) simply removes doubt and clarifies that “[n]o redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 7(h).

Additionally, the referendum provision itself can be read to exempt congressional maps from its coverage. *See Maggard*, 733 S.W.3d at 414 n.7 (flagging this language). Article III, Section 52(a) specifically excepts from the referendum “laws necessary for the immediate *preservation of the public peace, health or safety*, and laws making appropriations for the current expenses of the state government, *for the maintenance of state institutions* and for the support of public schools.” Mo. Const. art. III, § 52(a) (emphasis added). At least two of these exceptions apply here.

First, congressional maps are excepted from referenda because they are necessary “for the maintenance of state institutions.” Mo. Const. art. III, § 52(a). The term “institution” can refer to “a custom or practice that has existed for a long time and is accepted as an important part of a society,” such as “the institution of marriage.”

Institution, CAMBRIDGE DICTIONARY;¹¹ see also *Institution*, MERRIAM WEBSTER DICTIONARY (similar).¹² Laws necessary “for the maintenance of state institutions,” Mo. Const. art. III, § 52(a), can thus refer to laws necessary to preserve the most basic norms and practices of Missouri. That principle applies here because suffrage is certainly a fundamental Missouri institution. See Mo. Const. art. I, § 25; *Priorities USA v. State*, 591 S.W.3d 448, 452 (Mo. banc 2020). “The right to vote freely for the candidate of one’s choice is of the essence of a democratic society.” *St. Louis Cnty. Bd. of Election Commissioners v. McShane*, 492 S.W.3d 177, 180 (Mo. App. E.D. 2016) (internal quotation omitted). The U.S. Constitution also guards the fundamental right of Missourians to select their representatives in Congress. U.S. Const. art. I, § 2.

Perhaps no institution could be more fundamental to a free society than elections. To maintain that state institution, the Missouri Constitution specifically obligates the General Assembly to redistrict (at least) after each Census. Mo. Const. art. III, § 45. The General Assembly also holds plenary legislative authority to redistrict even more often if necessary. See *Luther*, 730 S.W.3d at 571–74. Post-Census redistricting is also functionally required by virtue of the U.S. Constitution’s “one person, one vote” rule. See *Wesberry*, 376 U.S. at 18. “Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly

¹¹<https://dictionary.cambridge.org/dictionary/english/institution?q=Institution>

¹² <https://www.merriam-webster.com/dictionary/institution>

representative of the people ...” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Fulfilling these requirements would be impossible without redistricting. *See* Mo. Const. art. III, § 45. Thus, redistricting legislation is squarely excepted from referenda because it is necessary “for the maintenance” of suffrage—which is a fundamental “state institution[.]” *Id.* art. III, § 52(a).

Von Glahn has only one response to this point: He reads “laws ... for the maintenance of state institutions” as applying only to *appropriations* laws in light of the prior exception for “laws making appropriations for the current expenses of the state government.” Appellant’s Br. 39; Mo. Const. art. III, § 52(a). However, the last-antecedent canon counsels against extending the modifier “making appropriations” beyond the immediately subsequent phrase “for the current expenses of the state government.” *See Rothschild v. State Tax Comm’n of Mo.*, 762 S.W.2d 35, 37 (Mo. banc 1988). Also, von Glahn’s reading makes no sense of Section 52(a)’s exceptions. Courts “must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage.” *Pestka v. State*, 493 S.W.3d 405, 409 (Mo. banc 2016) (internal quotation omitted). Yet von Glahn’s interpretation violates this presumption by limiting Section 52(a)’s exception to *appropriations* laws “for the maintenance of state institutions.” Mo. Const. art. III, § 52(a). Section 52(a) already excepts “laws making appropriations for the current expenses of the state government.” *Id.* This is already sufficiently broad to cover *appropriations* laws for the maintenance of state institutions. Thus, Section 52(a)’s *additional* exception as to “laws ... for the maintenance of state institutions” only makes sense in the context of all such laws, not just laws providing for an appropriation. *Id.*

Next, redistricting legislation is excepted from the referendum for another reason: Such legislation is “necessary” for “preservation of the public peace, health or safety.” Mo. Const. art. III, § 52(a). Again, facilitating elections is impossible without redistricting legislation. And “the political franchise of voting” is “preservative of all rights.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). That is why the Missouri Constitution speaks “‘with unmistakable clarity’ that Missouri citizens have a fundamental right to vote.” *Priorities USA*, 591 S.W.3d at 452 (citation omitted); Mo. Const. art. I, § 25 (“[A]ll elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”). Regular and fair elections are a fundamental component of a free society. Article III, Section 52(a) thus exempts election laws, such as the HB 1 map, from referendum challenges. Miniscule fractions of Missouri’s population (3.3% of voters) cannot demand referenda on—and potentially block—legislation that is so essential to the “preservation of the public peace.” Mo. Const. art. III, § 52(a).

Von Glahn’s lone response to this point is that HB 1 does not contain an emergency clause. Appellant’s Br. 39. But nothing in Section 52(a) provides that legislation must contain an emergency clause in order for the “public peace” exception to apply. Mo. Const. art. III, § 52(a). This is in stark contrast to Article III, Section 29, which provides that the legislature “must” include an emergency clause to alter the effective date of legislation. Mo. Const. art. III, § 29. There is no similar requirement in Article III, Section 52(a). These contrasting provisions suggest a difference in meaning. *See Am. Civ. Liberties Union of Mo. v. Ashcroft*, 577 S.W.3d 881, 892 (Mo. App. W.D. 2019) (holding that

“different terms” suggest “different meaning and effect” (internal quotation omitted)). Further, “[w]hether or not the act is one necessary for the immediate preservation of the public peace, health or safety is a judicial question.” *Inter-City Fire Prot. Dist. of Jackson Cnty. v. Gambrell*, 231 S.W.2d 193, 200 (Mo. banc 1950). This Court is not bound by the fact that the General Assembly did not include an emergency clause any more than it would be bound if the General Assembly had included such a clause. *See id.* And it is the “province and duty” of this Court to apply Article III, Section 52(a)’s exceptions where they plainly apply. *Mo. Coal. for Env’t v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (Mo. banc 1997) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803)).

The Court should therefore conclude that the Missouri Constitution does not authorize referenda against congressional maps and enter judgment for the Secretary.

II. The U.S. Constitution renders Article III, Section 52(b) of Missouri Constitution invalid as applied to HB 1. (Response to Points Relied On III and IV)

In the alternative, *even if* the Court believes that the Missouri Constitution permits referenda on congressional maps, the U.S. Constitution would invalidate Article III, Section 52(b)—which freezes referred laws pending a statewide vote—as applied to HB 1. The Circuit Court correctly recognized that applying Article III, Section 52(b) to a congressional map—especially *during* an ongoing election—would “invert[] the constitutional design” and violate the Elections Clause. D63, ¶ 112.

The Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4. This Clause is rooted in a republican theory

of government. At the founding, everyone agreed that the majority's will must control the time, place, and manner of federal elections. The only question was whether the majority will was best expressed through Congress or state legislatures. See Debate in New York Ratifying Convention, in 2 *The Founders' Constitution*, at 268, 269 (statement of John Jay) ("The will of the people certainly ought to be the law, but the only question was ... whether the will of the people, with respect to the time, place, and manner of holding elections, ought to be expressed by the general government, or by the state legislatures."); *Federal Farmer No. 12* (Richard Henry Lee) ("[S]o far as regulations as to elections cannot be fixed by the constitution, they ought to be left to the state legislatures, they coming far nearest to the people themselves; at most, congress ought to have power to regulate elections only where a state shall neglect to make them."). No one, however, could have imagined that any State would allow approximately 3.3% of a State's voting population to unilaterally override the State's congressional map for an entire election cycle. See Mo. Const. art. III, §§ 52(a), 52(b). Of course, it would be laughable to think that just 3.3% of the electorate could represent "the will of the people," as founders like John Jay and Richard Henry Lee envisioned.

Through the Elections Clause, the founders ultimately settled on vesting regulatory authority over elections in state legislatures—as "the *representative* body which ma[kes] the laws of *the people*." *Smiley v. Holm*, 285 U.S. 355, 365 (1932) (emphasis added) (internal quotation omitted). Yet according to von Glahn, Article III, Section 52(b) of the Missouri Constitution mandates that HB 1 cannot take effect (and is thus temporarily repealed) *until* voters weigh in. See D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. That would mean that

about 3.3% of registered voters can block a law enacted by the People's elected representatives. To the extent that the U.S. Constitution's Elections Clause means *anything*, it certainly prohibits that profoundly antidemocratic arrangement.

Of course, 110 years ago in *Hildebrandt*, 241 U.S. 565, the U.S. Supreme Court held that the U.S. Constitution's Elections Clause did not prevent Ohio from subjecting congressional maps to a referendum. Likewise, in *State ex rel. Carroll v. Becker*, this Court held that Missouri's Governor may veto redistricting legislation without running afoul of the Elections Clause. See 45 S.W.2d 533 (Mo. banc 1932), *aff'd*, 285 U.S. 380. But that has nothing to do with the questions at issue here. HB 1 *has* been approved by the Governor's signature. Yet von Glahn still thinks that "he is entitled to the immediate suspension of the use and implementation of HB 1" even *before* the People vote. D2, ¶ 42. That is unprecedented. Neither *Hildebrandt* nor *Carroll* suggest that just 3.3% of a State's voters can displace a lawfully-enacted congressional map for an entire election cycle.

Von Glahn nonetheless insists *Hildebrandt* endorsed this regime because all referendum petitions supposedly suspend enforcement of duly-enacted laws before they go into effect. Appellant's Br. 60–63. But that is not the law in Missouri. See *Maggard*, 733 S.W.3d at 421 ("[T]he December 9 referendum petition filing did not automatically suspend HB 1."). Also, that is not the law in many other States. See *State v. Allen*, 625 P.2d 844, 846 (Alaska 1981) ("[T]he filing of a referendum petition does not suspend the effect or operation of the act referred." (quoting *Walters v. Cease*, 388 P.2d 263, 268 (Alaska 1964))); *Thomson v. Wyo. In-Stream Flow Comm.*, 651 P.2d 778, 785–86 (Wyo. 1982); *Barnes v. State ex rel. Pinkney*, 204 A.2d 787, 793 (Md. 1964); *State v. Howard*,

248 P. 44, 45–46 (Nev. 1926). Despite von Glahn’s hyperbolic claim, *see* Appellant’s Br. 60–63, Missouri can have referenda without referred laws being automatically frozen.

Moreover, von Glahn’s cherry-picked quotation from *Hildebrandt* obscures what actually happened in that case. *See* Appellant’s Br. 61 (quoting *Hildebrandt*, 241 U.S. at 566). *Hildebrandt* never held that the Elections Clause permitted a small fraction of Ohioans to suspend the State’s congressional map for an entire election cycle. Rather, the 1915 referendum at issue in *Hildebrandt* arose in a non-election year. *See* 241 U.S. at 566. Also, the referendum “vote was taken and the law was disapproved” before the congressional elections in November 1916. *See id.* Thus, the U.S. Supreme Court never considered whether a small percentage of voters could suspend a congressional map for an entire election cycle. *See id.* Also, von Glahn brushes aside that *Hildebrandt* merely recognized the ability to *veto* redistricting legislation via a referendum vote. *AIRC*, 576 U.S. at 840 (Roberts, C.J., dissenting) (discussing *Hildebrandt*). “The result of the decision was to send the *Ohio Legislature* back to the drawing board to do the redistricting.” *Id.* (emphasis in original). *Hildebrandt* never suggested that just 3.3% of registered voters could force a State to use their preferred map for an entire election cycle. The State challenges von Glahn to explain what—if anything—would be left of the Elections Clause if *that* result is permissible.¹³

This Court should affirm.

¹³ The Guarantee Clause also provides a sufficient basis to affirm because it “necessarily implies a duty on the part of the States themselves to provide” a republican form of government. *Minor v. Happersett*, 88 U.S. 162, 175 (1874); *accord Opinion to the*

III. The U.S. Constitution and federal law forbid changing Missouri’s congressional map during the 2026 congressional election. (Response to Points Relied On V, VI, and VII)

Even if von Glahn is correct that 3.3% of Missouri voters can freeze duly enacted congressional maps, von Glahn’s proposed remedy—an injunction against enforcement of HB 1—would necessarily violate the U.S. Constitution and federal law.

Throughout this case, von Glahn has been unclear about precisely what remedy he envisions. At first, von Glahn’s Petition vaguely demanded an injunction against “the use and implementation of HB 1,” D2, ¶¶ 42–43, 45; *id.* at 8. Meanwhile, his counsel told the media that, if von Glahn prevails, Missouri courts might “order a new primary” or “leave the nominees in place and run them in the old districts.” See Jason Hancock, *Referendum campaign asks court to block new Missouri map from November election*, MISSOURI INDEPENDENT (Aug. 5, 2026).¹⁴ Then, the night before trial, von Glahn filed a brief proposing simply retaining the same nominees and “requir[ing] voters to consider different

Governor, 185 A.2d 111, 114 (R.I. 1962). Many state supreme courts have treated Guarantee Clause questions as justiciable. See *Opinion to the Governor*, 185 A.2d at 114; *VanSickle v. Shanahan*, 511 P.2d 223, 231–35 (Kan. 1973); *Heimerl v. Ozaukee Cnty.*, 40 N.W.2d 564, 567 (Wis. 1949). Also, von Glahn’s proposed remedy—nullification of HB 1 without a majority vote—palpably affronts the Guarantee Clause. As George Washington said, “[I]f the Laws are to be so trampled upon—with impunity—and a minority (a small one too) is to dictate to the majority,” then “there is an end put, at one stroke, to republican government.” See Letter from George Washington to Charles Mynn Thruston (Aug. 10, 1794). Allowing 3.3% of registered voters to override the People’s elected representatives is so outlandish and anti-democratic that it violates the Guarantee Clause. D63, ¶¶ 115–22.

¹⁴ <https://archive.is/Sb26p>

candidates at the general than they considered at the primary.” See D62, pp. 31–34. Von Glahn repeated this proposal at trial. Trial Tr., p. 28:22–25.

Now, on appeal, von Glahn has changed his strategy again. Citing *Maggard*, von Glahn criticizes the Secretary for even deigning to ask what an injunction against HB 1 would entail. Appellant’s Br. 71–72, 75. Von Glahn says that this action is “[l]imited” to the Secretary’s sufficiency determination under Section 116.150, RSMo, and that any consequences of a sufficiency determination would naturally flow from *Maggard*. Appellant’s Br. 70, 75.¹⁵ Also, for the first time on appeal, von Glahn suggests that if the HB 1 map is invalidated, the primary votes of 1.2 million Missourians should be discarded, all the August nominees should be disqualified, and party committees should nominate replacement candidates under § 115.363, RSMo. Appellant’s Br. 81–86.

Von Glahn’s continual search for a viable remedy illustrates that he has no idea how an injunction against HB 1 would work. And any potential remedy would violate federal law and the U.S. Constitution. Hosting another primary would be impossible in light of deadlines prescribed by UOCAVA, 52 U.S.C. § 20302. And holding a General Election under a *different* congressional map would violate the U.S. Constitution’s Article I, Section 2 and its Equal Protection Clause. Also, because the U.S. Constitution and federal law forbid all of von Glahn’s proposed remedies, von Glahn cannot gesture at *Maggard*’s holding as if *Maggard* somehow resolved every remedial question in this case (in reality,

¹⁵ Von Glahn’s Point Relied On V reads like a waiver of his request for an injunction against enforcement of HB 1. Von Glahn explicitly states: “This Case is an Action for Judicial Review Under Section 116.200, Which is Limited to Consideration of the Secretary’s Sufficiency Determination Under Section 116.150.” Appellant’s Br. 70.

of course, *Maggard* addressed none of these questions). Thus, the Court must reject von Glahn’s demand for an injunction.

A. Absent almost *any* explanation from von Glahn about his proposed remedy, the Circuit Court can hardly be faulted for noting that a new Primary Election would be improper under UOCAVA.

Von Glahn criticizes the Circuit Court for noting the legal impossibility of a new Primary Election in light of UOCAVA, 52 U.S.C. § 20302. Von Glahn thinks that such considerations are outside the scope of judicial review under Section 116.200, RSMo. Appellant’s Br. 70–74. He also says that he “never asked for a new primary election or claimed reversal of the Secretary’s certification decision would require one.” Appellant’s Br. 75.

However, the Circuit Court can hardly be faulted for noting this point in its judgment. Von Glahn’s Petition included virtually nothing about what he meant when he demanded an injunction against HB 1. D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. Also, von Glahn’s counsel told the press that Missouri courts might “order a new primary” if he prevailed in this litigation. *See* Jason Hancock, *Referendum campaign asks court to block new Missouri map from November election*, MISSOURI INDEPENDENT (Aug. 5, 2026).¹⁶ Moreover, if von Glahn “never asked for a new primary election,” Appellant’s Br. 75, one wonders why von Glahn devotes two points relied on to contesting the Circuit Court’s holding that running a new Primary Election would be impossible, *see* Appellant’s Br. 70, 75. Von Glahn cannot

¹⁶ <https://archive.is/Sb26p>

suffer any conceivable prejudice from the denial of a remedy that he supposedly never asked for.

At any rate, the Circuit Court was correct that it would be impossible to run a new Primary and a General Election by November 3, 2026. UOCAVA requires local election authorities to transmit ballots “not later than 45 days before the election” to military and overseas voters, 52 U.S.C. § 20302(a)(8), § 115.914, RSMo, and Missouri statutes implementing UOCAVA prevent the certification of election results for three days after an election, *see* §§ 115.920.1, 115.508, RSMo. Mathematically, that requires *at least* 93 days to run a primary and general election by the federally-imposed deadline on November 3, 2026. *See Foster v. Love*, 522 U.S. 67, 73–74 (1997) (holding that State may not run federal election in conflict with federal timing of 2 U.S.C. § 7). Yet, on the day of oral argument in this case, Missouri will be 62 days away from the November General Election. Thus, as a matter of federal law, it is already too late to order Missouri to re-run its Primary Election.

B. An order requiring a General Election under a different map would violate the U.S. Constitution.

In the Circuit Court, von Glahn floated another proposal: having the winners of the Primary Election simply run in different congressional districts in the General Election. *See* D62, pp. 31–34; Trial Tr., p. 28:22–25. In other words, hundreds of thousands of voters would vote for candidates in the General Election that they had no role in choosing in the Primary Election. Cole County voters, for example, chose Rick Brattin and Emanuel Cleaver as the candidates for Congressional District 5, but von Glahn apparently thinks

Cole County voters should be forced to choose between Bob Onder and Bethany Mann—who were chosen by entirely different voters in Congressional District 3.

The Circuit Court correctly held that this proposal violates the U.S. Constitution. Specifically, Article I, Section 2 protects the right to vote and prohibits States from nullifying votes cast in federal congressional elections. *See* U.S. Const. art. I, §2; *United States v. Mosley*, 238 U.S. 383, 386 (1915) (recognizing that the constitutional right to vote includes “right to have one’s vote counted”). But that is exactly what von Glahn proposed to the Circuit Court—a plan that would render hundreds of thousands of votes in the Primary Election effectively null and void. D62, pp. 31–34; Trial Tr., p. 28:22–25.

Nor does the fact that von Glahn proposes to nullify a primary election—as opposed to a general election—change anything. U.S. Supreme Court precedent establishes that “[w]here the state law has made the primary an integral part of the procedure of choice . . . the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by” the Constitution’s right to vote. *United States v. Classic*, 313 U.S. 299, 318 (1941). Said another way, the primary and general elections are “fus[ed]” into a “single instrumentality” such that they possess a “unitary character.” *Smith v. Allwright*, 321 U.S. 649, 660–61 (1944).

This is certainly true in Missouri. Relying on *Classic* and *Allwright*, this Court has already held that Missouri’s congressional primaries are “an integral part of the electoral process” in this State. *Pollard v. Bd. of Police Comm’rs*, 665 S.W.2d 333, 340 (Mo. banc 1984) (citing *Classic*, 313 U.S. 299; *Allwright*, 321 U.S. 649). This Court has also emphasized that “[n]ominating or primary elections have constitutional stature in

Missouri” and serve an “integral part of [the State’s] election machinery.” *State ex rel. McClellan v. Kirkpatrick*, 504 S.W.2d 83, 86 (Mo. banc 1974) (citing Mo. Const. art. VIII, § 3). Missouri law also provides that “all candidates for elective office shall be nominated at a primary election,” §§ 115.339, 115.343, RSMo. Thus, the primary “exclud[es] from the ballot on the general election the names of candidates rejected at the primary” such that it “impose[s] restrictions upon the choice of candidates by the voters save by voting at the primary election.” *Classic*, 313 U.S. at 313. This makes the primary “integral” “as a matter of law.” *Id.* at 314; *McClellan*, 504 S.W.2d at 86. Von Glahn fails to provide any persuasive argument otherwise, and his attempt to distinguish *Classic* and *Allwright* is wholly unpersuasive in light of this Court’s own reliance on those cases. *See Pollard*, 665 S.W.2d at 340.

The Circuit Court also correctly held that forcing Missouri’s Primary nominees to run in new districts would violate the U.S. Constitution’s Equal Protection Clause. *See* D63, ¶¶ 142–47. Once again, von Glahn told the trial court that he wanted many Missourians to consider a slate of candidates that they never considered in the Primary Election. D62, pp. 31–34; Trial Tr., p. 28:22–25. These voters would obviously possess less voting power than those who participated in a Primary and General Election in the same congressional district. That disparity in voting power would violate the Equal Protection Clause.

The Equal Protection Clause forbids weighting the votes of some Missourians “more heavily” than others. *Gray v. Sanders*, 372 U.S. 368, 379 (1963). “Once the geographical unit for which a representative is to be chosen is designated, all who

participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and *wherever their home may be* in that geographical unit.” *Id.* (emphasis added). “This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.” *Id.* at 379–80.

For obvious reasons, the Circuit Court found that remedy that von Glahn suggested—changing the congressional map in the middle of an election—would flagrantly violate this standard. D63, ¶¶ 142–47. Indeed, von Glahn’s remedy would diminish the voice of many Missourians (including every voter in Cole County) who would be forced to vote for different slates of candidates in the Primary and General Elections. This would be particularly problematic in districts where primaries are more competitive than the general election. In those districts, the primary election is *the* contest where voters effectively select their representative.

Von Glahn’s brief lacks any persuasive critique of the Circuit Court’s holding. Von Glahn mainly tries to confine *Gray*’s equal protection ruling to the facts of that case. Appellant’s Br. 78. But his argument ignores that it is “a judicial decision’s reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.” *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020). *Gray* broadly establishes that the Equal Protection Clause requires States to provide their citizens equal votes regardless of geographical differences. 372 U.S. at 379. The Circuit Court found that “[i]f the congressional map changes between the primary and general elections, it would force

hundreds of thousands of Missourians to vote in a district different from the one in which they cast their primary ballots.” D63, ¶ 145. Also, the court found that “[t]hose voters would possess materially less voting power than voters whose district remained the same because the former group would have to select from candidates they never had the opportunity to evaluate, support, or oppose in the primary.” *Id.* ¶ 146. Thus, hundreds of thousands of Missourians would be denied equal protection because their votes would be disadvantaged relative to the votes other Missourians. It is that simple.

C. Von Glahn’s newly demanded remedy is waived, it lacks any foundation in Missouri law, and it would flagrantly violate Article I, Section 2 of the U.S. Constitution.

The Court should also reject von Glahn’s newfound demand in Point Relied On VII for disqualification of all sixteen nominees selected by voters in the August Primary. *See* Appellant’s Br. 81–86. This argument is waived, it lacks any foundation in Missouri law, and it would flagrantly violate Article I, Section 2 of the U.S. Constitution. Unsurprisingly, the State is not aware of—and von Glahn does not cite—any judicial precedent awarding such a remedy.

Below, von Glahn never demanded an order disqualifying Missouri’s congressional nominees and requiring party committees to nominate replacement candidates. No such demand is contained in his Petition. D2. Von Glahn claims that he “addressed Missouri’s disqualification statutes in his trial brief.” Appellant’s Br. 81. But that is barely true. Von Glahn made a passing reference to Missouri’s disqualification statutes on page 32 of his trial brief, but that was only for purposes of addressing the implications of the State’s argument under Article I, Section 2 of the U.S. Constitution. D62, p. 32. He never raised

the disqualification statutes for purposes of proposing a remedy. And, lest there be any doubt, von Glahn’s counsel *explicitly disclaimed* at trial that he was requesting an order disqualifying nominees and requiring parties to select replacements:

We are not asking you to set aside that primary. If it turns out that someone challenges and that was running improperly, it may be that there are vacancies somehow in the nominees, in which case Missouri law provides that the democrat and republican parties will make their nominations. *We don’t have to decide any of that right now.*

Trial Tr., p. 29:1–7 (emphasis added). Thus, von Glahn’s argument in Point Relied On VII was affirmatively waived. Or, at the very least, Point Relied On VII is not preserved. “[I]t simply is not the role of ... this Court to grant relief on arguments that were not presented to or decided by the trial court.” *Barkley v. McKeever Enters., Inc.*, 456 S.W.3d 829, 839 (Mo. banc 2015). Thus, this Court should dismiss Point Relied On VII.

In any event, Missouri’s disqualification statute, § 115.363, RSMo, is wholly inapplicable to the scenario that the Court confronts in this case. Nothing in Missouri law allows this Court to throw out 1.2 million votes cast in the *completed* Primary Election. Rather, Missouri law makes primaries central to Missourians “choos[ing]” their representatives. *Classic*, 313 U.S. at 318; *accord* U.S. Const. art. I, § 2. Chapter 115, RSMo, makes clear that “[p]olitical parties and groups of voters may nominate candidates in the manner provided by this subchapter and *in no other manner.*” § 115.307, RSMo (emphasis added). Section 115.339 then provides that “[e]xcept as otherwise provided in this subchapter, *all candidates* for elective office shall be nominated *at a primary election* in accordance with the provisions of sections 115.339 through 115.405 of this subchapter.” (emphasis added). Section 115.341 then specifies, “For the nomination of candidates to be

elected at the next general election, a primary election shall be held on the first Tuesday after the first Monday in August of even-numbered years.”

Furthermore, the voters’ selection at the August 4 Primary Election is sacrosanct.

Section 115.343 provides:

The person receiving the greatest number of votes at a primary election as a party candidate for an office **shall** be the **only** candidate of that party for the office at the general election. The name of such candidate **shall** be placed on the official ballot at the general election unless he is removed or replaced as provided by law.

§ 115.343, RSMo (emphasis added).

The law provides for removal or replacement of the nominated candidate for only three reasons: The nominee (1) “die[s],” (2) “is disqualified,” or (3) voluntarily “withdraw[s]” “at or before 5:00 p.m. on the tenth Tuesday prior to the general election.” § 115.363.3(1)–(3), .4, RSMo. In those three circumstances (which must occur no later than 10 weeks before the general election), “the party nominating committee for any established political party may select a party candidate.” *Id.* Otherwise, “all candidates for elective office shall be nominated at a primary election”—which must take place on August 4. *See* §§ 115.339, 115.341, RSMo.

Thus, the idea that a court could simply throw away the votes of 1.2 million Missourians is nonsense. Missouri is already less than 10 weeks before the general election on November 3, 2026. Also, if the HB 1 map is invalidated, none of the nominees that voters selected would have died, become disqualified, or withdrawn. Chapter 115 defines “disqualified” as “a determination made by a court of competent jurisdiction, the Missouri ethics commission, an election authority or any other body authorized by law to make such

a determination that a candidate is *ineligible to hold office or not entitled to be voted on* for office.” § 115.013(7), RSMo (emphasis added).

Here, the nominees originally selected would remain qualified to compete in the general election—even if the HB 1 map were somehow deemed unconstitutional. In fact, they would likely compete for the nomination against the very same candidates that they just defeated per the votes of 1.2 million Missourians. See D63, ¶ 15. Thus, absent any death, disqualification, or withdrawal, political parties would lack the authority to nominate new candidates even if HB 1 were deemed unconstitutional. Rather, “[t]he person receiving the greatest number of votes at a primary election as a party candidate for an office **shall** be **the only** candidate of that party for the office at the general election.” § 115.343, RSMo (emphasis added).

* * *

In seeking an injunction against HB 1 before the General Election, von Glahn appears naïve about the blast radius of his demand. Regardless of how the Court reads the Missouri Constitution, it cannot order the State to violate the U.S. Constitution and federal law by using a different congressional map than the one used in the 2026 Primary Election. This Court should affirm.

IV. The Circuit Court found that changing the congressional map at this hour is impossible. Thus, the *Hadley-Purcell* principle forbids von Glahn’s impossible demand. (Response to Point Relied On VIII)

Finally, as the Circuit Court found, changing the congressional map is “impossible” after the 2026 Primary Election. D63, ¶ 170 (finding that “changing the maps at this late juncture is not just ‘impractical,’ it is impossible”); D50, ¶ 6, Brown Aff. Thus, the Circuit

Court correctly held that basic principles of equity mandate rejection of von Glahn’s claims. D63, ¶¶ 149–71.

It is far, *far* too late to change the map governing the 2026 elections. Candidate filing ended in late March. § 115.349.1, RSMo. Missouri finished its Primary Election—in which 1.2 million people voted—over three weeks ago. D63, ¶ 15; §§ 115.121.2, 115.341, RSMo. On the date of oral argument, absentee voting in the General Election will begin in a couple weeks. See § 115.284.5, RSMo. At this point, changing the HB 1 map is unthinkable—even if von Glahn proves a constitutional violation.

This Court’s decision in *Hadley* is dispositive. See *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1 (Mo. banc 1970). There, this Court confronted a remand *after* the U.S. Supreme Court found that districts for electing school officials were unconstitutionally apportioned. 460 S.W.2d at 2. On the date that this Court rendered its decision, the candidate filing period was scheduled to end in a few days. *Id.* at 2. The Court noted that “[f]ive candidates have filed for the office, and the election machinery already is in operation.” *Id.* at 3. Furthermore, “[a]bsentee ballots for that election are now being printed and other preparations, including necessary adjustments of voting machines, are in progress. Substantial expense has been incurred and substantial additional expense would be involved if the election of trustees is postponed and such election is held at a later date.” *Id.* This Court thus concluded that “it would be wholly inequitable and impracticable to attempt at this late date to” order an adjustment to the unconstitutionally apportioned districts. *Id.* In reaching this conclusion, the Court noted the U.S. Supreme Court’s own precedent that “a court is entitled to *and should* consider the proximity of a

forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Id.* at 2 (emphasis added) (quoting *Reynolds*, 377 U.S. at 585).

Today, the U.S. Supreme Court still applies this equitable principle—known as the *Purcell* principle in federal court. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). In fact, the U.S. Supreme Court applied the *Purcell* principle to foreclose challenges to Texas’s congressional map for the 2026 elections *ten months ago*—*during* Texas’s candidate filing period. *See Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (per curiam). If this case were in federal court, von Glahn’s request for an injunction would be deemed frivolous.

Undeterred, von Glahn soldiers on—demanding a change to Missouri’s congressional map over four weeks *after* the August Primary (accounting for the September 2 oral argument). The State is not aware of any court—ever—that has awarded such a drastic remedy. And *Hadley* certainly requires rejection of von Glahn’s claims here. As the Circuit Court found, “Candidate filing closed months ago. Over 1.2 million Missourians voted in the August 4 primary. Nominees have been selected. Campaigns for the general election are underway.” D63, ¶ 165. Also, the Circuit Court found that von Glahn had “not demonstrated how State officials could reverse course and implement some entirely new map, how nominees selected by voters in one set of districts would campaign in different ones, or how voters would make sense of a last-minute overhaul of the districts they just voted in.” *Id.*; accord *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring) (“Late judicial tinkering with election laws can lead to

disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.”).

The Circuit Court also found that “changing the maps at this late juncture ... is impossible” in light of changes that (at least) some counties would need to make to the Missouri Centralized Voter Registration (“MCVR”) database. D63, ¶¶ 170–71. This finding was supported by voluminous record evidence, most notably the written testimony of Tammy Brown. D50, ¶¶ 6, 19, Brown Aff. (testifying that changing the map in Jackson County before the 2026 General Election is “literally impossible”). Brown has twenty-five years of experience as a Jackson County election official. *Id.* ¶ 1. She has facilitated over a hundred elections in Jackson County, and she helped manage Jackson County’s efforts to implement redrawn congressional maps in 2012, 2022, and 2026. *Id.* ¶¶ 2, 3. Brown has never heard of Missouri—or any other State—ever changing their congressional map between a primary election and a general election. *Id.* ¶ 5.

As Brown explained in her affidavit, to implement a new congressional map, local election officials must transfer voters in the MCVR database. This is a slow, meticulous process that involves manually moving individual voters from one congressional district to another. *Id.* ¶ 7. It involves careful analysis of printed maps, and several rounds of proofreading. *Id.* This arduous process usually takes 2–2 ½ weeks, and requires *at least*

7–10 days if election officials worked overtime and weekends in order to quickly implement a new map. *Id.*¹⁷

Critically, the MCVR system locks shortly before absentee ballots are distributed and remains locked until an election is certified two weeks after election day. *Id.* ¶ 8.¹⁸ This year, the MCVR system will remain locked until (at least) mid-November because of a Jackson County special election in September 2026. *Id.* ¶ 9. Thus, changing the map in the MCVR system is “literally impossible” until after the General Election. *Id.* ¶¶ 6, 19; *see also* D63, ¶¶ 170–71 (factual findings crediting all these points).

Further, to comply with UOCAVA, Missouri local election officials must send ballots to military and overseas voters no later than September 19, 2026. *See* 52 U.S.C.

¹⁷ *Accord* D54, Letter of Missouri Association of County Clerks and Election Authorities; D51, pp. 11–14, Amicus Br. of Brianna Lennon, *supra*; D52, pp. 13–16, Amicus Br. of Kurt Bahr, *supra*; D53, p. 109:1–17, Trial Testimony of Shawn Kieffer, *supra*.

¹⁸ In fact, in light of MCVR’s locking function, the Missouri Association of County Clerks and Election Authorities feared that there would not be any window available after January 2026 to change Missouri’s congressional map. *See* D54, Letter of Missouri Association of County Clerks and Election Authorities (“Redistricting complicates this process because MCVR ‘locks’ current district boundaries during any active election so that new districts cannot be created, and voters subsequently cannot be assigned to new districts.”); *see also* D51, pp. 11–14, Amicus Br. of Brianna Lennon, *supra* (“Typically, the last possible time for a local election official to establish new districts for an election is the ninth Tuesday before an election.”); D52, pp. 13–16, Amicus Br. of Kurt Bahr, *supra* (“[L]ocal election authorities cannot access MCVR to enter new district lines at just any time of year. For lengthy stretches of time, MCVR is necessarily ‘locked’ to protect against structural districting changes. This lockout lasts for a period before and after each election while ballots are printed and mailed, poll lists are compiled, voting occurs, votes are canvassed, and returns are certified.”).

§ 20302(a)(8). This requires printing ballots no later than eight weeks before the election (September 8, 2026). D50, ¶ 14, Brown Aff. Election officials also need at least two weeks before printing (August 25, 2026) to design and test ballots. *Id.*¹⁹ And all of this can occur only after Missouri election officials implement the congressional map in the MCVR database. *Id.*²⁰ But again, changing the congressional map in MCVR is impossible while an election is ongoing. *Id.* ¶ 8.²¹ And Missouri currently has several ongoing elections—between the August Primary Election and the September Special Election in Jackson County. *Id.* ¶ 9. The Circuit Court credited all of this evidence, which is why it “decline[d] to order an unprecedented remedy that is impossible to implement.” D63, ¶¶ 170–71. The Circuit Court’s finding must stand absent clear error. *See Faire*, 252 S.W.2d at 290.

Von Glahn knows that his demand is impossible. That is why, many months ago, People Not Politicians and von Glahn repeatedly characterized their lawsuits as “time-sensitive election case[s]” because of their “impact” on “the 2026 election” and the need to avoid “chaos in August.” D44, Mot. to Expedite at 1–2, *State ex rel. People Not Politicians v. Limbaugh*, No. WD88821 (Mo. App. W.D., filed April 1, 2026); *see also*

¹⁹ *Accord* D53, pp. 105:25–108:21, Trial Testimony of Shawn Kieffer.

²⁰ *Accord* D54, Letter of Missouri Association of County Clerks and Election Authorities (“The lack of decided boundary lines [implemented in MCVR] effectively prohibits election authorities from preparing ballot types that accurately represent the correct political subdivisions for each residential address, which means ballots will not be ready for voters.”).

²¹ *Accord* D54, Letter of Missouri Association of County Clerks and Election Authorities; D51, pp. 11–14, Amicus Br. of Brianna Lennon, *supra*; D52, pp. 13–16, Amicus Br. of Kurt Bahr, *supra*.

D45, SIS Pet. for Writ of Prohibition at 5–6, *Limbaugh*, No. WD88821. That is also why opponents of HB 1—including opponents represented by von Glahn’s counsel—repeatedly stated that they needed judicial resolution of HB 1’s status before the candidate-filing period *opened last February*.²² Many of these plaintiffs acknowledged that equitable principles would eventually require Missouri courts “to favor the status quo in a legal dispute during the lead-up to an election.” *See, e.g.*, D48, p. 16, SIS Mot. for Prelim. Inj. at 16, *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026) (quotation omitted). The State *never* contested that point; in fact, it started asserting the *Hadley-Purcell* principle in February 2026. *See* D49, p. 54, Respondent’s Br. at 54, *Luther v. Hoskins*, No. SC101412 (Mo., filed Feb. 9, 2026). And even *Democracy Docket*, the Democratic Party’s election publication—admitted in March 2026 that it was already too late to change Missouri’s congressional map this year. *See* D56, Jen Rice, *GOP derails bid to stop Missouri gerrymander for 2026*, *Democracy Docket* (Mar. 27, 2026).

Other cases also corroborate why Missouri must conduct its general election under the HB 1 map. As far as the State is aware, every time a redistricting plan has been invalidated after a primary election, courts have stayed their remedy as to the upcoming general election. *See, e.g.*, *Covington v. North Carolina*, 316 F.R.D. 117, 176–77 (M.D.N.C. 2016) (allowing general election “to proceed as scheduled under the challenged

²² *See* D46, p. 2, Mot. to Expedite, *Luther v. Hoskins*, No. SC101412 (Mo., filed Dec. 31, 2025); D47, pp. 1–3, Pls.’ Opp’n. to a Continuance, *Wise v. State* and *Healey v. State*, Nos. 2516-CV29597, 2516-CV31273 (Mo. Cir. Ct., filed Dec. 15, 2025); D48, p. 16, SIS Mot. for Prelim. Inj., *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026).

plans” despite being determined unconstitutional after the primary); *Page v. Va. State Bd. of Elections*, 58 F. Supp. 3d 533, 554 (E.D. Va. 2014) (“[G]eneral principles of equity dictate that Virginia’s 2014 elections should proceed as scheduled under the challenged districting plans” after plan found invalid one month before general election.), *vacated on other grounds sub nom.*, *Cantor v. Personhuballah*, 135 S. Ct. 1699 (2015); *Vera v. Richards*, 861 F. Supp. 1304, 1351 (S.D. Tex. 1994) (ordering election held on unconstitutional map after primary had already been held), *aff’d sub nom.*, *Bush v. Vera*, 517 U.S. 952 (1996); *see also Terrazas v. Slagle*, 821 F. Supp. 1154, 1159 (W.D. Tex. 1992) (“Primary elections for offices chosen by the electorate in separate geographical districts obviously make no sense unless the districts are the same for the ensuing general election as for the primary.”).

In light of this mountain of evidence and precedent, the Circuit Court’s judgment was undoubtedly correct. Von Glahn offer several responses, but his arguments fail on both the facts and the law.

First, von Glahn argues that *Maggard* and Article III, Section 52(b) requires this Court to ignore the *Hadley-Purcell* principle. Appellant’s Br. 89–95. He claims that “[e]quitable principles cannot displace the Missouri Constitution or this Court’s *Maggard* decision.” *Id.* at 89. However, in making this argument, von Glahn ignores the distinction between *substantive* constitutionality and a court’s ability to award *a remedy*. *Hadley* demonstrates that the two are not always connected. Indeed, in *Hadley*, the redistricting legislation at issue was unconstitutional under the Fourteenth Amendment. *See Hadley*, 460 S.W.2d at 2. Even so, this Court declined to issue an injunction against enforcement

of the map as to the upcoming election because “it would be wholly inequitable and impracticable to attempt at this late date to” enjoin enforcement of the map. *Id.* at 3. *Hadley* also instructed that, “[i]n awarding or withholding immediate relief, a court is entitled to **and should** consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Id.* at 2. It also makes no difference that, under *Maggard*, HB 1 was never valid law if von Glahn’s referendum petition is sufficient. *Contra* Appellant’s Br. 90. The same could be said of any unconstitutional law. *See, e.g., Marbury*, 5 U.S. (1 Cranch) at 177 (“[A]n act of the legislature, repugnant to the constitution, is *void*.” (emphasis added)). Yet Missouri courts apply the *Hadley-Purcell* principle anyways.

Second, von Glahn argues that the State somehow waived its *Hadley-Purcell* argument seven months ago through its trial brief in *Maggard*. Appellant’s Br. 92. But the State’s brief did nothing of the sort. The brief said that “the *Purcell* principle governs whether *courts* may alter election laws in the lead-up to an election. The *Purcell* principle does not override the Secretary’s and local election authorities’ statutory obligations to review PNP’s referendum petition for legal sufficiency and to certify PNP’s petition if it is legally sufficient.” State’s Trial Br. at 14 n.6, *Maggard v. State*, No. 25AC-CC09120 (Feb. 9, 2026) (emphasis in original) (citing §§ 116.120–116.150, RSMo). This language merely reiterates the exact point that Missouri makes above: The *Hadley-Purcell* principle does not change substantive law or constitutional provisions, it merely controls the availability of a judicial *remedy*. The State’s trial brief in *Maggard* hardly “waived” the State’s *Hadley-Purcell* arguments. Indeed, the State has invoked the *Hadley-Purcell* principle in

every HB 1 case that this Court has heard, including *Maggard* itself. See D49, p. 54, Respondent’s Br. at 54, *Luther v. Hoskins*, No. SC101412 (Mo., filed Feb. 9, 2026); Respondents’ Br. at 80, *Maggard v. State*, No. SC101581 (Mo., filed Apr. 28, 2026); Respondents’ Br. at 57, *Healey v. State*, No. SC101570 (Mo., filed May 6, 2026); Respondents’ Br. at 79, *Wise v. State*, No. SC101572 (Mo., filed May 6, 2026); Respondents’ Br. at 41, *NAACP v. Kehoe*, No. SC101541 (Mo., May 11, 2026). Von Glahn disingenuously twists the State’s prior statements.

Third, despite the express text of the Circuit Court’s judgment, von Glahn claims that the Circuit Court disagreed with its own factual findings about the impossibility of changing Missouri’s congressional map. See D63, ¶¶ 170–71. For support, von Glahn relies on a statement that the Circuit Court made during trial about Tammy Brown’s and Brianna Lennon’s competing affidavits on the feasibility of changing the congressional map in the MCVR database. Appellant’s Br. 26, 87 (citing Trial Tr., pp. 54:13–55:16). The court suggested at trial that it would not find one affidavit credible to the exclusion of the other. See Trial Tr., pp. 54:13–55:16. However, the court never stated that it would “not make a finding on the technical feasibility of altering MCVR.” *Contra* Appellant’s Br. 87. Rather, the court’s judgment explicitly finds that changing the map is “impossible” in light of the practical impossibility of changing the MCVR system during an ongoing election. D63, ¶¶ 170–71. And, even without considering one affidavit as more credible than another, the Court could have credited Tammy Brown’s sworn testimony that “Ms. Lennon’s representation is wrong as to Jackson County,” where officials “exclusively implemented the HB 1 congressional map in the MCVR database for the 2026

congressional election.” D50, ¶ 18, Brown Aff. Of course, Ms. Lennon only oversees elections in Boone County, not Jackson County. D43, ¶ 1. Thus, the Circuit Court did not need to resolve conflicting testimony *even if* it believed both Lennon’s and Brown’s claims. At any rate, even absent an explicit factual finding about MCVR, this Court’s rules provide that “[a]ll fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.” Mo. Sup. Ct. R. 73.01(c). That should be the end of this factual dispute.²³

Finally, von Glahn argues that applying the *Hadley* principle would be inequitable because the Secretary has “unclean hands.” Appellant’s Br. 95–96. However, von Glahn provides *zero* evidence to support this audacious claim. Although he laundered the same claim to the Circuit Court, D62, p.21, he presented no evidence and the Circuit Court refused to credit this claim. For all his bluster, von Glahn’s only support for his claim of unclean hands is that “[t]he Secretary used the discretion afforded by the certification schedule in Chapter 116 to wait until the last day” to issue his certificate of insufficiency.

²³ In weighing any factual dispute, the Court should also keep in mind that Brianna Lennon has never responded directly to Tammy Brown’s affidavit. Lennon even submitted an amicus brief in this appeal, but still failed to respond to Brown’s testimony. See Lennon Amicus Br. (filed Aug. 24, 2026).

Lennon has also switched positions on MCVR according to the exigencies of the moment. In *Maggard*, she told this Court that a ruling in favor of the State would result in “chaos, confusion, and unnecessary expense” because changing congressional maps in August would be extremely difficult in light of MCVR. See D51, pp. 6–7, 11–14. But now, Lennon’s amicus brief in this case takes the exact opposite position. See Lennon Amicus Br. (filed Aug. 24, 2026). The Circuit Court did not credit Lennon’s testimony, and this Court should not either.

Appellant’s Br. 96. But von Glahn *never* claims the Secretary violated any Missouri law. Nor could he. The Secretary simply abided by Section 116.150’s explicit statutory deadline. It would be bizarre to hold that government officials have unclean hands when they use discretion explicitly granted to them in the law. *See* § 116.150.3, RSMo.

* * *

Von Glahn utterly fails to find error in the Circuit Court’s finding that it is “impossible” to change Missouri’s congressional map. D63, ¶¶ 170–71. Von Glahn also fails to cite a single decision that has *ever* changed a congressional map between a Primary and General Election. Von Glahn’s proposed remedy is not just “awkward,” Appellant’s Br. 71—it is one of the most disruptive changes imaginable to an ongoing election. The Circuit Court’s judgment is perfectly reasonable considering these facts, this Court’s *Hadley* opinion, Missouri law, federal law, and the U.S. Constitution.

CONCLUSION

This Court should affirm.

Dated: August 27, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 20,138 words, excluding tables, the cover, the signature, and certificates; complies with Missouri Supreme Court Rule 84.06(b); includes the information required by Rule 55.03; and includes information on how the brief was served on the opposing party. The State has submitted an unopposed motion for a small extension of the word count.

/s/ Louis J. Capozzi III

CERTIFICATE OF SERVICE

I hereby certify that, on August 27, 2026, a true and correct copy of the above 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/ Louis J. Capozzi III

SC101805

IN THE SUPREME COURT OF MISSOURI

RICHARD VON GLAHN,

Appellant,

v.

DENNY HOSKINS, in his official capacity,

Respondent,

and

MISSOURI REPUBLICAN STATE COMMITTEE, *et al.*,

Intervenors-Respondents.

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INTRODUCTION

The General Assembly enacted Missouri’s congressional redistricting plan, House Bill 1 (“HB 1”), by overwhelming majorities in both houses. The Missouri courts, including this Court, have upheld HB 1 against all four prior challenges. *See Healey v. State*, 732 S.W.3d 827 (Mo. banc 2026) (consolidated with *Wise v. State*, No. SC101572); *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. banc 2026); *Maggard v. State*, 733 S.W.3d 411 (Mo. banc 2026). Election officials successfully implemented HB 1 for the recent congressional primary elections. More than 1.2 million Missourians voted in those primary elections under the HB 1 plan.

General election day, November 3, is now less than ten weeks away. Candidates, voters, political parties, and members of the public are already exercising their constitutional rights to participate in the general election under the HB 1 plan. That participation includes actively raising and spending money, organizing get-out-the-vote efforts, mobilizing support, and preparing to cast ballots. Election officials, too, are preparing to administer the general election under the same HB 1 plan used in the primary elections.

Against this backdrop, Appellant asks this Court to read the Missouri Constitution to empower a small minority of voters to overturn the settled law of this State, nullify the results of the primary elections, and unleash chaos upon the State’s democratic and electoral machinery. On Appellant’s reading, a mere “five percent of the legal voters in each of two-thirds of the congressional districts in the state,” Mo. Const. art. III, § 52(a), can suspend the General Assembly’s duly enacted congressional redistricting plan for the ongoing 2026 election even *after more than 1.2 million Missourians voted under the plan* in the August primaries. Appellant, moreover, asks this Court to order placement

of hundreds of thousands of voters into *different districts for the imminent 2026 general election* than the districts they voted in during the primary elections.

It is difficult to imagine a judicial action that would sow more confusion among the State's electorate or inflict more damage to the public's confidence in the integrity of the State's elections than the relief Appellant seeks. Fortunately—and unsurprisingly—both Missouri and federal law foreclose Appellant's claim, as the circuit court correctly held.

The Missouri Constitution and the U.S. Constitution expressly vest authority to conduct congressional redistricting in “*the general assembly*.” *Id.* art. III, § 45 (emphasis added); *see also* U.S. Const. art. I, § 4, cl. 1 (vesting in state legislatures authority to “prescribe[]” the “Times, Places, and Manner of holding Elections for . . . Representatives,” “but the Congress may at any time by Law make or alter such Regulations”). Appellant's sole theory posits that the Missouri Constitution's referendum provisions oust the General Assembly's authority to conduct congressional redistricting at the whim of approximately 3.3% of the State's voters. *See* Mo. Const. art. III, § 52(a). But the referendum provisions say precisely *nothing* about congressional redistricting, so they lack the clear statement required to negate the General Assembly's authority.

Those provisions' silence regarding congressional redistricting alone defeats Appellant's claim as a matter of both Missouri and federal law. And if more were somehow needed, the Missouri Constitution provides more. To the extent the Missouri Constitution addresses the question, it provides in unqualified terms that “[n]o redistricting plan shall be subject to the referendum.” *Id.* art. III, § 3(i); *see also id.* § 7(h) (same).

Even if these dispositive defects in Appellant's legal theory were not enough, Appellant's requested relief violates state and federal law.

Suspending HB 1 and ordering a new congressional plan would require state officials to violate the Uniformed and Overseas Citizens Absentee Voting Act's ("UOCAVA") ballot-transmission mandate, fracture the integrated primary-general election process in violation of Article I, Section 2 of the U.S. Constitution, and create two classes of voters in violation of the Equal Protection Clause. Moreover, granting Appellant's requested relief would require the Court to violate the equitable principle prohibiting eleventh-hour judicial alteration of election laws and districts that this Court and the U.S. Supreme Court have routinely applied. Indeed, the circuit court found as a matter of fact that changing the plan before the general election is not merely inequitable; it is *impossible*. State voting systems will remain locked until at least mid-November, and implementing a new plan would require transferring hundreds of thousands of voters through a multi-week process that cannot be completed before the general election.

The Court should once again uphold HB 1 and affirm.

STATEMENT OF FACTS

The General Assembly enacted HB 1 on September 12, 2025. D63:P1 ¶ 1. HB 1 repealed Missouri's prior congressional districting plan and established new boundaries for Missouri's eight congressional districts. *Id.* HB 1 passed by a margin of 21 to 11 in the Senate and 90 to 65 in the House of Representatives. D63:P1 ¶ 2 (citing Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025)). Governor Michael L. Kehoe signed HB 1 into law on September 28, 2025. D63:P1 ¶ 3.

A group called People Not Politicians ("PNP") launched a referendum campaign to challenge the HB 1 map. D63:P1-2 ¶ 4. PNP eventually submitted a referendum petition to the Secretary of State on December 9, 2025,

invoking the referendum provisions in Article III of the Missouri Constitution. *Id.* Under Article III, Section 52(a), “[a] referendum may be ordered . . . by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a). Article III’s referendum provisions are silent regarding congressional redistricting. *See id.* art. III, §§ 49, 52(a)-(b). Article III, however, elsewhere expressly states that “[n]o redistricting plan shall be subject to the referendum.” *Id.* art. III, § 3(i); *see also id.* § 7(h) (same).

PNP’s submission triggered the Secretary’s statutory duty to review the referendum petition. *See Maggard*, 733 S.W.3d at 416. That review encompasses the timeliness, legality, and sufficiency of the petition, as well as the sufficiency of the signatures offered in support of the petition. *See* §§ 116.120–116.140, RSMo; *see also* D63:P2 ¶ 7. “After” review, “if the secretary of state finds [the petition] sufficient, the secretary of state shall issue a certificate setting forth that the petition contains a sufficient number of valid signatures to comply with the Constitution of Missouri and with this chapter.” § 116.150.1, RSMo. But “[i]f the secretary of state finds the petition insufficient, the secretary of state shall issue a certificate stating the reason for the insufficiency.” § 116.150.2, RSMo.

The Secretary was required to complete this extensive review “not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election or two weeks after the date the election authority certifies the results of a petition verification pursuant to subsection 2 of section 116.130, whichever is later.” § 116.150.3, RSMo; D63:P2-3 ¶ 10. The thirteenth Tuesday prior to this year’s general election fell on Tuesday, August 4, the date of the State’s primary elections. D63:P3 ¶ 11.

While the Secretary and Missouri’s local election officials were reviewing PNP’s submission, two plaintiffs separately challenged HB 1’s effectiveness, seeking a declaratory judgment and an injunction preventing use of the HB 1 plan until voters approved it through the referendum process. *See Maggard*, 733 S.W.3d at 413. This Court unanimously rejected their claims, holding that “the December 9 referendum petition filing did not automatically suspend HB 1 under article III, sections 49, 52(a), or 52(b) of the Missouri Constitution.” *Id.* at 421. This Court also went out of its way to emphasize that its decision should not be read as endorsing referenda on congressional plans. *See id.* at 414 n.7 (“[T]his opinion presupposes without deciding HB 1 is subject to the right of referendum.”).

Following this Court’s ruling, the Attorney General released an opinion letter requiring “State and local election officials” to “take all appropriate steps to ensure the HB 1 map is fully implemented in advance of the 2026 primary elections.” D63:P3 ¶ 14 (quoting Mo. Att’y Gen., Op. Letter 03-2026 (May 13, 2026)). Local election officials then implemented the HB 1 plan in Missouri’s Centralized Voter Registration (“MCVR”) system, transferring hundreds of thousands of voters to the new districts. D63:P3 ¶ 14. After implementation, state and local officials prepared ballots and conducted the August 4 primary elections under the HB 1 plan. *Id.*

A total of 1,206,871 Missourians voted in the State’s congressional primary elections under the HB 1 plan. *See* D63:P3 ¶ 15 (citing State Of Missouri Election Results – Primary Election August 4, 2026, *available at* <https://enr.sos.mo.gov/> (last visited Aug. 24, 2026)). Prior to 5 p.m. on August 4, the last day to vote in the primary elections, Secretary Hoskins announced that he was issuing a certificate finding PNP’s petition insufficient. D63:P4 ¶ 16. The Secretary’s certificate identified as “the reason for the insufficiency,”

§ 116.150.2, RSMo., that the Missouri Constitution does not permit referenda on congressional maps, D63:P4 ¶ 17. The Secretary's certificate relied upon a letter from the Attorney General explaining that insufficiency. *See id.*

Appellant filed this suit later that evening. D63:P4 ¶ 18. Appellant alleged that "he is entitled to the immediate suspension of the use and implementation of HB 1." D2:P6 ¶¶ 42-43; *see also* D2:P8. He also alleged that the Court should "restrain[] the Secretary from taking further steps to implement or use the congressional districts in HB 1 to ensure that . . . the correct congressional districts are utilized to conduct the 2026 general congressional election." D2:P6 ¶ 45; *see also* D2:P8. Appellant's Petition did not identify what he believes to be "the correct congressional districts . . . to conduct the 2026 general congressional election." D2:P6 ¶ 45. However, Appellant clarified after trial that he asks this Court to revert Missouri to the 2022 plan the General Assembly repealed in HB 1. *See* Appellant's Opening Br. ("App. Br.") at 14. Such an action would move hundreds of thousands of voters into different districts for the imminent 2026 general election compared to the districts in which they cast their ballots in the August primary elections just two weeks ago. *See* D63:P4-5 ¶ 20 (citing Order and Judgment, Findings 27, 30, 40-46, *Wise v. State*, No. 2516-CV29597 (Jackson Cty. Cir. Ct. Mar. 12, 2026)).

The Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee (collectively, the "Republican Committees" or "Intervenors") moved to intervene in defense of HB 1 on August 7, 2026. *See* D13; *see also* D17. Appellant opposed the Motion. *See* D12.

The circuit court granted the Republican Committees intervention on August 12, 2026. *See* D20. The circuit court ruled that the Republican

Committees satisfy all three requirements for intervention as of right, *see* Rule 52.12(a)(2), because HB 1’s congressional districts directly affect their ability to elect Republican candidates; their ability to protect that interest would be impaired absent intervention; and the Secretary’s institutional defense was inadequate to protect the Republican Committees’ distinct political and operational interests. D20:P5-9. The circuit court also exercised its “broad discretion” to grant permissive intervention, *see* Rule 52.12(b), because the Republican Committees’ defenses have questions of law and fact in common with the action and the outcome of this litigation will directly affect the Committees’ financial and operational expenditures in Missouri’s congressional elections. D20:P9-10.

The circuit court tried the matter on stipulated facts and exhibits on August 19, 2026. The circuit court entered judgment in favor of Respondents and denied Appellant’s claims and requested relief that same day, finding Appellant’s claims foreclosed in at least five respects. *See* D63.

First, the circuit court ruled that Missouri’s referendum provisions do not apply to congressional redistricting. D63:P6-14. The circuit court reasoned that Article III, Section 45 expressly vests authority over congressional redistricting in the General Assembly. D63:P6-7. The generic referendum provision in Section 49, by contrast, says nothing about congressional redistricting and thus lacks the clear statement required to oust the General Assembly’s redistricting authority. D63:P8-10. Moreover, Article III, Sections 3(i) and 7(h) declare by their plain text that “[n]o redistricting plan shall be subject to the referendum,” and over eighty years of unbroken practice in which no referendum on a congressional map has ever reached the ballot confirms that construction. D63:P9-14.

Second, the circuit court concluded that federal law independently confirms that Missouri has not ousted the General Assembly's redistricting authority. D63:P14-22. The Elections Clause expressly delegates congressional redistricting to "the Legislature" of each State, U.S. Const. art. I, § 4, and courts require a clear statement before concluding that a state has displaced that authority. D63:P14-18. But Missouri's generic referendum provision does not supply any such clear statement. D63:P21-22.

Third, the circuit court ruled that even if Missouri's referendum provisions could be read to encompass congressional redistricting, the U.S. Constitution would not permit it. D63:P23-26. The Elections Clause forbids any arrangement that would allow a fraction of voters to freeze a congressional map duly enacted by the General Assembly before any majority of Missourians has voted for or against it. D63:P23-24. The Guarantee Clause compels the same conclusion because permitting a sliver of the electorate to nullify the General Assembly's action is irreconcilable with Missouri's duty to maintain a republican form of government. D63:P24-25. As to the Guarantee Clause, the circuit court also explained that it lacked power to review the Secretary's judgment, which Appellant himself asserted presents a nonjusticiable political question. *Id.*

Fourth, the circuit court concluded that federal law forecloses any alteration to Missouri's congressional map after the primary. D63:P26-30. Changing the map would force state officials to send out ballots weeks after UOCAVA's ballot-transmission deadline had already passed and subject them to a federal lawsuit. D63:P26-27. Moreover, holding a general election under a different congressional map than the one used in the primary would violate Article I, Section 2 and the Equal Protection Clause by fracturing the integrated primary-general election process and creating two classes of voters:

those who had the opportunity to select their general-election candidate and those who did not. D63:P27-30.

Fifth, the circuit court ruled that equitable principles pronounced by this Court and the U.S. Supreme Court bar any changes to the map for the ongoing 2026 election. D63:P31-34. The circuit court further found that changing the map at this juncture is not merely inequitable, but impossible, because state voting systems have already locked until at least mid-November. D63:P35-36.

Appellant filed his notice of appeal the same day the circuit court issued its decision. D64. On August 20, 2026, this Court granted transfer of the case and expedited appellate proceedings. Intervenors now file this timely brief.

POINTS RELIED ON

I. MISSOURI'S REFERENDUM PROVISIONS DO NOT APPLY TO CONGRESSIONAL REDISTRICTING.

U.S. Const. art. I, § 4

Mo. Const. art. III, § 3(i)

Mo. Const. art. III, § 7(h)

Mo. Const. art. III, § 45

Mo. Const. art. III, § 49

Mo. Const. art. III, § 52

Luther v. Hoskins, 730 S.W.3d 567 (Mo. banc 2026)

State v. Clay, 481 S.W.3d 531 (Mo. banc 2016)

II. FEDERAL LAW INDEPENDENTLY CONFIRMS THAT MISSOURI HAS NOT OUSTED THE GENERAL ASSEMBLY'S REDISTRICTING AUTHORITY.

U.S. Const. art. I, § 4

Moore v. Harper, 600 U.S. 1, 34 (2023)

United States v. Gradwell, 243 U.S. 476 (1917)

State of Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916)

III. THE U.S. CONSTITUTION INVALIDATES ARTICLE III, SECTION 52(B) AS APPLIED TO A CONGRESSIONAL MAP ENACTED BY THE LEGISLATURE.

U.S. Const. art. I, § 4

Mo. Const. art. III, § 52

U.S. Const. art. IV, § 4

Maggard v. State, 733 S.W.3d 411 (Mo. banc 2026)

Minor v. Happersett, 88 U.S. 162 (1874)

IV. FEDERAL LAW FORECLOSES ANY ALTERATION TO MISSOURI'S CONGRESSIONAL MAP AT THIS LATE STAGE OF THE ELECTORAL PROCESS.

U.S. Const. art. I, § 2

U.S. Const. amend. XIV, § 1

52 U.S.C. § 20302(a)(8)

Smith v. Allwright, 321 U.S. 649 (1944)

United States v. Classic, 313 U.S. 299 (1941)

V. THE COURT SHOULD NOT ORDER ANY CHANGES TO THE GENERAL ASSEMBLY'S DULY ENACTED MAP FOR THE ONGOING 2026 ELECTION.

Abbott v. League of United Latin American Citizens, 607 U.S. ----, 146 S. Ct. 418, 419 (2025)

Purcell v. Gonzalez, 549 U.S. 1 (2006)

Hadley v. Junior Coll. Dist. of Metro. Kansas City, 460 S.W.2d 1 (Mo. banc 1970)

VI. THE COURT SHOULD AFFIRM THE REPUBLICAN COMMITTEES' INTERVENTION.

Mo. R. Civ. P. 52.12

Johnson v. State, 366 S.W.3d 11 (Mo. banc 2012)

LEGAL STANDARD

The General Assembly “has the power to do whatever is necessary to perform its functions *except as expressly restrained by the Constitution.*” *Luther*, 730 S.W.3d at 571 (quotations omitted) (emphasis added). “Deference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by . . . any reasonable construction of the Constitution.” *State v. Clay*, 481 S.W.3d 531, 537 (Mo. banc 2016) (quotations omitted).

This case also implicates federal law. The U.S. Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI. The Missouri Constitution enforces this principle, declaring that “Missouri is a free and independent state, subject only to the Constitution of the United States.” Mo. Const. art. I, § 4. Thus, federal law controls over any contrary provision of the Missouri Constitution or law.

This Court, moreover, “must apply the proper standard of review for the error claimed on appeal.” *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012) (*Pearson II*). For questions of fact, such as whether it is possible to change the districts at this juncture of the ongoing 2026 elections, this Court determines whether substantial evidence supports the judgment or whether the judgment is against the weight of the evidence. *Id.* In weighing the evidence, this Court will “defer to the trial court’s assessment” of any contested factual issues; the “trial court is free to disbelieve any, all, or none of th[e] evidence,” and this Court’s “role is not to re-evaluate [the evidence] through its own perspective.” *Id.* at 44 (quotations omitted).

This Court reviews questions of law *de novo*. *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006). However, the Court will not reverse any judgment “unless it finds” that the legal error “materially affect[ed] the merits of the action.” Mo. R. Civ. P. 84.13(b); *accord* Mo. Rev. St. 512.160(2).

A circuit court’s “decision regarding intervention as a matter of right will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012). “This Court reviews permissive intervention for abuse of discretion.” *Id.*

ARGUMENT

Appellant asks this Court to nullify the General Assembly’s duly enacted congressional map, which this Court has upheld on multiple occasions and which the State *already used* to conduct primary elections in which more than 1.2 million Missourians voted. Even in an ordinary case, that gambit would fail because the General Assembly has power to legislate “*except as expressly restrained by the Constitution*,” *Clay*, 481 S.W.3d at 537 (quotations omitted), and Appellant identifies no such restraint. But this is no ordinary case. The General Assembly enacted HB 1 under *both* an express state constitutional command, Mo. Const. art. III, § 45, and an express federal constitutional grant, *see* U.S. Const. art. I, § 4. If there were ever a context demanding a clear statement before the General Assembly’s authority could be displaced, this is it. But there is nothing—not a word—in Missouri’s referendum provisions addressing congressional redistricting. In fact, far from providing a clear statement *ousting* the General Assembly’s authority, the Missouri Constitution expressly *confirms* that authority by stating “[n]o redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 3(i); *see also id.*

§ 7(h) (same). Appellant’s claim therefore fails, as the circuit court correctly found.

If more were somehow needed, Appellant’s claim fails on at least three more independent grounds. *First*, even if the generic referendum provisions could somehow be read to extend to congressional redistricting, the U.S. Constitution invalidates Article III, Section 52(b) as applied to a congressional map enacted by the General Assembly. *Second*, federal law forecloses any alteration to Missouri’s congressional map for the ongoing 2026 election. *Third*, equitable principles previously applied by this Court and the U.S. Supreme Court likewise bar any changes to the General Assembly’s duly enacted map at this late juncture. Indeed, the circuit court found as a matter of fact that changing the map at this juncture would be impossible. D63:P36 ¶ 170. This Court should affirm.

I. MISSOURI’S REFERENDUM PROVISIONS DO NOT APPLY TO CONGRESSIONAL REDISTRICTING. (Responds to Appellant’s Point I).

The Court should affirm the dismissal of Appellant’s Petition because the referendum provisions in Article III of the Missouri Constitution do not apply to congressional redistricting.

A. ARTICLE III DOES NOT SUBJECT CONGRESSIONAL REDISTRICTING TO THE REFERENDUM.

This Court need not look beyond Missouri principles of constitutional interpretation to reject Appellant’s claim. Article III expressly directs that “the general assembly shall by law divide the state into [congressional] districts.” Mo. Const. art. III, § 45. As this Court has recognized, this is the principal constitutional provision addressing congressional redistricting—and it recognizes the General Assembly’s authority and mandate over that task. *Luther*, 730 S.W.3d at 571.

When the General Assembly conducts congressional redistricting, it acts not only under this express state constitutional command but also under an express federal constitutional grant of authority. *See* D63:P6 ¶ 29. The Elections Clause provides that the “Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof,” subject to laws enacted by Congress. U.S. Const. art. I, § 4. The General Assembly’s power to conduct congressional redistricting, therefore, is a uniquely robust legislative authority—emanating from a dual mandate prescribed by both the state and federal constitutions—layered on top of its plenary power to do whatever is necessary to perform its functions “except as expressly restrained by the Constitution.” *Luther*, 730 S.W.3d at 571 (quotations omitted).

Given the General Assembly’s unique authority over congressional redistricting, this Court should not lightly infer that the Missouri Constitution elsewhere divested that authority absent a clear statement. Missouri courts interpret the Constitution to effectuate its “plain, ordinary, and natural meaning,” and any provision must be “considered as a whole with the primary objectives of the provision in issue in mind.” *Id.* (quotations omitted); *see also Mo. Prosecuting Att’ys and Cir. Atty’s Retirement Sys. v. Barton Cty.*, 311 S.W.3d 737, 742 (Mo. banc 2010) (explaining that “due regard is given to the primary objectives of the provision at issue as viewed in harmony with all related provisions, considered as a whole”) (quotations omitted). Applying those principles here, the Missouri Constitution could not be more explicit that congressional redistricting belongs to the General Assembly. *See* Mo. Const. art. III, § 45. And this is no ordinary authority; it is a significant power stemming from the U.S. Constitution over the very structure of democratic representation in Missouri. A reasonable reader, understanding this context,

would expect the Missouri Constitution to speak clearly before concluding that authority had been limited or taken away.

This expectation of clarity is not novel in Missouri law. Missouri courts apply it across multiple doctrinal areas, each reflecting that where the law establishes a settled default, courts do not presume it has been silently displaced. For example, Missouri courts presume that statutes apply only within the State's borders unless the General Assembly clearly says otherwise. *Tuttle v. Dobbs Tire & Auto Centers, Inc.*, 590 S.W.3d 307, 311 (Mo. banc 2019). In addition, Missouri courts presume the State cannot be sued unless the General Assembly expressly waives the State's immunity. *Ramirez v. Mo. Prosecuting Att'ys and Cir. Atty's Retirement Sys.*, 694 S.W.3d 432, 436 (Mo. banc 2024). And Missouri courts presume that statutes operate prospectively unless the legislature's intent for retroactive application "clearly appears from the express language of the act or by necessary or unavoidable implication." *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 34 (Mo. banc 1982).

In each context, the principle is the same: A reasonable reader knows the baseline under Missouri law and expects clarity before concluding it has been changed. That principle also animates this Court's substantial deference to the General Assembly's exercise of its plenary legislative power recognized by the Missouri Constitution. Missouri law's baseline expectation that the General Assembly can exercise any and all legislative power is so strong that this Court refuses to nullify legislative acts under the Missouri Constitution if "it is possible to do so by . . . any reasonable construction of the Constitution" or by resolving any "doubt . . . against nullifying its action." *Clay*, 481 S.W.3d at 537. If anything, the expectation of clarity applies even more strongly here because congressional redistricting represents the rare circumstance where the General Assembly wields a dual mandate under the State and U.S.

Constitutions. *See* Mo. Const. art. III, § 45; U.S. Const. art. I, § 4. In other words, because an express restraint is necessary to limit the General Assembly's legislative authority recognized by the Missouri Constitution, such a restraint at a minimum is required to limit the General Assembly's exercise of its congressional redistricting authority both recognized by the Missouri Constitution *and* granted by the U.S. Constitution. *See Luther*, 730 S.W.3d at 571.

Appellant concedes that “the expectation of clarity is not novel in Missouri law.” App. Br. at 42. But he nonetheless asserts three reasons Missouri's clear-statement rule should not apply. All fail.

First, Appellant suggests that there is “no ambiguity requiring resort to any tie-breaking canon.” *Id.* at 42, 44. But a clear statement rule does not serve a “tie-breaking” role or apply only in instances of “ambiguity”; it recognizes that certain constitutional norms require more than silence from a generic provision before courts will conclude they have been displaced. *See Clay*, 481 S.W.3d at 537; *Luther*, 730 S.W.3d at 571; *see also Tuttle*, 590 S.W.3d at 311; *Ramirez*, 694 S.W.3d at 436; *Lincoln Credit Co.*, 636 S.W.2d at 34. The question therefore is whether the Missouri Constitution provides the clear statement necessary to divest the General Assembly of its dual constitutional mandate over congressional redistricting. It does not.

Second, Appellant argues that referendum provisions must be “liberally construed,” citing *State ex rel. Voss v. Davis*, 418 S.W.2d 163 (Mo. 1967) and *Rekart v. Kirkpatrick*, 639 S.W.2d 606 (Mo. banc 1982). *See* App. Br. at 37-38, 42-43. But those cases merely concerned how courts apply the procedural machinery of the referendum and the initiative, not how they calibrate the *scope* of those provisions vis-à-vis other constitutional provisions. *Voss* resolved whether supplemental petition signatures could be collected after an

initial filing to satisfy the threshold for a charter-amendment petition. 418 S.W.2d at 167. And *Rekart* held unconstitutional a statute that permitted post-filing withdrawal of signatures from an initiative petition. 639 S.W.2d at 608. Neither case addressed the scope of the referendum power itself, much less a clash between the referendum and an express constitutional mandate to the General Assembly. *Voss* and *Rekart* thus provide no basis to override the clear-statement rule protecting the General Assembly's congressional redistricting authority.

Third, Appellant dismisses the deference owed the General Assembly as a narrow protection against “judicial overreach.” App. Br. 42-43. Quite the opposite. The General Assembly has “*all* the powers and privileges which are necessary to enable it to exercise in all respects . . . its appropriate functions, except so far as it may be restrained by the express provisions of the Constitution.” *Bohrer v. Toberman*, 227 S.W.2d 719, 723 (Mo. banc 1950) (emphasis added). Missouri's clear-statement rule reflects the constitutional reality that the General Assembly's plenary authority cannot be displaced by implication. If the baseline rule *already* requires resolving doubt in favor of the General Assembly's legislative acts, then surely even greater deference is warranted where the General Assembly exercises authority emanating from dual constitutional mandates. *See supra* at 16-17.

B. THE MISSOURI CONSTITUTION CONFIRMS THE GENERAL ASSEMBLY'S AUTHORITY OVER REDISTRICTING.

Appellant's sole effort to identify a clear statement ousting the General Assembly's congressional redistricting authority rests entirely on the generic referendum provision in Article III, Section 49. *See* App. Br. at 38. Section 49 provides that “[t]he people reserve power . . . to approve or reject by referendum any act of the general assembly.” Mo. Const. art. III, § 49. That

provision, however, says nothing about—and therefore does not supply a clear statement extending the referendum power to congressional redistricting, a domain Article III and the U.S. Constitution separately and specifically assign to the General Assembly. A generic provision that says nothing about congressional redistricting cannot do the work of divesting the General Assembly of the dual mandate the Missouri and U.S. Constitutions assign to it. Because Section 49 does not “expressly restrain[]” the General Assembly’s authority over congressional redistricting, it cannot limit, let alone oust, the General Assembly’s exercise of that authority. *Luther*, 730 S.W.3d at 571 (quotations omitted). And any doubt on that score must be resolved in favor of the General Assembly, not against it. *See Clay*, 481 S.W.3d at 537. That alone suffices to defeat Appellant’s claim. *See supra* Part I.A.

Appellant’s claim, moreover, runs headlong into the Missouri Constitution’s express exemption of redistricting from the referendum. Both Article III, Section 3(i) and Article III, Section 7(h) declare that “[n]o redistricting plan shall be subject to the referendum.” Sections 3(i) and 7(h) are unlimited and unqualified: Their plain terms do not, for example, limit their reach to state legislative redistricting or redistricting conducted by a commission. Instead, they broadly encompass *all* “redistricting plan[s],” regardless of which legislative body those plans pertain to or adopted them, and exempt *all* such plans from “the referendum.” Mo. Const. art. III, §§ 3(i), 7(h). The “plain, ordinary, and natural meaning” of these sections forecloses Appellant’s theory that HB 1 or any other congressional redistricting plan is subject to the referendum. *Luther*, 730 S.W.3d at 571.

Appellant resists this plain textual construction by suggesting that Sections 3(i) and 7(h) address state legislative redistricting by commissions, not congressional redistricting by the General Assembly. *See App. Br.* at 40-

41; *accord* Campaign Legal Center Amicus Br. at 7 n.3 (“CLC Amicus Br.”). But that reading renders Sections 3(i) and 7(h) superfluous—as Appellant’s own argument implicitly concedes. As even Appellant acknowledges, the referendum power in Section 49 applies only to “any act of the General Assembly.” Mo. Const. art. III, § 49. Redistricting conducted by a commission is not an “act of the General Assembly,” so it could never be subject to the referendum in the first place even under Appellant’s unbounded construction of Section 49. *See* App. Br. at 40-41; *accord* CLC Amicus Br. at 7 n.3. Indeed, if Sections 3(i) and 7(h) applied only to redistricting conducted by a commission, they would exempt from the referendum something that was *already* exempt under the referendum provisions’ own terms. Such a superfluous construction would violate the rule that this Court “must assume that every word contained in a constitution provision has effect, meaning, and is not mere surplusage.” *Robust Missouri Dispensary 3, LLC v. St. Louis Cty.*, 721 S.W.3d 135, 139 (Mo. banc 2025) (quotations omitted). Sections 3(i) and 7(h) must therefore be doing real work—and the *only* work they can do is to exempt from the referendum power redistricting by the General Assembly, the sole actor whose “act[s]” that power can even conceivably reach under Section 49. Mo. Const. art. III, § 49.

To be sure, Sections 3 and 7 contain other provisions that address state legislative redistricting by commissions. But that placement reflects the historical *impetus* for Sections 3(i) and 7(h): undoing this Court’s decision subjecting Senate redistricting to the referendum in *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932). That placement, however, does not limit the *scope* of Sections 3(i) and 7(h). And neither Section 3(i) nor Section 7(h) expresses any limitation on their reach. Moreover, Appellant’s suggestion that the redistricting “plan” referred to in Sections 3(i) and 7(h) is only a

commission-drawn “plan,” App. Br. at 40-41, again would render Sections 3(i) and 7(h) superfluous and overlooks this Court’s multiple prior decisions referring to HB 1 and prior congressional districting statutes as a “plan.” *Healey*, 732 S.W.3d at 852; *Johnson*, 366 S.W.3d at 20. In all events, the construction that Sections 3(i) and 7(h) cover congressional redistricting is at least “reasonable,” so any “doubt” must be resolved in favor of the General Assembly and against subjecting HB 1 to the possibility of nullification through the referendum. *Clay*, 481 S.W.3d at 537.

C. CONTEXT CONFIRMS THAT CONGRESSIONAL REDISTRICTING IS NOT SUBJECT TO THE REFERENDUM.

Context only confirms that a congressional redistricting statute duly enacted by the General Assembly cannot be subjected to the referendum process. Three features of Missouri’s legal landscape reinforce this conclusion.

First, in the more than eighty years since Missouri ratified its current Constitution in 1945, no referendum petition directed at a congressional redistricting plan has ever reached the ballot. *See* App. Br. at 44 (conceding the point). The lone attempt before *Maggard* occurred in 1952, when a group filed referendum petitions against the congressional map, but the petitions were held untimely because the statute had already taken effect. *See State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 705-06 (Mo. banc 1952). The complete absence of any successful referendum on a congressional map over eight decades of practice underscores that Missouri never deliberately chose to extend the referendum power to this domain. Indeed, given the relative ease of collecting signatures of “five percent of the legal voters in each of two-thirds of the congressional districts in the state,” Mo. Const. art. III, § 52(a)—and the charged political stakes involved in redistricting—one would expect that political opponents of the majority party in the General Assembly would have

forced a referendum on a congressional redistricting plan long ago if Missouri law provided a viable path to do so. But no such thing has occurred.

Second, as discussed, the 1945 Constitution itself repudiated the only decision of this Court that had ever sanctioned a referendum on legislative redistricting of any kind, thus confirming the Missouri Framers' distrust of referenda in the redistricting sphere. *See Gordon*, 49 S.W.2d 146; Debates of the 1943–1944 Constitutional Convention of Missouri 7016 (2008); *see also* Mo. Const. art. III, §§ 3(i), 7(h).

Third, Chapter 116, the statutory “framework for exercising the right of referendum” the General Assembly enacted in 1980, *see No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 487 (Mo. banc 2022), is incompatible with referenda on congressional maps. Two features are particularly telling. As an initial matter, Chapter 116 restricts the ballot summary for any referendum measure to a mere hundred words and makes no provisions for visual aids such as maps. *See* § 116.334, RSMo. Congressional redistricting is a uniquely complex undertaking involving considerations of population, compactness, geography, and communities of interest. *See generally Healey*, 732 S.W.3d 827. The notion that voters could meaningfully evaluate competing redistricting plans based solely on a hundred-word description defies reason. Had the General Assembly contemplated that Chapter 116 would govern referenda on congressional maps, it surely would have written it to furnish voters with far more information so they could make an informed choice regarding that complex issue.

Moreover, Chapter 116 sets the presumptive deadline for the Secretary's certification decision on the very same day as the August primary elections. *See* § 116.150.3, RSMo. No rational legislature would impose a certification timeline that extends to—or past—primary election day if it believed that a

referendum could displace the congressional map under which the very primary was conducted.

Appellant misses the point when he argues that “a statute cannot . . . abrogate a constitutional right.” App. Br. at 46. No one suggests it can. The point is not that Chapter 116 limits the referendum power; it is that Chapter 116 confirms that Missouri law has never contemplated the referendum reaching congressional redistricting. Courts routinely look to post-adoption practice to verify the meaning of constitutional provisions. *See NLRB v. Noel Canning*, 573 U.S. 513, 524 (2014) (“[L]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions.”) (quotations omitted); *Stuart v. Laird*, 5 U.S. 299, 309, 2 L. Ed. 115 (1803) (“[I]t is sufficient to observe, that practice and acquiescence under it for a period of several years . . . affords an irresistible answer, and has indeed fixed the construction. It is a contemporary interpretation of the most forcible nature.”). Here, Chapter 116’s incompatibility with referenda on congressional maps is powerful evidence that the referendum does not reach that domain.

These points confirm what the text already establishes: Ever since Missouri adopted the 1945 Constitution, the State has never—by constitutional provision, by statute, or by practice—subjected congressional redistricting to the referendum. At every turn where the question might have been addressed, Missouri’s framers and legislators either remained silent or affirmatively rejected referenda on redistricting.

D. THE REFERENDUM PROVISIONS IN SECTION 52 EXEMPT CONGRESSIONAL MAPS FROM THEIR COVERAGE.

If that were not enough, the text of Article III’s referendum provisions themselves further underscore that they exempt congressional redistricting

from their reach. Article III, Section 52(a) carves out from the referendum process “laws necessary for the immediate preservation of the public peace, health or safety.” Mo. Const. art. III, § 52(a). Legislation qualifies for this exception when there is “a crisis or emergency which requires immediate or quick legislative action for the preservation of the public peace, property, health, safety, or morals.” *State ex rel. Tyler v. Davis*, 443 S.W.2d 625, 631 (Mo. banc 1969).

Missouri courts have explained that this standard is satisfied when federal law imposes a deadline that the State must meet through prompt legislation. For example, in *Osage Outdoor Advertising, Inc. v. State Highway Commission*, 687 S.W.2d 566, 569-70 (Mo. App. 1984), the federal Highway Beautification Act required Missouri to enact effective billboard-control legislation before a set date or lose ten percent of its federal highway appropriation. After the General Assembly passed the required statute, the court upheld it as emergency legislation, explaining that “[t]his sequence of events demonstrates the necessity for immediate action by the legislature and prompt enactment of the law.” *Id.* at 569.

The case for the exception is even stronger here. Federal law requires each State’s Legislature to prescribe the times, places, and manner of holding congressional elections. *See* U.S. Const. art. I, § 4. Federal law also imposes several constitutional and statutory mandates with which Missouri must comply, including a nationwide federal general election day on the first Tuesday in November of even-numbered years, 3 U.S.C. § 1; 2 U.S.C. §§ 1, 7, and a strict 45-day ballot transmission requirement prior to any federal primary or general election, 52 U.S.C. § 20302(a)(8); *see also infra* at 46-48. HB 1 is the legislation through which Missouri satisfies those federal requirements for congressional elections. Just as the billboard statute in

Osage was necessary to avoid the loss of federal highway funds, HB 1 is necessary to avoid a far graver consequence: the inability to hold a constitutionally valid election. D63:P14 ¶ 69. “[T]he political franchise of voting” has long been recognized as “preservative of all rights,” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (quotations omitted), and legislation that makes a federal election possible is plainly necessary to preserve the public peace. D63:P14 ¶ 70. It cannot be held hostage by a small minority of voters who prefer a different redistricting plan—particularly when that minority seeks to impose on the public a different plan in the weeks between a primary and a general election.

This exception provides yet another textual basis to conclude that congressional redistricting legislation is not subject to the referendum. And even if this Court were not persuaded that this exception exempts congressional redistricting from the referendum, it at minimum creates doubt about whether the referendum power reaches this domain. Once again, this Court must resolve any such doubt in favor of the General Assembly’s enacted map. *Clay*, 481 S.W.3d at 537.

Appellant tries to evade this exception by suggesting that HB 1 does not qualify as emergency legislation because it does not contain “an emergency clause.” App. Br. at 39. But Appellant conflates two distinct constitutional provisions. The requirement that an emergency “must be expressed in the preamble or in the body of the act” appears in Article III, Section 29, which governs when a law takes effect, not whether it is subject to the referendum. Article III, Section 52(a), by contrast, exempts from the referendum “laws necessary for the immediate preservation of the public peace, health or safety” and imposes no textual requirement that the General Assembly include an emergency clause to invoke that exception.

This Court's decision in *Heinkel v. Toberman* illustrates the distinction. 226 S.W.2d 1012 (Mo. banc 1950). There, an emergency clause failed to receive the required two-thirds vote in either the House or Senate. *Id.* at 1013. Despite the absence of an emergency clause, the appellants contended the bill was not subject to the referendum because it was necessary for the immediate preservation of the public peace, health, or safety. *Id.* at 1016. The Court did not reject that argument on the ground that the legislation contained no emergency clause. *Id.* Instead, the Court evaluated the bill on its substantive merits under the Section 52(a) standard. *Id.* That analysis would have been altogether unnecessary if the lack of an emergency clause was a prerequisite to invoking the exception.

Appellant's cited cases only reinforce that conclusion. *State ex rel. Tyler v. Davis* states that "courts possess the final authority to determine whether an emergency in fact exists." 443 S.W.2d at 630 (quotations omitted). The test is not whether legislation contains an emergency clause, but whether "the factual situation is such that there is actually a crisis or emergency which requires immediate or quick legislative action for the preservation of the public peace, property, health, safety, or morals." *Id.* Meanwhile, *State ex rel. Harvey v. Linville* examined whether an emergency clause was sufficient to give legislation immediate effect under what is now Section 29. 300 S.W. 1066 (Mo. 1927). It never held—or even suggested—that an emergency clause was necessary to invoke the emergency exception under Section 52.

HB 1 satisfies the express exception in Section 52(a) in any event. The Court should affirm on this basis as well if it reaches the question.

II. FEDERAL LAW INDEPENDENTLY CONFIRMS THAT MISSOURI HAS NOT OUSTED THE GENERAL ASSEMBLY'S REDISTRICTING AUTHORITY. (Responds to Appellant's Point II).

Although Missouri law alone requires affirmance, federal law provides an independent basis for affirming the circuit court's judgment. As explained, when the General Assembly conducts congressional redistricting, it wields authority expressly granted it by the U.S. Constitution's Elections Clause. *See* U.S. Const. art. I, § 4. Federal law, in turn, imposes its own clear statement requirement before this federal legislative authority can be displaced. Missouri's referendum provisions do not satisfy that requirement for the same reasons they fail it under Missouri law: they say nothing about congressional redistricting.

A. CLEAR STATEMENT RULES PROTECT AND UPHOLD THE U.S. CONSTITUTION'S EXPRESS DELEGATIONS OF AUTHORITY.

Enforcing constitutional boundaries ranks among courts' most vital duties. Given the tendency of institutions to encroach on each other's powers, *see* THE FEDERALIST No. 51 (James Madison) (C. Rossiter ed., 1961), courts must serve as a "bulwark[]" against those incursions, THE FEDERALIST No. 78 (Alexander Hamilton) (C. Rossiter ed., 1961). Consistent with that role, courts will not lightly infer a significant restructuring of a constitutional allocation of power. Where the Constitution assigns authority to a specific actor, that power cannot be divested absent a clear statement. *See West Virginia v. EPA*, 597 U.S. 697, 735 (2022) (Gorsuch, J., concurring) (explaining that clear-statement rules "operate[] to protect foundational constitutional guarantees").

Courts deploy an array of clear statement rules to safeguard the prerogatives of each branch of the federal government in its proper sphere. For example, Article I of the Constitution delegates responsibility "to make the

laws that govern us” to “the people’s elected representatives.” *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. 109, 124 (2022) (Gorsuch, J., concurring). To protect Article I’s grant of authority, courts will not infer that Congress delegated to executive agencies the power to resolve major policy questions absent a clear statement. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000). This expectation of clarity reflects and reinforces the constitutional structure. *See West Virginia*, 597 U.S. at 723 (explaining that the major questions doctrine rests on “both separation of powers principles and a practical understanding of legislative intent”). “Because the Constitution vests Congress with ‘all legislative Powers,’ a reasonable interpreter would expect it to make the big-time policy calls itself, rather than pawning them off to another branch.” *Biden v. Nebraska*, 600 U.S. 477, 515 (2023) (Barrett, J., concurring) (citation omitted). Accordingly, the clear statement rule keeps the legislative power “where . . . it belongs.” *Nat’l Fed’n of Indep. Bus.*, 595 U.S. at 124 (Gorsuch, J., concurring).

Clear statement rules likewise protect the President’s constitutional prerogatives in Article II. It is axiomatic that “[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.” *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) (quotations omitted). So “unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect,” courts will presume it does not apply extraterritorially. *Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (cleaned up). In this context, the clear statement rule reflects the structural principle that Congress does not ordinarily intend to intrude on the President’s authority to conduct foreign relations. *See RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 348 (2016).

Underscoring the point, federal courts routinely employ clear statement rules to protect their Article III authority. Federal courts will not imply a repeal of their jurisdiction in “the absence of clear congressional language mandating” that result. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 483-84 (1991); *see also Goncalves v. Reno*, 144 F.3d 110, 122 (1st Cir. 1998) (applying “the long standing rule disfavoring repeal of jurisdictional provisions by implication”). For example, the U.S. Supreme Court has long required that if Congress intends to make exceptions to the U.S. Supreme Court’s appellate jurisdiction, it must do so with unmistakable clarity, not “by mere implication.” *Ex parte Yerger*, 75 U.S. 85, 106 (1869). This principle ensures that any retrenchment of federal courts’ core functions occurs, if at all, only by Congress speaking with the clarity the Constitution’s separation of powers demands.

Clear statement rules also help police the “constitutional balance of federal and state powers.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). The Constitution’s structure, including the Tenth Amendment’s reservation of powers, counsels restraint in inferring federal limitations on state authority. Hence, “if Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989) (cleaned up). This clear statement rule governs attempts to displace state sovereign immunity, *see Seminole Tribe v. Florida*, 517 U.S. 44, 55 (1996) (“unequivocal[] express[ion]” required “to abrogate the immunity”) (quotations omitted), to preempt state legislation, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (courts will assume state police powers not superseded “unless that was the clear and manifest purpose of Congress”), to impose conditions on states accepting federal funds, *see Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)

(“unambiguous[]” language required to “impose a condition on the grant of federal moneys”), and to criminalize conduct traditionally regulated by the states, *Bond v. United States*, 572 U.S. 844, 857 (2014) (absent “clear indication,” courts will not read statutes to “intrude[] upon traditional state criminal jurisdiction”) (quotations omitted).

The United States Supreme Court has long applied the same clear-statement principle to a State’s alleged surrender of sovereign authority. *Providence Bank v. Billings*, 29 U.S. 514, 561 (1830) (“[T]he relinquishment of such a power is never to be assumed” and “its abandonment ought not to be presumed[] in a case in which the deliberate purpose of the [S]tate to abandon it does not appear”). That rule extends beyond any particular sovereign power. *Jefferson Branch Bank v. Skelly*, 66 U.S. 436, 446 (1861) (“[N]othing passes but what has been granted in clear and explicit terms” and “neither the right of taxation, nor any other power of sovereignty, will be held by this Court to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken”). Indeed, the rule applies “with special force” when the claimed surrender “calls for any abridgment of the powers of the government, or any restraint upon their exercise.” *In re Delaware R.R. Tax*, 85 U.S. 206, 225–26 (1874) (“Nothing can be taken against the State by presumption or inference”; “rights, privileges, and immunities not expressly granted are reserved”; and “the surrender when claimed must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power”). A State therefore cannot be presumed, from general language or implication, to have surrendered or displaced authority expressly assigned by the U.S. Constitution to a particular state institution.

In short, across multiple doctrinal settings, clear statement rules serve as a structural safeguard ensuring that only a deliberately expressed choice—

not ambiguity or implication—can recalibrate the Constitution’s usual balance of shared authorities among competing actors.

B. THE ELECTIONS CLAUSE REQUIRES A CLEAR STATEMENT TO DISPLACE THE STATE LEGISLATURE’S REDISTRICTING AUTHORITY.

The Elections Clause, no less than other enumerated delegations, requires a clear statement before courts may determine that a state has reallocated power over redistricting from the state legislature. This clear statement rule flows from the Elections Clause itself, which expressly provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof; but the Congress may at any time by Law make or alter such Regulations” U.S. Const. art. I, § 4 (emphasis added).

This delegation reflects a reasoned constitutional settlement. The Framers recognized “electoral districting problems and considered what to do about them,” and they “settled on a characteristic approach, assigning the issue to the state legislatures, expressly checked and balanced by the Federal Congress.” *Rucho v. Common Cause*, 588 U.S. 684, 699 (2019). Courts “must respect” the Constitution’s “deliberate choice” to “expressly vest[] power” to conduct congressional redistricting “in ‘the Legislature’ of each State.” *Moore v. Harper*, 600 U.S. 1, 34 (2023).

As with other express delegations in the U.S. Constitution, courts require a clear statement before concluding that a state has displaced its legislature’s authority over congressional redistricting. It is well established that Congress must employ “positive and clear statutes” in order to override a state legislature’s prerogative to regulate federal elections. *United States v. Gradwell*, 243 U.S. 476, 485 (1917); *see also United States v. Oregon*, 828 F. Supp. 3d 1092, 1095-96 (D. Or. 2026) (same, citing *Gradwell*, 243 U.S. at 485);

United States v. Caldwell, No. CV 26-2025 (ZNQ) (JTQ), 2026 WL 2186515, at *3 (D.N.J. July 29, 2026) (same, citing *Gradwell*, 243 U.S. at 485). Because Congress—the sole actor the Elections Clause empowers to supersede state legislative regulations—may do so only through unmistakable, affirmative enactments, any contention that some state actor or process has displaced the state legislature’s redistricting role must at a minimum rest on equally explicit and unequivocal language. *Cf.* App. Br. at 54-55.

The U.S. Supreme Court’s Elections Clause cases confirm the point. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the U.S. Supreme Court weighed whether Arizona could create an independent commission to draw congressional districts. 576 U.S. 787, 792-93 (2015). The U.S. Supreme Court sustained that arrangement because Arizona’s Constitution expressly “remove[d] congressional redistricting authority from the State Legislature.” *Id.* at 796-97. Likewise, in *State of Ohio ex rel. Davis v. Hildebrant*, the U.S. Supreme Court considered whether a constitutional referendum could displace the Ohio General Assembly’s authority to redistrict. 241 U.S. 565, 566-67 (1916). The U.S. Supreme Court concluded that it could only because state law “conclusive[ly]” “ma[d]e[] it clear that . . . the referendum constituted a part of the state Constitution and laws” applicable to congressional redistricting. *Id.* at 568. In both cases, no doubt existed that the state had deliberately overridden the legislature’s authority. Both cases therefore disprove Appellant’s assertion that no case has ever applied a clear statement rule to the states. App. Br. at 53.

Appellant leans heavily on *Hildebrant*, suggesting that it establishes that a state may subject congressional redistricting to the referendum without any express constitutional statement to that effect. *See* App. Br. at 51-52. That account mischaracterizes *Hildebrant* in several respects.

First, the provisions of the Ohio Constitution at issue in *Hildebrant* materially differ from the provisions of the Missouri Constitution before this Court. Ohio had no provision vesting authority to draw congressional districts in the General Assembly. Missouri does. *See* Mo. Const. art. III, § 45. Moreover, Ohio had no provision exempting redistricting from the referendum. Missouri has two such provisions, each of which states in unqualified terms that “[n]o redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 3(i); *id.* § 7(h). Those provisions rebut Appellant’s argument that the language in *Hildebrant* was “functionally identical” to the language before this Court. App. Br. at 52.

Second, *Hildebrant* did not even address whether the Elections Clause permits a State to displace the legislature’s authority over congressional redistricting without a clear statement or through a referendum. *See Hildebrant*, 241 U.S. at 567-68; *see also Arizona State Legislature*, 576 U.S. at 840 (Roberts, C.J., dissenting) (“*Hildebrant* in no way suggested that the state legislature could be displaced from the redistricting process.”). Instead, the U.S. Supreme Court addressed only *Congress’s* authority under the Elections Clause as part of its inquiry into whether Congress had permitted a referendum to displace state legislative authority over congressional redistricting in the Appropriation Act of 1911. *See id.* at 568-69. There is no such issue of Congress’s authority in this dispute. Moreover, the only federal constitutional question the U.S. Supreme Court addressed with respect to Ohio’s state-law referendum arose under the Guarantee Clause. *See id.* at 569-70; *accord Arizona State Legislature*, 576 U.S. at 840 (Roberts, C.J., dissenting). The U.S. Supreme Court concluded that question was a nonjusticiable political question, *see Hildebrant*, 241 U.S. at 567-70—which

only *confirms* that the Court should reject Appellant's claim here, *see infra* at 42-45.

Third, Hildebrant arose in a non-election year. The referendum was conducted in November 1915, not between a primary and general election in the same year. *See* 241 U.S. at 566; 94 Ohio St. at 154-55. It thus did not present the concerns at issue here regarding disruption to an ongoing election in which more than 1.2 million citizens have already voted.

Fourth, Hildebrant pre-dated the U.S. Supreme Court's one-person, one-vote jurisprudence and other subsequent legal developments that require states to conduct congressional elections in equipopulous single-member districts. *See, e.g., Kirkpatrick v. Preisler*, 394 U.S. 526 (1969). At the time of *Hildebrant*, extending a referendum to a congressional map did not place the state in peril of violating the one-person, one-vote mandate or other federal requirements that foreclose Appellant's claim and requested relief here. Those developments fundamentally alter the analysis and render *Hildebrant* inapplicable to these circumstances.

Appellant also insists that *Smiley v. Holm*, 285 U.S. 355 (1932), did not require an express reference before recognizing a gubernatorial veto over congressional redistricting. App. Br. at 51. But *Smiley* had no occasion to address a clear statement rule. In evaluating whether the Minnesota Legislature's congressional redistricting plan was subject to a gubernatorial veto, the U.S. Supreme Court simply assumed that Minnesota had empowered the governor to exercise such a veto. *See, e.g., Smiley*, 285 U.S. at 365. *Smiley* did not address what state law must say in order to displace the legislature's constitutionally vested power to conduct congressional redistricting, nor did it analyze whether Minnesota had in fact conferred such authority by a clear statement. *See id.*

Moreover, even if *Smiley*'s silence on the antecedent question could be read to dispense with a clear statement rule for a gubernatorial veto, it would not support Appellant's effort to dispose of that rule for his proposed referendum for at least two reasons. *First*, the U.S. Supreme Court's later decision in *Arizona State Legislature* applies a clear statement rule. *See* 576 U.S. at 796-97. This Court is bound to follow the U.S. Supreme Court's holding in a case where the issue was actually presented, not its silence in a case where the issue was *not* presented. *See Mallory v. Norfolk Southern Ry. Co.*, 600 U.S. 122, 136 (2023) ("If a precedent of th[e] [U.S. Supreme] Court has direct application in a case . . . a lower court should follow the case which directly controls.") (cleaned up).

Second, *Smiley* comports with a longstanding historical tradition, known to the Framers of the Elections Clause, surrounding gubernatorial vetoes that is glaringly absent from Appellant's proposed referendum process. The executive veto is deeply rooted and broadly accepted as a core feature of the separation of powers. The Framers described the veto as a fundamental safeguard against legislative overreach and ill-considered legislation: Indeed, a veto is the executive branch's "major 'fortification'" against the tendency of legislative authority to "predominate[]." *Morrison v. Olson*, 487 U.S. 654, 698 (1988) (Scalia, J., dissenting) (quoting THE FEDERALIST No. 51 (James Madison) (C. Rossiter ed., 1961)). They therefore wrote it into the federal Constitution. *See* U.S. Const. art. I, § 7; THE FEDERALIST No. 73 (Alexander Hamilton) (C. Rossiter ed., 1961); *see also* 1 W. Blackstone, Commentaries *154 (noting the Crown's authority to "approve or disapprove" laws passed by both houses of Parliament). The same structural check appeared early and often in state constitutions, with several adopting veto mechanisms even before ratification of the federal Constitution. *See, e.g.,* Mass. Const. pt. II, ch. 1, art.

2 (1780) (gubernatorial veto); N.Y. Const. art. III (1777) (veto by council of revision, composed of governor, chancellor, and judges of the Supreme Court).

It therefore comes as no surprise that, prior to *Smiley*, Minnesota treated the veto as a settled feature of its constitutional landscape, even as to redistricting. Minnesota explicitly enshrined the gubernatorial veto in its original constitution in 1857. *See* Minn. Const. art. IV, § 11 (1857). And beginning the next year, when the Minnesota Legislature passed the state's first congressional map, the governor approved the map before it was enacted into law on seven separate occasions. *See* Laws of Minnesota 1858, c. 83; 1872, c. 21; 1881, c. 128; 1891, c. 3; 1901, c. 92; 1913, c. 513; 1929, c. 64. This unbroken course of practice confirmed that congressional redistricting in Minnesota was always treated as legislation subject to the executive check of a gubernatorial veto. So, far from relaxing any requirement of a clear statement, *Smiley*—at most—presupposed that the Framers of the Elections Clause were aware of gubernatorial veto power and contemplated that the entrenched historical practice of gubernatorial vetoes could bear on state legislatures' exercise of their authority under the Elections Clause.

But that presupposition, if any, is unilluminating with respect to procedures, such as Appellant's proposed referendum, that were unknown to the Framers of the Elections Clause. Indeed, Missouri did not amend its constitution to provide for a referendum until 1908, 120 years after ratification of the Elections Clause. *See Marsh v. Bartlett*, 121 S.W.2d 737, 742 (Mo. 1938). And where a state purports to transfer its legislature's Elections Clause authority to conduct congressional redistricting to a novel process not contemplated by the Framers, it must make a clear statement to do so. *See, e.g., Arizona State Legislature*, 576 U.S. at 796-97 (involving redistricting commission, which did not exist at the Founding).

Thus, if anything, *Smiley* actually *confirms* that the clear statement rule is alive, well, and applicable to Appellant’s attempt to wield the power to “prescribe[]” a congressional redistricting plan that the Elections Clause vests in the General Assembly. U.S. Const. art. I, § 4; *see also Arizona State Legislature*, 576 U.S. at 796-97; *id.* at 825 (Roberts, C.J., dissenting).

C. MISSOURI’S REFERENDUM PROVISIONS DO NOT PROVIDE A CLEAR STATEMENT DISPLACING THE GENERAL ASSEMBLY’S AUTHORITY.

The Missouri Constitution does not supply *any* statement—let alone a clear one—reallocating authority over congressional redistricting away from the General Assembly to a referendum process. Article III, Section 45 mandates that “the *general assembly* shall by law divide the state into [congressional] districts,” Mo. Const. art. III, § 45 (emphasis added); *see supra* at 14-15. Indeed, the Missouri Constitution supplies the opposite of what Appellant needs by declaring that “[n]o redistricting plan shall be subject to the referendum.” Art. III, § 3(i); *id.* § 7(h); *see supra* at 19-21.

Pretending that Sections 3(i) and 7(h) do not exist, Appellant again points to the generic referendum provision in Article III, Section 49, which provides that “[t]he people reserve power . . . to approve or reject by referendum any act of the general assembly.” Mo. Const. art. III, § 49; *see App. Br.* at 55-56. This is a textbook example of a broad, undifferentiated clause that does not provide a clear statement overriding the U.S. Constitution’s express grant of authority over congressional redistricting to the General Assembly. *See Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 139 (2005) (plurality opinion) (“[C]lear statement rules ensure [the state] does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation.”). Section 49 gives no indication that Missouri “specifically considered” whether to displace the General Assembly’s federally

assigned authority over redistricting and “intentionally legislated on the matter.” *Sossamon v. Texas*, 563 U.S. 277, 290 (2011). Accordingly, it does not provide a “conclusive” statement divesting the General Assembly of its Elections Clause authority over congressional redistricting, much less vesting that authority in the referendum process. *Hildebrant*, 241 U.S. at 568.

Appellant retreats to a slanted historical account of congressional redistricting in Missouri. *See* App. Br. at 17, 48. His position boils down to this: On a single occasion, before Missouri adopted its current Constitution, voters subjected congressional redistricting to a referendum. No court addressed the legality of the referendum then or since, but a few courts opined in dicta (decades later) that a referendum was permissible. One such case was *Gordon*, which the Framers of the 1945 Constitution explicitly abrogated. *See* Debates of the 1943–1944 Constitutional Convention of Missouri 7016 (2008). The others that postdate the 1945 Constitution did not concern the Elections Clause. *See Preisler v. Hearn*, 362 S.W.2d 552, 557 (Mo. banc 1962) (rejecting a one-person, one-vote challenge); *Toberman*, 250 S.W.2d at 706-07 (Mo. banc 1952) (holding that a petition for a referendum of a congressional apportionment was untimely).

It is unclear what Appellant thinks these isolated data points establish. Dicta obviously cannot provide a “conclusive” statement of Missouri law. *Cf. Hildebrant*, 241 U.S. at 568 (explaining that the state supreme court’s “conclusive” determination provided the requisite clarity). Nor can a single historical aberration predate the current Missouri Constitution. Indeed, despite the fact that a minority party has every incentive and nothing to lose from challenging the majority party’s redistricting plan, Missouri has subjected no congressional plan to a referendum vote since the state adopted its latest Constitution in 1945. Appellant’s attempt to circumvent the General

Assembly's authority over redistricting through the referendum process is, quite literally, unprecedented. Lacking any clear statement in Missouri law to support that transparently political gambit, it must fail.

The Campaign Legal Center and the ACLU also point to 2 U.S.C. § 2c, which provides that congressional representatives “shall be elected only from districts so established by law.” *See* CLC Amicus Br. at 17. Amici argue that because Congress chose the phrase “established by law” rather than “established by the legislature,” it affirmatively authorized states to use referenda to enact or reject congressional plans without a clear statement. *Id.* But a congressional statute cannot command an unconstitutional result—so Congress cannot use its Elections Clause authority to permit states to violate *other* requirements of the Constitution. For example, a congressional enactment purporting to authorize states to violate the one-person, one-vote mandate in congressional redistricting, *Kirkpatrick*, 394 U.S. at 527-28, would not be constitutional merely because it was a congressional “Law” regulating the “Manner” of congressional elections, U.S. Const. art. I, § 4, cl. 1. So too here, a congressional enactment authorizing states to use the referendum cannot make such use constitutional absent the clear statement in state law the Constitution otherwise requires (and Missouri law lacks), *see Gradwell*, 243 U.S. at 485, and without accounting for equitable restraints on judicial orders in the lead-up to an election, *see infra* Part V.

III. THE U.S. CONSTITUTION INVALIDATES ARTICLE III, SECTION 52(b) AS APPLIED TO A CONGRESSIONAL MAP ENACTED BY THE LEGISLATURE. (Responds to Appellant's Points III and IV).

Appellant's claim fails for another reason. Even if Missouri's referendum provisions could somehow be read to encompass congressional redistricting, the U.S. Constitution would not permit it. *See* U.S. Const. art. VI; Mo. Const.

art. I, § 4. Both the Elections Clause and the Guarantee Clause forbid the application of Article III, Section 52(b) to a congressional map enacted by the General Assembly.

As discussed, the Elections Clause vests redistricting authority squarely in the state legislature. *See* U.S. Const. art. I, § 4; *see supra* at 31-32. Indeed, the U.S. Supreme Court recently cautioned that state law may not be wielded to “arrogate” the “power vested in state legislatures to regulate federal elections.” *Moore*, 600 U.S. at 36.

That is precisely what would happen if Article III, Section 52(b) applies to congressional maps. Courts have held that Section 52(b) provides that legislation subject to a referendum is suspended once a sufficient petition is filed. Mo. Const. art. III, § 52(b); *see also Maggard*, 733 S.W.3d at 418. A referendum petition is sufficient if signed by merely “five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a). On Appellant’s theory, a small fraction of voters can freeze a congressional map duly enacted by the General Assembly before any majority of Missourians has voted for or against it—and even *after* that map has been used to conduct primary elections.

That theory inverts the constitutional design. The Elections Clause guarantees that the People’s elected representatives control the time, place, and manner of federal elections.¹ But according to Appellant, a small,

¹ “Both the Constitution and our cases make clear that ‘the Legislature’ in the Elections Clause is the representative body which makes the laws of the people.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 827 (2015) (Roberts, C.J., dissenting). In *Arizona State Legislature*, the four members of the dissent strongly opposed the position that the “people” can be the “legislature” under the Elections Clause. That dissent, penned by Chief Justice Roberts and joined by Justices Alito, Thomas and Scalia, calls into question the entire validity of a referendum on a congressional

unelected minority would wield effective veto power over the General Assembly's redistricting decisions. This case illustrates the point. HB 1 passed overwhelmingly in both chambers of the General Assembly and was signed by the Governor. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025). Yet Appellant claims that a small minority of voters can suspend the map months before the election without any statewide vote. The Elections Clause forbids any arrangement that would so thoroughly “annihilate[]” the General Assembly's redistricting authority. *Hildebrant*, 241 U.S. at 569.

Appellant continues to suggest that *Hildebrant* “reject[ed] Elections Clause challenges to referenda on redistricting bills.” App. Br. 58-59. It did nothing of the sort. *See supra* at 32-34. But even if *Hildebrant* could be read to approve the *concept* of a referendum on a congressional map, it certainly does not approve the relief Appellant seeks here. In *Hildebrant*, the people of Ohio actually voted to reject a redistricting plan in a non-election year. 241 U.S. at 566. Here, by contrast, Appellant claims that petition signatures from a fraction of Missouri's electorate can suspend the General Assembly's map before any statewide vote occurs and after that map has already been used to conduct primary elections. *Hildebrant* approved no such maneuver.

Appellant's response is alarmingly flip. Suspension, he asserts, is “how the referendum works.” *See* App. Br. 60-62. But he cites no case that has ever approved suspending a congressional map mid-election cycle, between a primary and general election, on the basis of petition signatures representing

district map and in light of the changed nature of the U.S. Supreme Court, seems likely to now consist of a majority view of the members of the current court.

a sliver of the electorate. Instead, he seems to think that because *Hildebrant* approved a referendum on a congressional map in one context (which, as explained, it did not), a referendum may be deployed at any time, under any circumstances, with any consequences. That does not follow. In fact, this Court and the U.S. Supreme Court have expressly *forbidden* late-breaking changes to election machinery precisely because of the disruption they inflict on voters, candidates, and officials who have already acted in reliance on existing law. *See infra* Part V. For similar reasons, the suspension of HB 1 by a fraction of voters would violate the Elections Clause by stripping the General Assembly of its redistricting authority at the moment that authority matters most—when an election is underway.

The Guarantee Clause compels the same conclusion. That clause provides that “[t]he United States shall guarantee to every State in this Union a Republican Form of Government.” U.S. Const. art. IV, § 4. A republican government is one in which “the scheme of representation takes place”—that is, the people govern through elected representatives who enact laws on their behalf. *THE FEDERALIST* No. 10 (Madison) (C. Rossiter ed., 1961). “[T]he distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves.” *Duncan v. McCall*, 139 U.S. 449, 461 (1891); *accord Madden v. Missouri Pac. Ry. Co.*, 192 S.W. 455, 458 (Mo. banc 1917) (Woodson, J., concurring in the judgment).

Appellant’s proposed regime is the antithesis of a republican form of government. On his theory, a small minority of voters can nullify a congressional map enacted by the People’s elected representatives without any majority vote. *See THE FEDERALIST* No. 22 (Hamilton) (C. Rossiter ed., 1961);

THE FEDERALIST No. 58 (Madison) (C. Rossiter ed., 1961) (“it would no longer be the majority that would rule: the power would be transferred to the minority”). And Appellant’s requested remedy makes the affront even starker: he seeks the “immediate suspension” of HB 1, D2:P6 ¶¶ 42-43, which would leave Missouri with no congressional map whatsoever for the imminent general election (except, presumably, one ordered by the judiciary). Permitting a sliver of the electorate to void the “legitimate acts . . . of the people themselves” cannot be squared with Missouri’s constitutional duty to maintain a republican form of government. *Duncan*, 139 U.S. at 461.

Appellant concedes away his case by arguing that “Guarantee Clause arguments are non-justiciable.” App. Br. 65 (cleaned up). At trial, he similarly argued that “[t]he question of what best effectuates a ‘republican form of government’ is” not committed to “the courts.” D62:P21. Appellant is correct, as the circuit court ruled. D63:P24-25 ¶ 117. *Hildebrant* squarely holds that “the question of whether that guaranty of the Constitution has been disregarded presents *no justiciable controversy*.” 241 U.S. at 569 (emphasis added). Here, the Secretary determined that permitting a fraction of voters to nullify the General Assembly’s duly enacted congressional map is irreconcilable with Missouri’s obligation to maintain a republican form of government. *See* D63:P24 ¶ 117; D27:P9. That is precisely the kind of determination the Guarantee Clause commits to the political branches.

Contradicting his concession that Guarantee Clause questions are nonjusticiable, Appellant nonetheless argues that this Court can review the Secretary’s determination under the Guarantee Clause. *See* App. Br. 66-67. His main thrust is that otherwise the Secretary could reject any referendum petition by invoking the clause. *Id.* Even this position reflects Appellant’s selective advocacy: He elsewhere asks the Court to disregard “the

consequences” of the legal positions he advocates. App. Br. 62. In any event, this argument is a red herring. The Secretary’s determination rests on the ground that *this* petition is irreconcilable with republican government because it would allow a small minority to nullify representative action on a matter the Constitution assigns to the People’s elected representatives. The Secretary has never claimed any authority to reject referenda writ large for failure to comply with the Guarantee Clause.

Appellant also resorts to the remarkable argument that the Secretary either did not, or lacks authority to, adhere to the U.S. Constitution. *See* App. Br. 57-58. Appellant is wrong at the threshold when he says “[t]he Secretary did not claim to base his insufficiency determination on the federal constitution.” App. Br. 57. The Secretary incorporated by reference the Attorney General’s opinion, *see* D27:P3, which explains that “the Elections Clause and the Guarantee Clause of the U.S. Constitution would . . . require Missouri to implement the HB 1 map for the 2026 election,” D27:P8.

Appellant’s related premise that the Secretary lacks authority to abide by—and therefore is required to *ignore*—federal law and the U.S. Constitution when reviewing a referendum petition is multiply erroneous. *Every* state officer in America must apply and adhere to the U.S. Constitution—the supreme law of the land—in every action he undertakes. *See* U.S. Const. art. VI; Mo. Const. art. I, § 4; *supra* at 12. No statute or state constitutional provision can override that obligation. *See* U.S. Const. art. VI. Indeed, the Secretary of State’s oath *requires* that he “support the Constitution of the United States and of this state.” Mo. Const. art. VII, § 11. The notion that the Secretary must bury his head in the sand at a violation of the U.S. Constitution in order to enforce a state referendum provision—that does not even govern by its own terms—flips the Supremacy Clause on its head.

As to the Guarantee Clause specifically, the Secretary's obligation runs even more directly. The U.S. Supreme Court has held that the Guarantee Clause "necessarily implies a duty on the part of the States themselves to provide" a republican form of government. *Minor v. Happersett*, 88 U.S. 162, 175 (1874). That duty falls on state officers, including the Secretary. And Appellant insists that his compliance with that duty is unreviewable by any court. For this reason too, the Secretary's judgment must stand.

Appellant's reliance on a nonbinding lower appellate decision in *Missouri Electric Cooperatives v. Kander*, 497 S.W.3d 905 (Mo. App. W.D. 2016), is misplaced. See App. Br. 57-58. There, opponents of a proposed campaign finance initiative sought to block it from the ballot on the ground that its contribution limits would violate the First Amendment and Equal Protection Clause if enacted by voters. 497 S.W.3d at 908-09. The Court of Appeals deemed the challenge not ripe for pre-election review because it demanded a substantive *merits* review of a constitutional amendment that did not exist. See *id.* at 915, 920-21. At the same time, however, the court reaffirmed that the Secretary can review whether a petition satisfies constitutional requirements pertaining to its "*procedure and form*," including threshold eligibility questions about whether the petition is constitutionally permitted to appear on that ballot at all. See *id.* at 912-14, 920 (emphasis added).

This case falls on the "form" side of that line, not the "merits" side. Appellant is not proposing new legislation whose future constitutionality is speculative. He is seeking to subject *existing* legislation to a referendum—and the question is whether the referendum power extends to that subject matter. That is a threshold determination, not a substantive assessment of any law's merits, and it is precisely the type of inquiry *Missouri Electric Cooperatives* preserved for the Secretary.

In any event, Appellant reads too much into the court's statement that "[t]he sufficiency determination the Secretary of State is required to conduct plainly does not include whether an initiative petition complies with the Federal Constitution." *Id.* at 920. Even assuming that statement is correct, it merely describes what Section 116.120.1 "*require[s]*." It does not hold that the Secretary is *prohibited* from considering federal structural limits on the referendum when conducting his review. Nor could it. As already explained, the Supremacy Clause independently requires the Secretary to review the petition for compliance with federal law.

IV. FEDERAL LAW FORECLOSES ANY ALTERATION TO MISSOURI'S CONGRESSIONAL MAP AT THIS LATE STAGE OF THE ELECTORAL PROCESS. (Responds to Appellant's Points V and VI).

Even if this Court were to conclude that the Missouri Constitution authorizes referenda on congressional maps and that the U.S. Constitution does not invalidate Section 52(b) as applied, federal law would still prohibit Appellant's requested relief: "immediate suspension of the use and implementation of HB 1." D2:P6 ¶¶ 42-43; *see also* D2:P8. More than 1.2 million Missourians have *already* voted under the HB 1 map in the primary elections. *See* State Of Missouri Election Results – Primary Election August 4, 2026, *available at* <https://enr.sos.mo.gov/> (last visited Aug. 24, 2026). Appellant asks the Court to nullify those votes and adopt some other congressional map for the imminent general election. Doing so would violate federal law several times over.

First, UOCAVA protects the voting rights of military service members and citizens living abroad by requiring state election officials to transmit absentee ballots no fewer than 45 days before any federal election. *See* 52 U.S.C. § 20302(a)(8); *see also* § 115.914, RSMo. That requirement applies

independently to each federal election, including a primary. Accordingly, if this Court were to suspend the use of HB 1, UOCAVA would require ballot transmission to military and overseas voters 45 days before any primary under the new map. Missouri law would then require a three-day waiting period after the primary before the results could be certified. *See* §§ 115.920.1, 115.508, RSMo. And UOCAVA would again require ballot transmission 45 days before the subsequent general election on November 3, 2026. 3 U.S.C. § 1; 2 U.S.C. §§ 1, 7. The arithmetic is straightforward: The State needs 93 days minimum before the general election on November 3, 2026, to comply with the federal election day statute and UOCAVA.

That deadline has already passed. *See Foster v. Love*, 522 U.S. 67, 74 (1997) (holding that a State may not conduct federal elections in conflict with congressionally mandated timing under 2 U.S.C. § 7). An injunction against HB 1 would therefore require state officials to violate federal law. And UOCAVA is enforceable by the U.S. Attorney General in federal court, 52 U.S.C. § 20307(a), meaning that Appellant's requested relief would expose Missouri officials to an adverse federal injunction. The Secretary correctly avoided that result by declining to certify the referendum petition. *See* D63:P27 ¶ 132; D27:P9-10.

Appellant disputes none of this. Instead, he suggests that a state may seek a waiver of UOCAVA's timeline when it faces "undue hardship." App. Br. 80. But it is entirely fanciful to think that the State could obtain a waiver at this juncture. To illustrate, Ohio requested a hardship waiver in 2022 roughly nine weeks before the 2022 *primary election*, explaining that "the Ohio Redistricting Commission has not adopted a Congressional district map approved by the Ohio Supreme Court, and legal contests in state and federal

court are ongoing.” See Frank LaRose, Ohio Sec’y of State, 2022 Ohio Undue Hardship Waiver Request, at 2 (Feb. 26, 2022), <https://www.fvap.gov/uploads/FVAP/EO/2022-Ohio-Undue-Hardship-Waiver-Request.pdf>. Ohio also proposed an alternative plan that still allowed “UOCAVA voters 38 days to return their absentee ballot.” *Id.* Despite Ohio’s proposal, the federal government rejected the State’s request for a waiver. See Ltr. from Gilbert R. Cisneros, Jr., Under Sec’y of Defense, Denial of the State of Ohio’s Waiver Request (Mar. 4, 2022), <https://www.fvap.gov/uploads/FVAP/EO/DoD-Response-Letter.pdf>. Given the timeline before the general election, it defies credulity that the federal government would grant Missouri a waiver for a new primary and general election before November 3, 2026.

Second, holding a general election under a different congressional map than the one used in the August 4 primary would violate Article I, Section 2 of the U.S. Constitution. That provision guarantees that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States.” U.S. Const. art. I, § 2. The U.S. Supreme Court has long recognized that “[w]here the state law has made the primary an integral part of the procedure of choice,” then “the right of the elector to have his ballot counted at the primary[] is likewise included in the right protected by Article I, § 2.” *United States v. Classic*, 313 U.S. 299, 318 (1941).

Missouri law makes the primary integral: “all candidates for elective office shall be nominated at a primary election,” § 115.339, RSMo., and “[t]he person receiving the greatest number of votes at a primary election as a party candidate for an office shall be the only candidate of that party for the office at the general election,” § 115.343, RSMo. A candidate may be replaced only if he or she dies, is disqualified, or voluntarily withdraws. See § 115.363.3(1)-(3), .4, RSMo. This Court has thus confirmed that “primary elections have

constitutional stature” and serve as an “*integral* part of [the State’s] election machinery.” *State ex rel. McClellan v. Kirkpatrick*, 504 S.W.2d 83, 86 (Mo. banc 1974) (emphasis added).

Appellant’s requested relief plainly violates the right of Missouri voters to have their ballot counted. More than 1.2 million Missourians voted in the August 4 congressional primaries under the HB 1 map and selected nominees in each of Missouri’s eight districts. Appellant asks this Court to ignore those votes, *see* D2:P6 ¶¶ 42-43; *see also* D2:P8, stripping the nominees of the mandate their voters conferred. Article I, Section 2 forbids this result.

Appellant assures this Court that “every Missourian who voted in the August 4 primary had their votes counted.” App. Br. at 76 (emphasis omitted). But counted for what? In the very next section, Appellant argues that the nominees those votes produced are “disqualified” and that party committees—not voters—will select replacement candidates. *See id.* at 84-86. In other words, more than 1.2 million Missourians participated in a primary that, on Appellant’s own theory, elected no one. That is precisely the harm Article I, Section 2 prohibits.

Appellant’s analogy to the substitution of a candidate who has died or withdrawn under Section 115.363 misses the point entirely. *See* App. Br. 84-85. When a candidate must be replaced, the district stays constant, including its boundaries, electorate, and opposing-party nominee. Changing the congressional map, by contrast, reassigns hundreds of thousands of voters to entirely different districts, with different boundaries, different candidates, and different opponents—none of whom those voters ever had the chance to evaluate in the primary. That is not a ballot change. It is the wholesale dismantling of the election those voters already participated in.

The U.S. Supreme Court has long recognized that primary and general elections are not separate events but a unified process. In *Smith v. Allwright*, the Court described “[t]he fusing . . . of the primary and general elections into a single instrumentality for choice of officers.” 321 U.S. 649, 660 (1944). Because the primary and general election constitute a “single instrumentality for choice of officers,” *id.*, then changing the districts between those two stages does not merely alter the ballot; it fractures the instrumentality itself. *See also Storer v. Brown*, 415 U.S. 724, 735 (1974) (describing the primary as “not merely an exercise or warm-up for the general election but an integral part of the entire election process, the initial stage in a two-stage process by which the people choose their public officers”).

Third, an order requiring a general election under a different congressional map than the one used in the primary would violate the Equal Protection Clause. U.S. Const. amend. XIV, § 1. The U.S. Supreme Court has held that primary-election procedures constitute “‘state action’ within the meaning of the Fourteenth Amendment” and “must be exercised in a manner consistent with the Equal Protection Clause.” *Bullock v. Carter*, 405 U.S. 134, 140-41 (1972). The U.S. Supreme Court has also made clear that “[o]nce the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote . . . wherever their home may be in that geographical unit.” *Gray v. Sanders*, 372 U.S. 368, 379 (1963).

Appellant’s proposed remedy would violate this standard. If the congressional map changes between the primary and general elections, it would force hundreds of thousands of Missourians to vote in a district different from the one in which they cast their primary ballots. *See* D63:P29 ¶ 145. Those voters would possess materially less voting power than voters whose

district remained the same because the former group would have to select from candidates they never had the opportunity to evaluate, support, or oppose in the primary. *See* D63:P29 ¶ 146. They would thus be denied the right to choose their own representative through the integrated primary and general elections. Meanwhile, voters who happened to remain in the same district would retain the full benefit of their primary vote. *See* D63:P30 ¶ 147. An order changing the congressional map would thus create two classes of voters—those who had the opportunity to select their general election candidate and those who did not—in direct violation of the Equal Protection Clause. *See id.*

Appellant protests that neither the HB 1 districts nor the 2022 districts “accord one class of persons more voting power than another.” App. Br. at 78. That misses the point entirely. The equal-protection violation arises not from any deficiency in either plan standing alone, but from *switching* plans between the primary and general election—thereby creating two classes of voters.

Appellant also accuses the circuit court of relying on unsupported factual assertions when it concluded that hundreds of thousands of voters would change districts. *Id.* at 79. But the circuit court cited the Jackson County circuit court’s findings in *Wise v. State* and *Healey v. State*, which, after a four-day trial concerning the constitutionality of HB 1, meticulously evaluated the differences between HB 1 and the 2022 plan, and concluded that hundreds of thousands of voters would move to new districts. *See* D63:P4-5 ¶ 20. Appellant cites no contrary evidence to rebut that finding.

In short, regardless of how this Court reads the Missouri Constitution, it cannot order the State to use a different congressional map than the one under which Missouri conducted the 2026 primary elections. Federal law precludes that result.

V. THE COURT SHOULD NOT ORDER ANY CHANGES TO THE GENERAL ASSEMBLY'S DULY ENACTED MAP FOR THE ONGOING 2026 ELECTION. (Responds to Appellant's Points VII and VIII).

Finally, even setting aside the various insurmountable barriers to Appellant's claim, fundamental equitable principles applied by this Court and the U.S. Supreme Court in prior cases also foreclose any changes to the General Assembly's duly enacted map for the ongoing 2026 election. Missouri has already completed its August 4 primary elections, in which over 1.2 million Missourians selected nominees who are now the only candidates of their respective parties for the general election, *see* § 115.343, RSMo., which will be completed less than ten weeks from now, *see* D63:P31 ¶ 150. Any judicially ordered changes to the map at this late juncture would "result in voter confusion and consequent incentive to remain away from the polls" and erode the "[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006); *accord Hadley*, 460 S.W.2d at 2.

Months ago, the U.S. Supreme Court stayed a three-judge federal district court's order enjoining use of Texas's 2025 congressional redistricting plan and requiring the State to revert to its 2022 plan. *Abbott v. League of United Latin American Citizens*, 607 U.S. ----, 146 S. Ct. 418, 419 (2025). The district court issued its injunction shortly after the opening of candidate filing, approximately four months before the primary, and eleven months before the November 2026 general election. *See League of United Latin Am. Citizens v. Abbott*, 809 F. Supp. 3d 502 (W.D. Tex. 2025). The U.S. Supreme Court issued the stay because the district court had "improperly inserted itself into an active primary campaign, causing much confusion" with its late-breaking injunction. *Abbott*, 146 S. Ct. at 419; *see Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir.

2022) (per curiam), *stay issued sub nom.*, *Ardoin v. Robinson*, 142 S. Ct. 2892, 2892-93 (June 28, 2022) (staying injunction of congressional redistricting plan issued five months before primary elections); *Callais v. Landry*, 732 F. Supp. 3d 574, 613-14 (W.D. La. Apr. 30, 2024), *stay issued sub nom.*, *Robinson v. Callais*, 144 S. Ct. 1171 (May 15, 2024) (staying injunction of congressional redistricting plan issued more than six months before the next election).

It is a “basic tenet of election law” that “[w]hen an election is close at hand, the rules of the road should be clear and settled.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (mem.) (Kavanaugh, J., concurring). “[L]ate-breaking, court-ordered rule changes can ‘result in voter confusion and consequent incentive to remain away from the polls,’ and thus undermine the ‘[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy.’” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026) (quoting *Purcell*, 549 U.S. at 4-5); see also *Abbott*, 146 S. Ct. at 419. After all, “running a statewide election is a complicated endeavor,” involving “a host of difficult decisions about how best to structure and conduct the election.” *Democratic Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). And those decisions must then be communicated to the “state and local officials” tasked with implementing them, who in turn “must communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting.” *Id.* When a “court alters election laws near an election,” *id.*, candidates, voters, and even officials are left scrambling to understand the court-imposed alteration, “inviting confusion and chaos and eroding public confidence in electoral outcomes,” *id.* at 30 (Gorsuch, J., concurring).

These considerations counsel judicial restraint and deference to the democratic process on the eve of an election. The General Assembly is responsible for redrawing the State’s congressional districts. *See* Mo. Const. art. III, § 45; U.S. Const. art. I, § 4, cl. 1; *see also* *Ariz. State Legis. v. Ariz. Ind. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). This allocation makes practical sense. Legislatures “enjoy far greater resources for research and factfinding” than courts, and “make policy and bring to bear the collective wisdom of the whole people when they do, while courts dispense the judgment of only a single person or a handful.” *Democratic Nat’l Comm.*, 141 S. Ct. at 29 (Gorsuch, J., concurring). “It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a . . . court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent.” *Id.* at 31 (Kavanaugh, J., concurring).

Missouri’s own precedent reinforces these principles. In *Hadley v. Junior College District of Metropolitan Kansas City*, this Court confronted a remand after the U.S. Supreme Court found that junior college trustee districts violated the one-person, one-vote principle. *See* 460 S.W.2d at 1. By the time this Court addressed the case, the State’s election machinery was already in motion. Five candidates had filed for office, officials had begun printing absentee ballots and adjusting voting machines, and the State had already incurred substantial expense. *Id.* at 2-3. Moreover, the candidate-filing deadline fell just two days away and the election itself loomed one month out. *Id.* In light of these considerations, this Court held that “it would be wholly inequitable and impracticable to attempt at this late date to apply the principles enunciated” by the U.S. Supreme Court, and ordered the election to proceed under the existing apportionment. *Id.* In other words, even a *proven*

violation of the U.S. Constitution could not justify disrupting an ongoing election. As this Court explained, “a court is entitled to *and should* consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Id.* at 2 (emphasis added) (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)).

This case presents the exact scenario *Hadley* and *Purcell* were designed to prevent. If courts cannot change a congressional map four months before a primary, see *Abbott*, 146 S. Ct. at 419, they certainly cannot do so *after* the primary has already occurred and mere weeks before the general election. Candidate filing closed months ago. Over 1.2 million Missourians voted in the August 4 primary. Nominees have been selected. Campaigns for the general election are underway. See D63:P34 ¶ 165. Appellant does not even attempt to explain how State officials could reverse course and implement some entirely new map, how nominees selected by voters in one set of districts would campaign in different ones, or how voters would make sense of a last-minute overhaul of the districts they just voted in. The disruption Appellant seeks would dwarf anything contemplated in *Abbott*, *Ardoin*, or *Callais*—and the U.S. Supreme Court stayed all of those injunctions as impermissible.

Appellant’s brief only confirms that the disruption to voters, candidates, and officials alike would be staggering. Appellant concedes that reverting to the 2022 districts would “disqualify” *every* nominee chosen by voters in the August 4 primary. App. Br. 83-85. His proposed solution? Forcing party nominating committees to “convene and select nominees” from scratch without any input from the electorate. *Id.* at 14.

Step back and consider what this would mean. Weeks before a general election, party committees would scramble to convene and designate replacements in new districts. Then, those replacement candidates would have

to familiarize themselves with new voters in different districts, many of whom chose entirely different nominees just weeks earlier. Candidates would also abandon months of campaign investment and strategy in districts that no longer exist, and somehow start from scratch in unfamiliar territory. And at the same time, local election authorities would have to reassign hundreds of thousands of voters, reprint ballots, and communicate an entirely new electoral plan to the public. This process would be anything but “straightforward.” App. Br. at 80, 85.

Appellant’s proposal is not merely impractical, but also appears unlawful under Chapter 115. Section 115.363.3 authorizes a party nominating committee to select a new candidate only when a *prior* candidate died, was disqualified, or withdrew. None of those circumstances are present here. Appellant asserts that Missouri conducted primaries in districts he contends were inoperative, an alleged defect concerning the election itself, not the candidates’ eligibility. See § 115.013(7) (defining “disqualified” as a determination that “a *candidate* is ineligible to hold office or not entitled to be voted on for office”) (emphasis added).

Appellant’s contrary theory is self-defeating. Before replacement can occur, Section 115.363.3(2) presupposes a “person nominated as the party candidate.” But a person can be nominated only in a legally effective primary—not the “legally ineffective” primaries Appellant alleges occurred here. App. Br. at 83. Indeed, if the primaries were “legally ineffective,” no lawful nomination ever occurred, and there is no person nominated whose disqualification could trigger the statute. These statutory barriers foreclose Appellant’s novel requested remedy and, at minimum, illustrate the substantial legal hurdles his proposal would have to clear just weeks before the general election.

In fact, Missouri election officials are not aware of any precedent, in Missouri or any other State, in which a court has changed a congressional map between a State's primary and general elections. D63:P35 ¶ 167. On the contrary, courts have rejected attempts to change district boundaries after a primary. In *Terrazas v. Slagle*, 821 F. Supp. 1154 (W.D. Tex. 1992), after Texas held its primary elections under court-ordered interim state senate redistricting plans, the Secretary of State issued a directive attempting to switch the general election to entirely different senate districts under a new plan. The three-judge federal court enjoined the directive and explained that “[p]rimary elections for offices chosen by the electorate in separate geographical districts obviously make no sense unless the districts are the same for the ensuing general election as for the primary.” *Id.* at 1159. The court agreed with the Justice Department's undisputed assertion that the State had “never held or sought to hold a general election under a redistricting plan different from the plan used for the preceding primary election.” *Id.*

In fact, courts have refused to change maps even when the existing districts are unconstitutional. In *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), the court had found that the state legislature had engaged in one of the most extensive unconstitutional racial gerrymanders ever encountered by a federal court, affecting nearly 70% of House and Senate districts. *See Covington v. North Carolina*, 270 F. Supp. 3d 881, 892, 896 (M.D.N.C. 2017). Yet with “the 2016 primary elections already held under the challenged maps and Election Day less than three months away,” the court concluded that immediate injunctive relief was “impractical” and allowed the general election to proceed under the unconstitutional maps. *Id.* at 887, 892; *see also Covington*, 316 F.R.D. at 177.

In fact, changing the maps at this late juncture is not just “impractical,” it is “impossible.” See D63:P36 ¶¶ 170-71. The circuit court credited the affidavit of a Missouri election official, who explained that implementing a new congressional map requires local election officials to transfer hundreds of thousands of individual voters in the MCVR system. D63:P36 ¶ 170. That is a meticulous process involving careful analysis of printed maps and multiple rounds of proofreading; it ordinarily takes more than two weeks, and at least 7-10 days even under emergency conditions. *Id.* But even that timeline is academic here, because the MCVR system locks shortly before absentee ballots are distributed and remains locked until an election is certified two weeks after election day. D63:P36 ¶ 171. The circuit court found that this year, the system will remain locked until at least mid-November because of a Jackson County special election in September 2026. *Id.* This Court must “defer to the [circuit] court’s assessment” that it would be “impossible” to change the districts at this juncture, *Pearson II*, 367 S.W.3d at 47; D63:P36 ¶ 170, and decline to order an unprecedented remedy that cannot be implemented, see *Hadley*, 460 S.W.2d at 3 (refusing to alter districts where doing so would be “wholly inequitable and impracticable”).

Appellant suggests that election officials can change the maps because the 2022 districts “remain active” in MCVR. App. Br. at 87. That misunderstands the problem. The obstacle is not drawing new district boundaries; it is reassigning hundreds of thousands of individual voters back into their former districts. That is the process the circuit court found takes a minimum of 7-10 days under emergency conditions, and which would be “impossible” before the general election because the system is already locked. D63:P36 ¶ 170.

Appellant asks this Court to disregard that fact finding in favor of a competing affidavit. *See* App. Br. at 86-87; *see also* Lightfoot & Lennon Amicus Br. at 5-6 (same argument). But the circuit court weighed both affidavits and concluded that changing the districts before the general election is “impossible.” D63:P36 ¶ 170. That is a quintessential factual determination, and this Court does not reweigh competing evidence on appeal. *See Pearson II*, 367 S.W.3d at 47.

Appellant’s own representations to Missouri courts confirm that the window for relief has long since closed. For months, PNP and von Glahn urged courts to resolve the status of HB 1 on an expedited basis, insisting that their challenges were “time-sensitive” given the approaching 2026 elections and the need to prevent “chaos in August.” D43:P1-2. Other challengers to HB 1 pressed for judicial resolution before candidate filing even opened, conceding that equity would “favor the status quo in a legal dispute during the lead-up to an election.” *See, e.g.*, D47:P16 (quotation omitted). Having told Missouri courts for months that time was running out, Appellant cannot now demand the very relief he previously admitted would come too late.

This Court should follow its own precedent and the settled approach of the U.S. Supreme Court and decline to order any changes to the General Assembly’s duly enacted map after the primary has already occurred. *See Abbott*, 146 S. Ct. at 419; *Ardoyn*, 142 S. Ct. at 2892-93; *see also Hadley*, 460 S.W.2d at 2. Such an injunction would “lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). To “protec[t] the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election,” *Democratic Nat’l Comm.*,

141 S. Ct. at 31 (Kavanaugh, J., concurring), this Court should decline to order any changes to HB 1 for the 2026 election.

VI. THE COURT SHOULD AFFIRM THE REPUBLICAN COMMITTEES' INTERVENTION. (Responds to Appellant's Points IX and X).

The circuit court also correctly granted the Republican Committees intervention in this action. Major political parties routinely intervene in cases involving election laws because they have a direct stake in the legal rules governing the elections in which their candidates compete and their resources are deployed. *See, e.g., La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (“*LUPE*”). And in Missouri, it has long been the policy of courts that intervention “should be allowed with considerable liberality.” *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012) (quotations omitted); *see also Allred v. Carnahan*, 372 S.W.3d 477, 482 (Mo. App. W.D. 2012) (explaining that Rule 52.12 “should be liberally construed to permit broad intervention”). It should thus come as no surprise that the State Committee was already granted intervention in three prior cases challenging HB 1, each of which was appealed to this Court. *See Luther v. Mo. Sec. of State*, No. 25AC-CC06964 (Cole County); *Wise v. State*, No. 2516-CV29597 (Jackson County); *Healey v. State*, No. 2516-CV31273 (Jackson County). The circuit court followed this long-settled policy and concluded that the Committees satisfy the elements to intervene as a matter of right and for permissive intervention.

A. THE REPUBLICAN COMMITTEES WERE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Substantial evidence supports the circuit court’s granting of intervention as of right. To warrant intervention as of right, the applicant must establish “(1) an interest relating to the property or transaction which is the subject of the action; (2) that the applicant’s ability to protect the interest is impaired or

impeded; and (3) that the existing parties are inadequately representing the applicant's interest." *State ex rel. Nixon v. American Tobacco Co.*, 34 S.W.3d 122, 127 (Mo. banc 2000) (internal citations omitted). "When an applicant satisfies these elements . . . the right to intervene is absolute and the motion to intervene may not be denied." *Id.*

The Committees satisfy all elements for intervention as of right. *First*, the Republican Committees possess substantial cognizable interests at stake in this dispute. In defining what interests count, this Court has said that movants must have "a direct claim upon the subject matter such that the intervenor will either gain or lose by direct operation of [the] judgment." *Robinson v. Mo. Dep't of Health & Senior Services*, 672 S.W.3d 224, 232 (Mo. banc 2023) (quotations omitted).

The Republican Committees possess several such interests, each of which suffices to support intervention. Their main interest is in getting Republican candidates in Missouri elected to office. *See* D57:P1-2 ¶¶ 4-5; D58:P1-2 ¶¶ 4-5; D59:P1-2 ¶¶ 4-5. As part of that goal, the Committees have an interest in ensuring that Republicans can seek office in a fair and competitive environment where all election laws—including HB 1—are enforced. The Committees also have an independent interest in avoiding changes to election laws and procedures that would force them to adjust their campaign strategy and divert their limited resources to supplement efforts they have already made to educate voters, train volunteers, and turn out the vote. *See* D57:P2 ¶¶ 8-9; D58:P2-3 ¶¶ 8-9; D59:P2 ¶¶ 8-9.

Courts around the country routinely recognize that these types of interests are legally cognizable and enjoy legal protection. *See, e.g., Mecinas v. Hobbs*, 30 F.4th 890, 898 & n.3 (9th Cir. 2022) (candidates and political parties have a "shared interest in fair competition" and suffer injury when

forced “to participate in an illegally structured competitive environment” (cleaned up)); *LUPE*, 29 F.4th at 306 (political committees have a “direct” and “substantial” interest in proceedings that could change the “legal landscape” under which the committees “expend resources regarding . . . recruitment [and] training”); *Nelson v. Warner*, 12 F.4th 376, 384 (4th Cir. 2021) (candidate suffers concrete harm when a law “injur[es] his chances of being elected”); *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020) (per curiam) (political committees are injured when a law “unequally favors supporters of other political parties” (emphasis omitted)); *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014) (political parties who were “subject to” a law and whose candidates “were affected” by it suffered injury); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (political party suffers organizational injury when it diverts resources in response to a law); *Shays v. FEC*, 414 F.3d 76, 86–87 (D.C. Cir. 2005) (candidates suffer injury when changes to election laws and procedures “alter the competitive environment’s overall rules” and force them to “adjust their campaign strategy”). What is more, several of these cases concerned Article III standing, which is “more stringent” than the lower standard for intervention. *See Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1252 n.4 (10th Cir. 2001).

Even more to the point, courts ordinarily grant intervention to political parties on a showing of an altered competitive environment or disrupted campaign strategy and resource allocation indistinguishable from the showings the Republican Committees have made here. As the Fifth Circuit explained, Republican Party entities had an interest in defending state election laws because the case’s outcome “could affect [their] ability to participate in and maintain the integrity of the election process in Texas.” *LUPE*, 29 F.4th at 306. Another court likewise held that Republican Party entities have “an

interest in the subject matter of [a] case” when “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the . . . Republican Party.” *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005). Still another court granted intervention as of right to Republican committees seeking to defend a mail voting law because “[t]he claims brought by Plaintiffs could affect the Committees’ ability to participate in the election process within the state.” *Pa. State Conf. of the NAACP v. Chapman*, 2023 WL 121867, at *5 (W.D. Pa. Jan. 6, 2023). Courts have allowed entities affiliated with the Democratic Party to intervene in similar circumstances. *See, e.g., Paher v. Cegavske*, 2020 WL 2042365, at *2–3 (D. Nev. Apr. 28, 2020) (granting intervention to Democratic Party entities when a lawsuit would disrupt their organizational efforts); *Issa v. Newsom*, 2020 WL 3074351, at *1–4 (E.D. Cal. June 10, 2020) (same).

This case fits squarely within the mold set by this line of precedent. Appellant challenged HB 1, the very statute that defines the districts in which Intervenor’s candidates are campaigning right now. D20:P5-7. If Appellant prevails, the congressional plan would be enjoined weeks before the general election, hundreds of thousands of voters would be reassigned to different districts than the ones in which they voted in the primary, and the Republican Committees would be forced to scrap months of campaign planning and redirect resources to entirely different districts on an impossible timeline. *See* D57:P3 ¶¶ 12-14; D58:P3-4 ¶¶ 12-15; D59:P3 ¶¶ 12-14. These are not speculative harms; they are the direct and inevitable consequence of the relief Appellant seeks. The Committees’ interests in this litigation are thus immediate, concrete, and indistinguishable from the interests that courts across the country have found sufficient to support intervention as of right.

Second, the Republican Committees’ interests will be impaired if this Court reverses the circuit court’s merits holding.

This Court has found impairment where the disposition of the action may leave intervenors “in an uncertain position as to how to proceed in discharging [their] duties.” *Dunivan v. State*, 466 S.W.3d 514, 520 (Mo. banc 2015). Further, in assessing the risk of impairment in the election context, courts “should not second-guess a candidate’s”—or political party’s—“reasonable assessment of his own campaign by assuming the guises of campaign consultants or political pundits in assessing the candidate’s assertion of how a challenged governmental action affects their capacity to compete politically.” *Castro v. Scanlan*, 86 F.4th 947, 958 (1st Cir. 2023) (cleaned up).

The inquiry is especially straightforward here. If Appellant succeeds in enjoining HB 1 for the 2026 general election, the Republican Committees’ interests will necessarily be impaired because the Republican Committees will “be[] forced to participate in an ‘illegally structure[d] competitive environment’”—i.e., one in which the Legislature’s duly enacted plan is disregarded. *Mecinas*, 30 F.4th at 898 (alteration in original) (quoting *Shays*, 414 F.3d at 87). As a result, Intervenors would have to “deploy substantial financial and organizational resources to supporting and seeking election of Republican candidates, educating and turning out voters, and otherwise exercising their constitutional rights other than those the General Assembly enacted in HB 1.” D20:P6; *see also* D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18. Indeed, if ordered, “that relief also could affect the likelihood of whether Republican candidates are elected to Congress from Missouri.” D20:P6. Since Appellant’s requested relief would “alter” the “overall rules” to which the Republican Committees and their members are

subjected and force the Committees to deploy their resources to attempt to mitigate any late-breaking alteration to HB 1, the Republican Committees “may challenge [Appellant’s] subversion of [the Legislature]’s guarantees” through intervention. *Shays*, 414 F.3d at 86, 91.

Third, the Secretary cannot (and should not) adequately represent and protect the Republican Committees’ uniquely *partisan* interests.

Missouri courts have held that “once a proposed intervenor establishes an interest in the underlying litigation and that such an interest may be impaired or impeded if intervention is not permitted, the third element is satisfied upon a ‘minimal showing’ that there is a divergence of interest between the proposed intervenor and the party.” *Allred*, 372 S.W.3d at 487. Indeed, Rule 52.12—like its federal analogue—provides that a movant is entitled to intervene when the other factors are met, “*unless* the applicant’s interest is adequately represented by existing parties.” Mo. R. Civ. P. 52.12(a) (emphasis added). This language implies that there is a strong presumption in favor of intervention when the other factors are satisfied and that the court should deny intervention only when it is “persuaded that the representation is in fact adequate.” 7C Charles A. Wright et al., *Federal Practice & Procedure* § 1909 (3d ed. 2024) (observing that the language of the federal rule may even shift the burden of persuasion to the existing parties to prove adequate representation).

Intervenors certainly made a minimal showing that the Secretary’s interests diverge from the Committees’ interests. *See* D20:P7-8. To begin, the Secretary simply does not (and should not) share the Committees’ objectives. The Committees’ ultimate interest in this action is “winning [e]lection[s]” for the Republican Party. *Shays*, 414 F.3d at 86; *see also* D57:P1-2 ¶¶ 4-5; D58:P1-2 ¶¶ 4-5; D59:P1-2 ¶¶ 4-5. The Secretary, by contrast, must serve the public

at large. *Screws v. United States*, 325 U.S. 91, 130 (1945) (Rutledge, J., concurring in the result) (explaining that a State official’s “sworn oath” and “first duty are to uphold the Constitution, then only the law of the state which too is bound by the charter”). He therefore *could not* “vindicate such an interest while acting,” as he must, “in good faith.” *LUPE*, 29 F.4th at 309. Because the Secretary’s responsibilities transcend the “narrower interest” of the Republican Committees, his representation is necessarily inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 539 (1972) (cleaned up).

Furthermore, this case proceeded at a breakneck pace from its inception. This action was filed on August 4, 2026, and by law it must be resolved no later than September 8. It will be argued September 2, before the Secretary’s answer would normally have been due. This compressed timeline necessarily creates uncertainty about the issues: claims or defenses might arise or be abandoned on a literal moment’s notice. It was not possible for Intervenorors to know what approach the Secretary might take to defending this case, let alone account for any possible course changes mid-suit or even mid-trial. In *Robinson*, county health departments were permitted to intervene post-judgment after the State announced it would not appeal the trial court’s decision. *Robinson*, 672 S.W.3d at 234. That practice would be impracticable, if not impossible, given the timeline of this case: the first brief in this Court was due six days after judgment and this brief two days after that. Had Intervenorors waited even momentarily to intervene, they risked missing important deadlines or being excluded from the case altogether. These circumstances further counsel in favor of intervention, especially in light of the policy that Rule 52.12 “should be liberally construed to permit broad intervention.” *Allred*, 372 S.W.3d at 482.

As the circuit court found, the Secretary's institutional obligations also pull him in multiple—and sometimes conflicting—directions that may dictate litigation positions that diverge from the Committees' preferred course. The Committees, for example, "have a direct and practical interest in ensuring the referendum does not advance for any reason, including the political reason of preserving HB 1's district lines under which Intervenors support election of Republican candidates to Congress." D20:P8. The Secretary's objective, by contrast, "is to demonstrate that the Secretary's review of the referendum petition complied with statutory requirements and administrative rules." *Id.* For that reason, the State may not raise arguments "concerning the substantive harm of the referendum, the costs of reversal to interested parties, or the broader electoral implications—all of which are *central* to Intervenor's mission and interests." *Id.* (emphasis added); *see also* D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18.

Appellant fails to rebut this analysis. He first mischaracterizes the Republican Committees' interests as generic "ideological" preferences. App. Br. at 101-02. But the Committees are not concerned bystanders with a rooting interest. They are the organizations whose institutional purpose is to elect Republican candidates to Congress from Missouri. In pursuit of that mission, they have spent substantial funds on candidate recruitment, advertising, field operations, and voter-contact programs specifically in reliance on HB 1's district lines. D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18.

Appellant next insists that the Committees' harm is merely "downstream." App. Br. at 100. Whatever that means, everything in Appellant's brief belies that characterization. Appellant asks for an immediate injunction changing the map for an election that is already underway. App. Br. 106. And he concedes what follows: every nominee chosen in the August 4

primary would be disqualified, and the Republican Committees' own nominating bodies would be required to convene and select replacements—if it is even authorized under Chapter 115 for replacement candidates to be selected at this date. *Id.* at 83-86. An intervenor who must execute the remedy plaintiff seeks has the most immediate interest in the litigation imaginable.

Appellant relies principally on three cases, none of which supports his position.

First, Appellant cites *Committee for Educational Equality v. State*, 294 S.W.3d 477 (Mo. banc 2009). That case is doubly inapposite. As a threshold matter, this Court reviewed the trial court's grant of *permissive* intervention under Rule 52.12(b), not intervention as of right under Rule 52.12(a). *Id.* at 487. The legal standards are different, and the case does not even *mention* Rule 52.12(a). Even setting that aside, the facts bear no resemblance to this dispute. Three individual taxpayers sought to join the State's defense of a school-funding formula, but they asserted "no interest apart from that of general taxpayers." *Id.* The Republican Committees, by contrast, are the party organizations whose candidates appear on the ballot, whose financial resources have been deployed in reliance on HB 1, and whose statutory nominating authority under Section 115.363 would be triggered if the map changes. D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18.

Second and third, Appellant cites *Toder v. Hoskins*, 730 S.W.3d 129 (Mo. App. W.D. 2026), and *Prentzler v. Carnahan*, 366 S.W.3d 557 (Mo. App. W.D. 2012). Both are nonbinding Court of Appeals decisions, and both involved challenges to the fairness and sufficiency of ballot *titles* under Section 116.190. In *Toder*, a parent sought to intervene in a dispute over whether the Secretary's summary description of a proposed education amendment was "fair." 730 S.W.3d at 132-33. Her asserted interest—that her daughter might

lose a scholarship if the amendment were eventually certified, placed on the ballot, adopted by voters, and then interpreted to eliminate an existing program—depended on a chain of contingencies the court found “speculative.” *Id.* at 137. In *Prentzler*, petition signatories sought to intervene in ballot-title litigation based merely on an alleged interest in having their signatures counted and qualifying an initiative for the ballot. 366 S.W.3d at 562-63. The court held that interest was “too remote and conjectural” to support intervention. *Id.* Notably, the court reasoned that neither intervenor could show the litigation’s outcome would “directly and immediately affect[]” their “legal interests.” *Id.* at 563-64.

This case has nothing in common with either *Toder* or *Prentzler*. Appellant asks this Court to change the congressional plan governing an ongoing election, which would subject the Republican Committees to immediate, concrete harms including substantial financial ones. In fact, *Toder* contrasted the “speculative” harms the plaintiff raised, with the immediate harms faced by the intervenors in *Johnson v. State*. See 366 S.W.3d 11. In *Johnson*, three sitting legislators sought to intervene in a constitutional challenge to a House reapportionment plan. *Id.* at 21. This Court deemed intervention proper because the legislators had “unique interests at stake” including “personal and economic interests related to their planned reelection efforts” and “interests in preventing delay and uncertainty in avoiding unnecessary expenditures or time and resources.” *Id.* This case is a near facsimile. Like the legislators in *Johnson*, the Republican Committees have direct financial and organizational interests tied to a specific redistricting plan—interests that would be immediately undercut by the relief Appellant seeks.

Undeterred, Appellant suggests that because the Committees' trial brief pressed some of the same arguments as the Secretary, the Secretary must adequately represent their interests. App. Br. 103. But Appellant cites only *Committee for Educational Equality*, which concerned permissive intervention, and never held that similar briefing equals adequate representation. To the contrary, the standard is whether the existing party adequately represents the intervenor's *interest*, not whether their legal arguments happen to overlap. See Rule 52.12(a). For the reasons discussed, the Secretary cannot adequately represent the Committees' interests.

In sum, the Secretary's divergent obligations and objectives establish at least the possibility—if not the certainty—that he will not safeguard the Committees' distinct and legally cognizable interests. Substantial evidence supports the circuit court's decision to grant the Republican Committees intervention as of right. The Court should affirm.

B. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING PERMISSIVE INTERVENTION.

Finally, the circuit court did not abuse its discretion in granting the Republican Committees permissive intervention. Rule 52.12(b)(2) allows intervention where an applicant's "claim or defense and the main action have a question of law or fact in common." Permissive intervention is appropriate when intervenors "can show [an] interest unique to themselves." *Johnson*, 366 S.W.3d at 21 (emphasis omitted). This Court has explained that one such cognizable interest is "an economic interest in the outcome of the suit." *Id.* To reverse the grant of permissive intervention, this Court must find that the circuit court's ruling was "clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Id.* (quotations omitted).

The circuit court’s decision easily clears that bar. The Republican Committees’ defenses plainly share questions of law and fact with this action: they seek to defend HB 1’s validity on multiple grounds, the very issues at the heart of Appellant’s Petition. *See supra* at 1-3. And the Committees bring interests “unique to themselves,” *Johnson*, 366 S.W.3d at 21, that go beyond anything the Secretary is positioned to advance—specifically, their direct financial and organizational stake in which congressional map governs the elections in which their candidates are competing and their resources are deployed, *see* D20:P9-10; *see also* D57:P2 ¶¶ 8-9; D58:P2-3 ¶¶ 8-9; D59:P2 ¶¶ 8-9. In *Johnson*, this Court upheld permissive intervention where sitting legislators had “personal and economic interests related to their planned reelection efforts, including interests in preventing delay and uncertainty and in avoiding unnecessary expenditures of time and resources.” 366 S.W.3d at 21. The Republican Committees’ interests track *Johnson* closely because they will be required to deploy—or refrain from deploying—substantial financial and organizational resources depending on which congressional map governs the 2026 election cycle. *See* D57:P3-4 ¶¶ 13-17; D58:P3-4 ¶¶ 13-15; D59:P3 ¶¶ 13-16.

Appellant hardly resists the circuit court’s grant of permissive intervention. For the most part, he continues to cite *Toder*, which bears no resemblance to this case for the reasons already discussed. *See supra* at 68-69. Appellant also gestures at the “tight timeline” for this lawsuit and argues that intervention could “complicate that process.” App. Br. at 105. But the record refutes any suggestion that the Committees’ participation complicated or delayed these proceedings. The Committees moved to intervene before any hearings were held or responsive pleadings were due, filed their proposed Answer concurrently with their Motion to Intervene as required by Rule

52.12(c), and adhered to every deadline the circuit court and this Court set on an expedited schedule. Whatever concern might exist about intervenors complicating or delaying litigation has no foothold in this record.

CONCLUSION

The Court should affirm the circuit court's judgment and the Republican Committees' intervention.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a copy of Intervenor-Respondents' brief was filed by the Court's electronic filing system on August 27, 2026, for service electronically on all counsel of record. This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 20,684, excluding the cover, table of contents, table of authorities, signature block, appendix, and this certificate. The font is Century Schoolbook 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.

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IN THE SUPREME COURT OF MISSOURI

No. SC101805

**RICHARD VON GLAHN,
APPELLANT,**

VS.

**DENNY HOSKINS, SECRETARY OF STATE OF MISSOURI,
RESPONDENT.**

**On Appeal from the Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge**

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INTRODUCTION

Respondents' arguments are fundamentally flawed because they invert two concepts. First, the people have *reserved* the right to the referendum. No law needs to grant it—they've always had it. It has been that way since 1908, and this Court's jurisprudence is long and unbroken.

Over the decades, members of this Court have come and gone, but all have acknowledged the core principle of Article I, Sections 1 and 3, and Article III, Section 49:

“The legislative authority of the State” means all of it: all of it is taken back by the people and then granted, subject to the reservations named, to the General Assembly alone. Manifestly the framers of the Amendment of 1908 intended, as did the people in adopting it, that every vestige of legislative power granted directly by the Constitution itself to agencies of the state government, the exercise of which would affect the State as a whole, should be subject to its initiative and referendum provisions.

State ex rel. Gordon v. Becker, 49 S.W.2d 146, 148 (Mo banc. 1932)

Respondents ask the Court to ignore all of that, disregard the Constitution's plain language (which their briefs do not argue is ambiguous), and apply rules of construction that, if they are actually rules, have never been applied by any court to reach Respondents' desired result. Part I discusses those arguments.

History may not repeat, but it rhymes. When faced with similar arguments in 1994, this Court unanimously put it this way: “Citing no direct authority for

their argument beyond hope, the Boundary Commission and St. Louis County reason that if the framers had intended section 8 limitations to apply to charter counties, they would have included similar limiting language in section 18.” *State ex rel. City of Ellisville v. St. Louis Cty. Bd. of Elections Comm’rs*, 877 S.W.2d 620, 622 (Mo. banc 1994). The same is true here. Respondents cite no direct authority but hope this Court will limit the people’s referendum power. The Court should decline.

Similarly, Respondents turn federalism on its head, arguing the United States Constitution limits the people’s referendum right. All the cases say the opposite, culminating with a recent U.S. Supreme Court case. “Nowhere in the Federal Constitution could we find provision of an attempt to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution of the State has provided that laws shall be enacted.” *Moore v. Harper*, 600 U.S. 1, 24 (2023) (cleaned up).

Respondents would have the Court allow the legislature to engage in congressional redistricting without regard to the reserved referendum power. *Moore* rejected that proposition. “A state legislature may not ‘create congressional districts independently of’ requirements imposed ‘by the state constitution with respect to the enactment of laws.’” *Id.* at 26 (quoting *Smiley v. Holm*, 285 U.S. 355, 373 (1932)). And “[t]he Elections Clause should not be read to single out federal elections as the one area in which States may not use citizen

initiatives as an alternative legislative process.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 816 (2015).

Next, Respondents turn to the *consequences* of following the law. They double down on the Attorney General’s reaction to *Maggard*: that “the challenged legislation never went into effect under Article III, Section 52(b) . . . would have disastrous consequences in the context of a congressional map.” Pshaw.

Parts II and III elaborate on why the Court need not address those consequences; Parts IV and V explain why, if addressed, they would not be the disaster the Attorney General envisions. Regardless, the Court should return to *Ellisville*’s wisdom: “We remain of the view expressed in [a prior case] that the constitution means what it says, despite the inconvenience it causes [the administrators of the program].” 877 S.W.2d at 623.

The Court should reverse the Circuit Court’s judgment. The people have reserved the power to conduct referenda on acts of the General Assembly. House Bill 1 is such an act, and the petition referring it to the people was sufficient when submitted in December 2025. As *Maggard* held, House Bill 1 is not now, and has never been, the law.

ARGUMENT

I. The Referendum Petition Is Sufficient

A. The Language of Sections 49 and 52(a) is Plain and Unambiguous, and No One Claims Otherwise

Neither Respondent contends Section 49 or 52(a) is ambiguous. Because they aren't. Instead, Respondents insist this Court should resort to canons of construction—specifically, a “clear statement rule”—to override clear, unambiguous language. Secretary Br. at 35; Intervenors Br. at 17. That's not how constitutional interpretation works. *See State ex rel. Heimberger v. Board of Curators of Univ. of Missouri*, 188 S.W. 128, 130 (Mo. banc 1916) (“Narrow and technical reasoning is misplaced when it is brought to bear upon an instrument framed by the people themselves, for themselves, and designed as a chart on which every man, learned and unlearned, may be able to trace the leading principles of government.” (cleaned up)).

Section 49 says “any act of the general assembly” is subject to a referendum. In a companion case, *People Not Politicians v. Hoskins*, No. SC101801, the Secretary helpfully defines “act” as “the formal product of a legislature or other deliberative body exercising its powers; esp., statute.” Secretary Br., Case No. SC101801, at 21. HB 1 is an “act of the general assembly” (it says so on top) because it went through the formal legislative process. D23:P3. No canon of construction is necessary. The word is comprehensive. *State ex rel.*

Westhues v. Sullivan, 224 S.W. 327, 334 (Mo. banc 1920). HB 1 is subject to the referendum.

Section 52(a) is similarly unambiguous. Again, the Secretary nicely sums up that this section in the other case as “except[ing] laws dealing with public emergencies and appropriations.” Secretary Br., Case No. SC101801, at 23. That’s it. And it makes sense that those are the only two exceptions, because public emergencies and appropriations are the only two types of legislation that take effect prior to 90 days after adjournment. Mo. Const. art. III, § 29; *see also Maggard v. State*, 733 S.W.3d 411, 414 (Mo. banc 2026).

While the Secretary acknowledges the plain meaning of the unambiguous text in *that* case, in *this* case he advances two new arguments untethered from the Constitution’s text and any practical understanding of lawmaking.

First, Respondents argue HB 1 was in fact an emergency, despite the General Assembly never declaring it so. Secretary Br. at 47-48; Intervenor Br. at 23-26. That can’t be. To exempt an act from the referendum, the legislature must include a *valid* emergency clause that declares an emergency within Section 52(a)’s terms. Mo. Const. art. III, § 29 (emergency “must be expressed in the preamble or in the body of the act”); *see also Westhues*, 224 S.W. at 333-38 (discussing interaction between emergency-clause and referendum provisions). There isn’t one here. *See Maggard*, 733 S.W.3d at 421 n.8. This Court may not

retroactively declare legislation an emergency. Respondents certainly cannot do so.¹

Even if Respondents could retroactively invoke the emergency exception, their attempt is nonsensical. The Secretary contends HB1 was “necessary” because “facilitating elections is impossible without redistricting legislation.” Secretary Br. at 48. But Missouri already had valid “redistricting legislation” when the General Assembly enacted HB1. *See Luther v. Hoskins*, 730 S.W.3d 567, 570 (Mo. banc 2026) (observing General Assembly enacted HB 1 to replace 2022 districts without new census data). There was no “immediate” need to preserve peace, health, or safety. *See State ex rel. State Highway Comm’n v. Thompson*, 19 S.W.2d 642, 647 (Mo. banc 1929).

The 2022 districts “facilitate[ed] elections” in 2022 and 2024 and remain readily available in 2026. The Secretary’s suggestion that elections would be “impossible” without HB 1 ignores the statutes still in effect. §§ 128.461-469, RSMo.

Second, the Secretary tries to jam HB 1 into the appropriations exception. Secretary Br. at 47. He invokes the last-antecedent canon to argue that “laws making appropriations” modifies only “current expenses,” leaving “maintenance

¹ The Secretary also contends the Court should ignore Article III’s plain language because the consequences of the plain-language reading would allow initiative petitions to draw congressional districts. Secretary Br. at 39. Like many of Respondents’ other arguments, this is rooted in policy disagreements, not legal analysis. In any event, the question of whether citizens can redistrict by initiative is simply not before this Court.

of state institutions” and “support of public schools” as independent exceptions. But that’s not how we read law. When a modifier follows a straightforward parallel series, it “normally applies to the entire series.” *Facebook, Inc. v. Duguid*, 592 U.S. 395, 402-3 (2021). Section 52(a)’s exception for “laws making appropriations *for* the current expenses of the state government, *for* the maintenance of state institutions and *for* the support of public schools” is precisely such a parallel series—“laws making appropriations” modifies all three items. And there can be no argument that HB 1 is an appropriations law. *See Doyle v. Tidball*, 625 S.W.3d 459, 466 (Mo. banc 2021).

B. HB 1 Is Not a “Redistricting Plan,” Rendering Sections 3(i) and 7(h) Irrelevant

Respondents also hope Section 7(h) and 3(i)’s prohibition on referenda on “redistricting plan[s]” encompasses congressional maps, notwithstanding the fact that these provisions expressly govern only state house and senate plans. Intervenor Br. at 19–26; Secretary Br. at 43–45.

The Court should not entertain this argument. It noticeably *does not* appear in the Secretary’s certificate of insufficiency. *See* D27. Section 116.200 commands that the Secretary must provide *all* the reasons for his determination of insufficiency. § 116.200.1, RSMo. This makes sense. If a citizen chooses to challenge the certificate (particularly one issued at the last minute), there should be a set list of reasons to challenge in court to avoid any surprise. The Secretary

cannot cure his procedural default by relying on Intervenor to raise arguments he was statutorily required—but failed—to include in his certificate.

And the omission of this argument from the certificate of sufficiency was no oversight. The Secretary knows it is wrong. He never raised it in *Missouri General Assembly v. von Glahn*, No. 4:25-cv-01535-ZMB (E.D. Mo.), or *Maggard v. State*, No. SC101581. And in *Luther v. Hoskins*, No. SC101578, the Secretary affirmatively told this Court Section 7(h) does *not* apply to congressional redistricting. Secretary Br., Case No. SC101578, at 45. The Secretary’s about-face reveals his strained attempt to avoid the plain constitutional implications of Plaintiff’s referendum petition.

In any event, this argument is wrong. Sections 7(h) and 3(i) must be read in context. *Pestka v. State*, 493 S.W.3d 405, 409 (Mo. banc 2016). Section 7 governs state-senate redistricting and Section 3 governs state-house redistricting, both led by bipartisan citizens commissions.

On their face and in context, neither governs “acts of the General Assembly.” See Mo. Const. art. III, § 45. Section 45 is the “only provision of the Missouri Constitution directly addressing congressional redistricting.” *Luther*, 730 S.W.3d at 571. Reading “redistricting plan” to reach only commission-created plans gives effect to Sections 7 and 3’s subject matter, while Respondents’ reading

exports a provision addressing one constitutional process into another containing no comparable restriction.²

Intervenors press a surplusage argument: if Sections 3(i) and 7(h) apply only to commission-drawn plans, they are superfluous because commission plans are not “acts of the general assembly” and could never be referred anyway. Intervenors Br. at 19–21. Assuming Sections 3(i) and 7(h) are rendered surplusage under Appellant’s reading (they are not),³ the canon against surplusage is, at most, a general preference. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 536 (2004). If there are two ways to read the text—one rendering language surplusage (but the meaning plain) and one not (but rendering the meaning ambiguous)—the Court should prefer the plain meaning. *See id.* If there are two ways to read 7(h) and 3(i) (there are not), this Court should read the text as plain rather than inject ambiguity.

² Respondents’ argument also ignores the plain language of Section 49, which states the referendum power applies to all acts of the general assembly “except as *hereinafter* provided.” Mo. Const. art. III, § 49 (emphasis added). “Hereinafter” means “in the following part of this writing or document.” <https://www.merriam-webster.com/dictionary/hereinafter>. Sections 3 and 7, of course, do not follow Section 49.

³ These sections say redistricting plans are not subject to “the referendum.” They do *not* say such plans are exempt from Sections 49 or 52, or otherwise reference other provisions of the Constitution. One reading, which harmonizes all the provisions at issue, is that Sections 3(i) and 7(h) were meant to ensure the *General Assembly* does not try to refer such plans to the people by passing an act to do so.

Even if canons of construction were needed to understand 7(h) and 3(i), there are many that support Plaintiff's position. The "presumption of consistent usage" provides that "a word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012). Sections 7(h) and 3(i) refer to "redistricting plans"—plans for state house and senate districts put in place by the bipartisan citizens commissions—materially different than an "act of the general assembly," which is the only mechanism to implement congressional districts under Section 45.

C. Respondents Cannot Cite a Single Case Requiring State Constitutions to Use a "Clear Statement"

Respondents double down on their argument that there must be a clear statement in the Constitution allowing a referendum on redistricting. Setting aside that the Constitution is crystal clear (all "acts of the general assembly" are subject to the referendum except "as hereinafter provided"), Respondents cite not a single case that requires state constitutions have a clear statement about anything, let alone referenda on redistricting.

Indeed, Respondents' invocation of the clear-statement rule is precisely backwards. Where the United States Supreme Court *has* used a "clear statement rule," it has done so to limit federal intrusion on state authority, not the other way around. *See Bond v. United States*, 572 U.S. 844, 858 (2014); *Sackett v. EPA*, 598 U.S. 651, 680 (2023); *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). These

rules protect state sovereignty from federal overreach—they do not empower state officials to read exceptions into the People’s reserved powers. Respondents cite no case requiring a state constitution to include a “clear statement” before citizens may exercise their expressly reserved referendum power.

D. Respondents Cannot Cite a Single Case Supporting Their Elections Clause and Guarantee Clause Arguments, Which Have Been Conclusively Rejected

Unable to find support in Missouri law for their “clear statement” argument, Respondents resort to federal constitutional arguments under the Elections Clause and Guarantee Clause. *See* Secretary Br. at 26–52; Intervenor Br. at 27–44. Tellingly, Respondents cite no case supporting either their Elections Clause argument or Guarantee Clause argument. For good reason: these arguments have been repeatedly and conclusively rejected by the United States Supreme Court.⁴

Respondents argue the Elections Clause precludes a referendum on redistricting. *See* Secretary Br. at 26–42; Intervenor Br. at 27–39. That might be what they hope, but more than a century of Supreme Court jurisprudence says otherwise. *See State ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916); *Smiley v. Holm*, 285 U.S. 355 (1932); *Ariz. State Leg. v. Ariz. Indep. Redistricting*

⁴ The Secretary seems to recognize this because he has relegated his Guarantee Clause argument to a mere footnote. Secretary Br. at 52 n.13.

Comm’n, 576 U.S. 787 (2015); *Moore*, 600 U.S. 1. Respondents offer no case to the contrary—because there isn’t one.

The Guarantee Clause argument is similarly impuissant. Respondents contend a referendum on redistricting is incompatible with a republican form of government. *See* Secretary Br. at 52 n.13; Intervenor Br. at 42–44. The Supreme Court rejected this exact argument over 100 years ago. *Hildebrant* 241 U.S. at 569-70. “[N]o particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated.” *Minor v. Happersett*, 88 U.S. 162, 175 (1874). Respondents cannot identify a single case invalidating anything under the Guarantee Clause. This is conclusive (even setting aside that this argument is nonjusticiable).⁵

II. The Only “Remedy” Necessary in a Section 116.200 Action is a Determination that the Referendum is Sufficient and Reversal of the Secretary’s Contrary Conclusion

The sufficiency issue is easily resolved. Article III is plain and unambiguous. HB 1 is an act of the General Assembly and is subject to the referendum. There is not, and has never been, *any* substance to Respondents’ arguments.

⁵ Respondents complain about the ability of “3.3%” of the population to suspend legislation. Secretary Br. at 50-53; Intervenor Br. at 2. That is a policy argument, not a legal argument. And it has nothing to do with a “republican form of government.” The People, acting through their representatives (*i.e.*, the Framers at the Convention) *chose* to structure the referendum power that way. There is nothing anti-democratic about that.

So, Respondents hope the Court will overlook the law by focusing on “remedy.” But the remedy for a Section 116.200 action is unequivocal: “If the court decides the petition is sufficient, the secretary of state shall certify it as sufficient and attach a copy of the judgment.” § 116.200.2, RSMo. And *Maggard* established the consequence of a sufficiency determination: “If [] the December 9 referendum petition filing is ultimately determined to be sufficient,” then “HB 1 was referred to the people as of December 9 and can only go into effect when approved by a majority of the votes cast thereon.” 733 S.W.3d at 420.

The only remedy Plaintiff seeks is an injunction to enforce Section 52(b) and this Court’s decision in *Maggard*. Respondents’ attempt to transform this action into an open forum for addressing hypothetical questions about election administration—questions only the *Secretary* raised and that Missouri law already answers—is beyond the scope of this straightforward statutory action.

A. The Only Issue in a Section 116.200 Action is the Sufficiency of a Referendum Petition

As explained in Plaintiff’s opening brief, the scope of a Section 116.200 action is limited to sufficiency. *Mo. Elec Coops. v. Kander*, 497 S.W.3d 905, 920 (Mo. App. 2016); *Ketcham v. Blunt*, 847 S.W.2d 824, 831 (Mo. App. 1992). Respondents do not seriously dispute this. Nonetheless, they focus on Plaintiff’s request for an injunction ordering the Secretary to cease using HB 1, as if this opened a Pandora’s Box authorizing speculation about implications for the general election. It does not.

Section 116.200 specifically contemplates injunctive relief to enforce the court's mandate. *See* § 116.200.2, RSMo. If the petition is sufficient, the court says so and the Secretary "shall certify" it as such; if it is insufficient, the court "shall enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot."⁶ True, the legislature probably did not envision state officials imprudently enforcing an act for which a facially sufficient referendum petition supported by hundreds of thousands of signatures had been submitted—or continuing to enforce it after local officials confirmed those signatures are valid and this Court confirmed a sufficient petition would suspend the bill.

But the plain language of the statute offers only two options: certification or not. Indeed, this Court made clear in *Maggard* what a sufficiency determination means for the enforcement of HB 1. Asking the trial court to recognize that does not transform this action into a speculative free-for-all. The Secretary has announced he does not intend to follow the law as explained in *Maggard* and it falls to the courts to set him straight.

B. Plaintiff's Request for an Injunction Flows Directly from Article III, Section 52(b) and *Maggard*

"Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise." Mo. Const. art. III, § 52(b).

⁶ The Circuit Court's judgment neither deemed the referendum insufficient nor issued an injunction.

This Court explained what that means in *Maggard*: if the referendum petition is sufficient, then HB 1 was suspended “as of December 9,” before going into effect, and cannot take effect unless and until approved by voters. 733 S.W.3d at 419–20. This has been well settled for a century. *Westhues*, 224 S.W. at 334-36.

Maggard explained what a sufficiency determination would mean. Plaintiff could have omitted his request for injunctive relief because sufficiency means HB 1 is not, and never was, in legal effect. But Plaintiff *did* ask for an injunction as security, given that the Secretary’s certificate explicitly conveyed his belief that HB 1 should still be used even if it is not the law. D27:P7-10.

“[P]ublic officials [must] comply with mandatory statutory provisions, and such requirements may not be avoided by a compliance only when the official sees fit to comply.” *Fulton v. City of Lockwood*, 269 S.W.2d 1, 8 (Mo. 1954). This is no less true of constitutional requirements. The Court should reverse the decision below, conclude the referendum is sufficient, order the Secretary to place it on the ballot, and order him to stop treating HB 1 as if it is the law. He is responsible for running the election and must follow the law as interpreted by this Court.

C. Respondents Improperly Seek to Relitigate *Maggard*

While the Secretary tries to dance around it, he undoubtedly seeks to relitigate *Maggard*. He insists *Maggard* concluded referendum petitions *do not* suspend legislation. Secretary Br. at 51. He and the Attorney General began

making this claim within days of *Maggard* being decided. See *von Glahn v. Hanaway*, Case No. 26AC-CC00248, Pet., Ex. 22; Pet. Ex. 23.

More generally, Respondents insist that because the Secretary waited until the very last hour to issue his certificate—after the primary—*Maggard*'s conclusion concerning sufficiency goes out the window and we must now engage in extensive “remedy” analysis. See Secretary Br. at 54-55; Intervenor Br. at 41-43. But *Maggard* foreshadowed these contentions' fate, citing *State ex rel. Nixon v. Blunt*, 135 S.W.3d 416, 420 (Mo. banc 2004), for the proposition that “the secretary cannot exercise official duties in a manner to frustrate constitutional provisions.” This proposition is basic and well established.

The Court should see Respondents' arguments for what they are: a transparent attempt to defy this Court's unanimous and unambiguous holding in *Maggard* as to the consequence of a sufficiency determination. The Secretary was well-aware of these consequences when he chose to delay a sufficiency determination until after the primary. He cannot escape the mandates of Article III, Section 52(b)—or this Court's holding from four months ago—by trying to run out the clock in the hopes of checkmating the power of the people to refer a bill to the people by referendum and this Court with a host of new “remedy “ questions well beyond what Section 116.200 authorizes.

III. The Trial Court Erred by Deeming the Referendum Insufficient Based on Alleged Difficulties with Running the General Election

A. Alleged Issues Created by the Secretary's Delay Do Not Affect Sufficiency

As discussed in the previous Section, the only issue in a Section 116.200 action is sufficiency. That turns on whether this referendum petition satisfies the constitutional and statutory requirements for referenda. Issues allegedly created by the Secretary's decision about *when* to make his decision on such matters have nothing to do with whether the referendum petition itself is sufficient.

Consequently, it was error for the trial court to even address whether a new primary would be needed, and what impact Article I, Section 2; the Equal Protection Clause; or UOCAVA might have on that question. Nonetheless, if the Court chooses to reach those issues, Respondents' analysis lacks *any* legal or factual support. They are simply wrong.

B. Respondents Cannot Cite Any Caselaw or Evidence Supporting Their Theory that Using the 2022 Districts for the General Election Would Violate Article I, Section 2 or the Equal Protection Clause

There is no case anywhere finding that using lawfully enacted congressional districts different from those used for the primary creates any problem under Article I, Section 2 or the Equal Protection Clause. Respondents cite none. *See* Secretary Br. at 56–60; Intervenor Br. at 47–52. As to Article I, Section 2, Respondents rely on two cases—*United States v. Classic*, 313 U.S. 299

(1941), and *Smith v. Allwright*, 321 U.S. 649 (1944)—neither of which had anything to do with changing district boundaries after a primary. The same is true of *Gray v. Sanders*, 372 U.S. 368 (1963), the only case cited for their equal protection argument.

There is also no evidence from which this Court could conclude any constitutional violation occurred. Evidence is required for Equal Protection Clause and voting-right claims. *See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977); *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607–09 (8th Cir. 2020) (discussing *Anderson-Burdick* framework). Respondents’ speculation about what “could” happen is not evidence. *See* Secretary Br. at 57–58; Intervenor Br. at 50–51.

For example, HB 1 made no changes to the boundaries of Congressional Districts 7 and 8, so there is no conceivable issue with using the results of the primaries in those districts. Minimal changes were made to other districts. And Respondents offered no evidence to support their assertions.

C. UOCAVA Has Nothing to Do with What Districts Are Used

Respondents claim UOCAVA prohibits use of the lawfully enacted 2022 districts in November. *See* Secretary Br. at 55–56; Intervenor Br. at 46–47. UOCAVA says nothing of the sort. As all seem to agree, UOCAVA imposes requirements on the states for when ballots must be mailed to Americans overseas and in the military. *See* 52 U.S.C. § 20302(a)(8). No one is contending that it will be a problem for Missouri to meet these deadlines for the November

election, whether it is conducted under the 2022 districts or HB 1. Because it won't be. Respondents instead contend it would be impossible to run a new primary and meet UOCAVA's deadlines. *See* Secretary Br. at 55–56; Intervenor Br. at 46–47. Since no one is asking to re-do the primary, this is irrelevant.⁷

IV. To the Extent this Court Needs or Wishes to Discuss the Consequences for the General Election, There Are Multiple Options

A. Plaintiff's Position Has Always Been that the General Election Should be Run Using the Law that Was Enacted in 2022 and Respondents Have Offered No Authority Prohibiting Their Use Without a New Primary

As explained, the remedy in a Section 116.200 action is reversal of the Secretary's decision and a court order certifying the referendum as sufficient. *Maggard* tells us the consequences of such decision: HB 1 was suspended as of December 9 and never went into effect. Respondents cite no legal authority

⁷ Even *if* a new primary were required, UOCAVA has a waiver process. *See* 52 U.S.C. § 20302(g)(2)(B)(ii). Intervenor's argue a waiver would be impossible, but since the provision has been in force, the federal government has granted approximately half of all waiver requests. *See* <https://www.fvap.gov/eo/waivers>; <https://www.justice.gov/archives/opa/pr/fact-sheet-move-act>; https://ovi.csg.org/wp-content/uploads/2025/05/OVI_State_Primary_V3.pdf. And, of course, Intervenor's offered no *evidence* as to why Ohio or any other state's request was rejected.

supporting the notion that the Secretary can, by fiat, just proceed as if HB 1 is a law.

Plaintiff's position has always been that HB 1 is not in effect and cannot be used for the general election. He requested an injunction barring its use pending a vote. D2:P5-6, 8. In the letter accompanying the Secretary's certificate of insufficiency, the Attorney General engaged in extensive, irrelevant "remedy" analysis, claiming the lawful districts could not be used without a new primary. D27:P9-10. The day before trial, the Secretary and Intervenors filed more than 100 pages of briefing addressing these theories. D60-61.

Within the time constraints the Secretary's belated decision on sufficiency imposed, Plaintiff responded by explaining that no one had asked for new primaries; *Maggard* already supplies the answer; the Attorney General's legal analysis is wrong; and the 2022 districts can, must, and should be used. D62:P31-34. As explained in Section III, the Secretary and Intervenors *still*—despite extensive briefing—have not cited a single case supporting their contentions.

B. The Remedy Supplied by Chapter 115 is Not "Plaintiff's Remedy" and Plaintiff Did Not Waive Any Argument on this Subject

Despite Respondents' failure to offer any legal or factual support for their arguments, the trial court went beyond the bounds of Section 116.200 and addressed both the alleged illegality and feasibility of using the lawfully enacted districts in November. D63:P26-37. Since the trial court erroneously went down that path, Plaintiff explained in his opening brief why the trial court's analysis

was wrong, and that Missouri law already addresses what to do about any perceived problems with use of the nominees produced by the August primaries at the general election. Pl. Br. at 81-88.

Now, the Secretary argues Plaintiff somehow “waived” his right to “seek” such a remedy.⁸ Secretary Br. at 60-63. That is wrong. Plaintiff did not *ask* to declare the primary elections invalid. In fact, the Board of State Canvassers did not even certify the election results until the day Plaintiff filed his opening brief.⁹ At present, *no one* has challenged those results. Such a challenge may never come to pass.

What Plaintiff’s opening brief *is* doing is responding to the trial court’s erroneous conclusion that it would be either unlawful or infeasible to conduct the general election under the *only* lawful districts (enacted in 2022). If anything, the trial court’s speculation on this subject only underscores why Section 116.200 actions must be confined to sufficiency, *Ketcham*, 847 S.W.2d at 831; *Mo. Elec. Coops.*, 497 S.W.3d at 920, and why state officials must heed this Court’s warning not to delay questions that can be answered early, *Coleman v. Ashcroft*, 696 S.W.3d 347, 351-55, 371-72 (Mo. banc 2024). The Secretary delayed arguments

⁸ The Secretary cites the undersigned’s statements at trial as if they are some sort of damning admission. *See* Secretary Br. at 61 (citing Tr. 29:1-7). They are not. Plaintiff’s position at trial was the same as it is now: Missouri can proceed to the election using the candidates produced by the August primaries, but if those results need to be aside, Missouri law supplies a process to replace the candidates.

⁹ <https://enr.sos.mo.gov/>

fully developed in October 2025 until August 4, 2026, knowing full well a September 8 deadline was looming. The Secretary's decision to delay neither transforms the scope of these proceedings nor lends new-found credibility to Respondents' poorly developed arguments.

Regardless of how to deal with the Secretary's decision to conduct a primary using congressional districts that have never been the law, the answer is not to simply throw up our hands and reward the Secretary's decision to "exercise [his] official duties in a manner to frustrate constitutional provisions." *Maggard*, 733 S.W.3d at 419. As the opening brief pointed out, one option is to declare all candidates "nominated" in the primary election as "ineligible to hold office or not entitled to be voted on for office." § 115.013(7), RSMo.

C. Missouri Law Provides a Remedy to the Secretary's Concerns about Election Administration

As Plaintiff explained, if this Court needs to deal with the primary, Missouri has a process for replacing primary nominees. Pl. Br. at 81-88. The Secretary insists the primary "nominees" *must* be the candidates at the general election. Secretary Br. at 61-63. They can be. But they do not have to be. Despite quoting it, he ignores that Chapter 115 explicitly says "such candidate shall be placed on the official ballot at the general election *unless he is removed or replaced as provided by law.*" § 115.343, RSMo (emphasis added). This tracks the Constitution. Mo. Const. art. VIII, § 24. Missouri law has long recognized that sometimes primary nominees must be replaced.

Such replacement may occur if the nominee dies, is “disqualified,” or withdraws. “Disqualified” includes “a determination that a candidate is ineligible to hold office or not entitled to be voted on for office.” § 115.013(7), RSMo. At the moment, the fact is that the Secretary certified the August primary election results and therefore Missouri has nominees to run in the general election in each congressional district. The Secretary seems to *agree* that “the nominees originally selected would remain qualified to compete in the general election—even if the HB 1 map were somehow deemed unconstitutional.” Secretary Br. at 63. So, it is unclear what he believes the problem is.

Federal law says candidates must be elected from districts “established by law.” 2 U.S.C. § 2c. That will happen in November ***only if*** the lawfully enacted districts are used—Missouri cannot use the HB 1 districts because they are not established by law. Fortunately, the chapter 115 procedure could be used to avoid any conflict with federal law that would result from the Secretary’s use of invalid districts: party nominating committees can nominate new candidates.

The point is this: Respondents’ “remedy” arguments go far beyond Section 116.200’s scope. The trial court should never have reached them. Even if this Court does, they are meritless for the reasons discussed in Section III. But *if* Respondents are right that Missouri cannot use the lawfully enacted districts in November, then 2 U.S.C. § 2c poses a significant problem. Plaintiff says follow the law and use the lawful districts. Respondents say use districts that have never been law because the primary “results” pose some problem. Chapter 115 avoids

any such problem by providing a state-law process to address the Secretary's use of non-law districts for the primary.

D. MCVR is Not an Impediment to Enforcement of the Constitution and Maggard

Respondents also hope this Court will ignore the law because, they say, MCVR is “locked” and the November election cannot be held using the lawful districts. *See* Secretary Br. at 66–68; Intervenor Br. at 58–59.

The circuit court incorporated that argument into its judgment even though the only evidence on this was an affidavit from a formal election official that MCVR was “locked” in one local election authority due to a unique set of elections there. That evidence did not support the finding that, whatever the circumstances are in part of Jackson County, the law must be ignored. As amici current election officials (from two counties and one each from both major parties) explain, the 2022 districts already exist in MCVR and voters are “still assigned to both districts.” *Lightfoot & Lennon Amicus Br.* at 5–6.

Local election authorities “do not need to redefine or edit the information in MCVR” because “[e]very local election authority completed the process of redistricting in May 2026” and “had the choice of selecting either the 2022 or HB 1 congressional district.” *Id.* at 6. That choice “is still available for the November 3, 2026 general election.” *Id.* MCVR’s “locking” function “has no impact on local election authorities’ ability to set up their November 3, 2026 general election using whichever congressional map this Court decides.” *Id.*

Even if that is wrong, it is no reason to ignore the law. If MCVR being “locked” causes some problem complying with the law, the Secretary has the key and should *unlock* it. MCVR is within the Secretary’s control. *See* 15 CSR 30-15.030. If there were any genuine issue with MCVR, a decision finding the referendum petition sufficient would resolve it—the Secretary would simply direct local election authorities to select the 2022 districts that are already in the system. D43:P3–4.

The Secretary chose to offer an affidavit from a former election official rather than present live testimony from someone in his own office who actually administers MCVR. The “impossibility” finding (to which this Court owes *no* deference for the reasons previously discussed) is contradicted by current election officials with firsthand knowledge of the system. The MCVR argument is simply a distraction.

V. To the Extent Equitable Principles Should Factor into the Analysis, the Equities Overwhelmingly Favor Plaintiff

For the reasons discussed above and in Plaintiff’s opening brief, there is no need to accept the Secretary’s plea to equity—either to resolve this case or address the consequences of his delayed certification. Regardless, if resort to equity *is* necessary, Respondents’ analysis is tortured and wrong.

They rely on the “*Purcell* Principle” and *Hadley*. As Plaintiff has explained, *Purcell* has no application to state courts enforcing state law and *Hadley* (cited once since being decided) is factually distinct and irrelevant. More

fundamentally, though, Respondents act like *Purcell* and *Hadley* **mandate** a particular course of action. This completely misunderstands equitable analysis.

Courts acting in equity “seek to do complete justice and determine and adjust the equities of all parties.” *Jones v. McGonigle*, 37 S.W.2d 892, 895 (Mo. 1931). Equity “preserves its flexibility and expansiveness in order to meet the requirements of every case,” *Cannon v. Bingman*, 383 S.W.2d 169, 174 (Mo. App. 1964), and seeks “to relieve hardships which, from time to time, arise from a hard and fast adherence to more absolute legal rules,” *Holland v. Florida*, 560 U.S. 631, 650 (2010). Respondents turn these principles on their head.

The Secretary also ignores his unclean hands. He insists Plaintiff has “provide[d] *zero* evidence to support this audacious claim.” Secretary Br. at 73. Really? The Secretary and Attorney General made their scheme explicit: delay issuing a certificate because “delay works in our favor.” D38:P4. By that, they meant avoid an unfavorable ruling on their meritless constitutional arguments by invoking *Purcell*. These arguments were known and fully developed in October 2025—a federal court already concluded as much. D30:P8. The Secretary offers no good-faith basis for waiting until August 4 to issue his certificate.

The Secretary insists his hands are clean because he “simply abided by Section 116.150’s explicit statutory deadline.” Secretary Br. at 73-74. Again, he does not understand equity. Unclean hands seeks “to prevent *opportunistic* behavior,” *Purcell v. Cape Girardeau Cnty. Comm’n*, 322 S.W.3d 522, 524 (Mo. banc 2010)—not “illegal” behavior. “He who has acted in bad faith, resorted to

trickery and deception, or been guilty of fraud, injustice, or unfairness will appeal in vain to a court of conscience, even though in his wrongdoing he may have kept himself strictly ‘within the law.’” *Monsanto Co. v. Rohm & Haas Co.*, 456 F.2d 592, 599 n.11 (3d Cir. 1972); *see also Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933); *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815 (1945).

Respondents do not engage with the “general equitable principles” or *Milligan* factors Plaintiff addressed in his opening brief. They fail to recognize the constitutional gravity of allowing the Secretary to implement congressional districts that have *never* been law, in open defiance of the people’s reserved referendum right. They simply insist Tammy Brown’s affidavit shows it is “impossible” to use the 2022 districts. But as discussed above, this Court owes no deference to that finding; the affidavit is irrelevant and suspect; and *even if* true, the 2022 districts are *already in* MCVR and ready to use.

Put simply, if the Secretary wants to invoke equity, he must do equity. He must demonstrate, under all the facts and circumstances, that this Court should allow him to run roughshod over the People’s constitutional rights. He does not come close. “[T]he secretary cannot exercise official duties in a manner to frustrate constitutional provisions.” *Maggard*, 733 S.W.3d at 419. The equities overwhelmingly favor Plaintiff and the rights of Missouri citizens.

VI. As the Briefing in this Court Illustrates, It Was Error to Permit the Republican Committees to Intervene

Plaintiff briefed the intervention issue extensively in his opening brief and need not say much more here. Intervenors' arguments to the contrary notwithstanding, this Court need do nothing but compare the Secretary's and Intervenors' briefs to this Court. If one were trying to draw a Venn diagram comparing their arguments, it would be a circle. *See* D60; D61. Intervenors lack a unique interest and are more than adequately represented by the Secretary. *See* Intervenor Br. at 60–72.

CONCLUSION

The Court should reverse the Secretary's decision, declare the referendum petition sufficient, and enter the judgment the trial court should have entered. Rule 84.14.

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 August 25, 2026.

This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 7,354. 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.

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IN THE SUPREME COURT OF MISSOURI

RICHARD VON GLAHN,)

Appellant,)

v.)

Case No. SC101805

DENNY HOSKINS, in his official)

capacity as Missouri Secretary of)

State,)

Respondent.)

**MOTION FOR A STAY OF INJUNCTION PENDING EMERGENCY
APPEAL AND APPLICATION FOR STAY TO THE SUPREME COURT
OF THE UNITED STATES**

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INTRODUCTION

Secretary of State Denny Hoskins moves for stay of the injunction prohibiting enforcement of HB 1 pending an emergency appeal to the United States Supreme Court. This Court holds authority to “stay injunctive relief pending appeal” under Rule 92 and the Court’s inherent authority. *See State ex rel. Bailey v. Sengheiser*, 692 S.W.3d 20, 24 (Mo. banc 2024) (citing Mo. S. Ct. R. 92.03, 92.04). A stay of the injunction pending appeal is warranted because the Court’s order violates federal law in several serious respects.

The Circuit Court found that 1.2 million Missourians voted in the August 2026 Primary Election. D63, ¶ 15. Those votes are now meaningless under this Court’s injunction. The Circuit Court also found that changing the map is not just “impractical,” but “impossible” in light of Missouri’s obligation to send out mail ballots under UOCAVA. *Id.*, ¶¶ 170–71. Yet this Court’s injunction now asks the Secretary of State and Missouri local election authorities to do what is technically impossible. Indeed, as Tammy Brown, a Jackson County election official with 25-years’ experience testified, “changing the congressional map after the primary election would put the entire election at risk.” D50, ¶ 6. The Circuit Court agreed—finding that an injunction against HB 1 would be “impossible to implement.” D63, ¶¶ 150–71. Yet this Court imposed a statewide injunction anyways.

The Court's injunction also violates the U.S. Constitution and federal law. The U.S. Constitution's Elections Clause forbids permitting just "five percent of the legal voters in each of two-thirds of the congressional districts" (approximately 3.3% of voters) to unilaterally suspend a congressional map. Mo. Const. art. III, § 52(a); U.S. Const. art. I, § 4. But without discussing this aspect of the Elections Clause, this Court enjoined enforcement of HB 1 anyways.

Article I, Section 2 of the U.S. Constitution also forbids this Court from nullifying votes cast in a Primary Election for seats in the U.S. House of Representatives. When, as here, Missouri law "has made the primary an integral part of the procedure of choice . . . the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by" Article I, Section 2. *United States v. Classic*, 313 U.S. 299, 318 (1941). Yet this Court's injunction brushes aside Article I, Section 2 and *Classic* without even discussing these authorities.

There's more. The Equal Protection Clause forbids discriminating against voters by weighing their votes differently based on where they live. *Gray v. Sanders*, 372 U.S. 368, 379–80 (1963). The Circuit Court found that such discrimination would occur if HB 1 were enjoined after the Primary and before the General Election. But, without acknowledging this factual finding or the Equal Protection Clause, this Court enjoined HB 1 anyways.

This Court also completely ignored the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20302 (“UOCAVA”). UOCAVA requires absentee ballots to be transmitted to military personnel and overseas Americans no later than 45 days before an election. The Circuit Court found that changing the map would make complying with UOCAVA impossible. D63, ¶ 131; *see also id.* ¶¶ 170–71. But, without discussing UOCAVA, this Court enjoined HB 1 anyways. Missouri is now exposed to a UOCAVA enforcement action in federal court. 52 U.S.C. § 20307.

At the very least, an administrative stay is necessary to “permit time for briefing and deliberation” in the U.S. Supreme Court. *United States v. Texas*, 144 S. Ct. 797, 798 (2024). And a stay is especially necessary here—because implementing the Court’s injunction is impossible, because the Court’s order puts Missouri’s entire congressional election at risk, and because the Court’s injunction violates several provisions of the U.S. Constitution.

To permit expedited review at the U.S. Supreme Court, the Secretary respectfully requests a ruling on this motion for stay no later than 12:00 p.m. tomorrow on September 4, 2026.

LEGAL STANDARDS

Missouri courts rely on federal precedent in assessing applications for emergency relief. *See State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996); *State ex rel. Kehoe v. Zhang*, No. SC101026,

2025 WL 1564397, at *1 (Mo. banc May 27, 2025). Federal standards strongly counsel in favor of a stay, or—at least—an administrative stay pending an emergency application to the U.S. Supreme Court. The U.S. Supreme Court “*frequently* issues an administrative stay to permit time for briefing and deliberation” after “receiving an emergency application.” *Texas*, 144 S. Ct. at 798 (emphasis added).

The Supreme Court also grants applications for a stay pending the entire appeal based on: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). “There is substantial overlap between these and the factors governing preliminary injunctions; not because the two are one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined.” *Id.* (citation omitted).

ARGUMENT

The Court should grant the Secretary of State’s application for a stay pending appeal. In the alternative, the Court should grant an administrative

stay to provide breathing room for briefing and deliberation by the U.S. Supreme Court.

I. The Secretary is likely to succeed on the merits.

A. The Court's injunction violates the U.S. Constitution and federal law.

This Court's injunction is fundamentally flawed, and likely to be vacated, because it violates the U.S. Constitution and federal law. It also violates basic principles of equity, including the *Purcell* principle. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006). Indeed, this Court is the first—*ever*—to order an injunction changing Missouri's congressional map between the Primary and the General Election. This has created a host of problems under the U.S. Constitution and federal law.

1. The Court’s injunction violates Article I, Section 2 of the U.S. Constitution.

The Court’s order requires Missouri to change its congressional maps between the Primary and the General Election. *See Op.*, pp. 13–14. Yet the Circuit Court found, as a factual matter, that this injunction would force hundreds of thousands of Missourians to vote for candidates in the General Election that they had no role in choosing in the Primary Election. D63, ¶¶ 20, 145. Cole County voters, for example, chose Rick Brattin and Emanuel Cleaver as the candidates for CD-05, but this Court is now forcing every voter in Cole County to choose between Bob Onder and Bethany Mann—who were chosen by entirely different voters in CD-03.

The Court’s injunction palpably affronts Article I, Section 2 of the U.S. Constitution, which provides, “The House of Representatives shall be composed of Members *chosen* every second Year *by the People of the several States.*” U.S. Const. art. I, § 2 (emphasis added). This language protects the right to vote and prohibits States from nullifying votes cast in federal congressional elections. *See* U.S. Const. art. I, §2; *United States v. Mosley*, 238 U.S. 383, 386 (1915) (recognizing that the constitutional right to vote includes “right to have one’s vote counted”). But that is exactly what this Court’s injunction does—it renders hundreds of thousands of votes in the Primary Election effectively null and void. *See* D63, ¶ 145.

Nor does the fact that this Court’s injunction nullifies a primary election—as opposed to a general election—change anything. U.S. Supreme Court precedent establishes that “[w]here the state law has made the primary an integral part of the procedure of choice . . . the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by” the Constitution’s right to vote. *United States v. Classic*, 313 U.S. 299, 318 (1941). Said another way, the primary and general elections are “fus[ed]” into a “single instrumentality” such that they possess a “unitary character.” *Smith v. Allwright*, 321 U.S. 649, 660–61 (1944).

Missouri’s August Primary Election was an integral part of the procedure for choosing congressional representatives from Missouri. Relying on *Classic* and *Allwright*, this Court has already held that Missouri’s congressional primaries are “an integral part of the electoral process” in this State. *Pollard v. Bd. of Police Comm’rs*, 665 S.W.2d 333, 340 (Mo. banc 1984) (citing *Classic*, 313 U.S. 299; *Allwright*, 321 U.S. 649). This Court has also emphasized that “[n]ominating or primary elections have constitutional stature in Missouri” and serve an “integral part of [the State’s] election machinery.” *State ex rel. McClellan v. Kirkpatrick*, 504 S.W.2d 83, 86 (Mo. banc 1974) (citing Mo. Const. art. VIII, § 3). Missouri law also provides that “all candidates for elective office shall be nominated at a primary election,” §§ 115.339, 115.343, RSMo. Thus, the primary “exclud[es] from the ballot on

the general election the names of candidates rejected at the primary” such that it “impose[s] restrictions upon the choice of candidates by the voters save by voting at the primary election.” *Classic*, 313 U.S. at 313. This makes the primary “integral” “as a matter of law.” *Id.* at 314; *McClellan*, 504 S.W.2d at 86. This Court’s opinion fails to provide any persuasive argument otherwise. In fact, the Court does not even mention Article I, Section 2 of the U.S. Constitution.

This Court’s injunction will also violate Article I, Section 2 of the U.S. Constitution for another reason: It will make it impossible for Missouri to hold a timely General Election. This point is supported by the Circuit Court’s factual findings, the testimony of Missouri local election officials, and the declaration attached to this motion from the Missouri Secretary of State. *See* D63, ¶¶ 20, 170–71; D50; Ex. A, ¶¶ 6–12 (Decl. of Denny Hoskins)). However, Article I, Section 2 requires that “[t]he House of Representatives shall be composed of Members chosen *every second Year* by the People of the several States.” U.S. Const. art. I, § 2 (emphasis added). Fulfilling this constitutional timeline will be technically impossible, however, if this Court’s injunction stands as to the 2026 General Election. The election *must* proceed under the HB 1 map if a timely election is to occur at all.

The Secretary is likely to succeed in showing that this Court’s injunction violates Article I, Section 2 of the U.S. Constitution.

2. The Court's injunction violates the Equal Protection Clause.

Next, this Court's injunction violates the Equal Protection Clause by transferring hundreds of thousands of voters from one district to another, thereby disadvantaging the voting power of these voters solely based on where they live. The Circuit Court found that Missourians forced consider a new slate of candidates for the General Election are at an inherent disadvantage in terms of voting power. D63, ¶¶ 145–46. The Court also found that this disparity in voting power would violate the Equal Protection Clause. *Id.* ¶¶ 142–47.

The Equal Protection Clause forbids weighting the votes of some Missourians “more heavily” than others. *Gray v. Sanders*, 372 U.S. 368, 379 (1963). “Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and *wherever their home may be* in that geographical unit.” *Id.* (emphasis added). “This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.” *Id.* at 379–80.

For obvious reasons, the Circuit Court found that changing the congressional map between the primary and general elections would flagrantly

violate this standard. D63, ¶¶ 142–47. The Circuit Court found that “[i]f the congressional map changes between the primary and general elections, it would force hundreds of thousands of Missourians to vote in a district different from the one in which they cast their primary ballots.” D63, ¶ 145. Also, the court found that “[t]hose voters would possess materially less voting power than voters whose district remained the same because the former group would have to select from candidates they never had the opportunity to evaluate, support, or oppose in the primary.” *Id.* ¶ 146.

Indeed, if it is permitted to stand, the Court’s injunction will diminish the voice of many Missourians who would be forced to vote for different slates of candidates in the Primary and General Elections. This would be particularly problematic in districts where primaries are more competitive than the general election. In those districts, the primary election is *the* contest where voters effectively select their representative.

The Secretary is thus likely to succeed on appeal under the Equal Protection Clause.

3. The Court’s injunction will force a violation of UOCAVA.

The Court’s injunction will also force a violation of UOCAVA before the General Election in November 2026. Indeed, the Circuit Court found that it would be “impossible” to change the map and still comply with UOCAVA if a

court enjoined the HB 1 map before the 2026 General Election. D63, ¶¶ 145, 170–71.

The Circuit Court’s finding is supported by simple math. UOCAVA requires Missouri to transmit ballots to military voters and overseas Americans no later than 45 days before the General Election. 52 U.S.C. § 20302(a)(8). But before ballots can be designed, tested, and printed, each Missouri voter must be assigned to the proper congressional district in the Missouri Centralized Voter Registration (“MCVR”) database. *See* D50. In Missouri, the MCVR database is currently locked and cannot be changed before November. D63, ¶¶ 170–71. Thus, ordering an election under the new map would alone force a violation of UOCAVA (in addition 2 U.S.C. § 7) because the election cannot proceed at all by November 3, 2026. D63, ¶¶ 170–71; *see Foster v. Love*, 522 U.S. 67, 73–74 (1997) (holding that State may not run federal election in conflict with federal timing of 2 U.S.C. § 7, which requires an election this year on November 3, 2026). Indeed, as local election officials told this Court, “there is no time window to change the congressional district lines in the MCVR database between now and the general election on November 3, 2026,” and “changing the congressional map after the primary election w[ill] put the entire election at risk.” D50, ¶¶ 6, 10.

At any rate, even if it was somehow *possible* to change the district lines in the MCVR, it would still be *impossible* to change the lines and comply with

UOCAVA. All of Missouri’s local election authorities must transmit UOCAVA ballots no later than 45 days before the General Election (September 19, 2026). That is just 16 days away. However, as election officials testified, changing a map in MCVR takes *at least* 7–10 days. D50, ¶ 7. Then, after the map is changed in MCVR, ballots must be designed and tested, which takes about 14 days (or two weeks). *Id.*, ¶ 11. And after that, local election officials need an additional 7 days (one week) for printing ballots. *Id.* That is a combined 28 days—*at best*. However, with UOCAVA’s September 19 deadline just 16 days away, there simply is insufficient time to change the HB 1 map before the General Election (*even* if changing the map was somehow possible in MCVR).

This is another reason that the Secretary of State is likely to prevail on the merits. It would be impossible for the Secretary and local election authorities to simultaneously comply with UOCAVA and with this Court’s injunction.

B. The Elections Clause forbids the Court’s application of Article III, Section 52(b) of the Missouri Constitution to suspend a duly-enacted congressional map without a referendum vote.

The U.S. Constitution’s Elections Clause also forbids the Court’s injunction issued under Article III, Section 52(b) of the Missouri Constitution. The Court’s injunction permits a referendum petition signed by “five percent of the legal voters in each of two-thirds of the congressional districts in the state” (or approximately 3.3% of voters) to suspend a duly-enacted

congressional map. Mo. Const. art. III, §§ 52(a), 52(b). However, the Elections Clause forbids permitting just 3.3% of a State’s voters from suspending a congressional map without a referendum vote. The People’s elected representatives passed HB 1 by overwhelming margins—21 to 11 in the Senate and 90 to 65 in the House of Representatives. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025). The Elections Clause requires that the People’s will, expressed through the state legislature, must stand absent a referendum vote in which a *majority* of voters abrogate HB 1.

The Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4, cl.1. This Clause is rooted in a republican theory of government. At the founding, everyone agreed that the majority’s will must control the time, place, and manner of federal elections. The only question was whether the majority’s will was best expressed through Congress or state legislatures. *See* Debate in New York Ratifying Convention, *in* 2 *The Founders’ Constitution*, at 268, 269 (statement of John Jay) (“The will of the people certainly ought to be the law, but the only question was ... whether the will of the people, with respect to the time, place, and manner of holding elections, ought to be expressed by the general government, or by the state legislatures.”); *Federal Farmer No. 12* (Richard

Henry Lee) (“[S]o far as regulations as to elections cannot be fixed by the constitution, they ought to be left to the state legislatures, they coming far nearest to the people themselves; at most, congress ought to have power to regulate elections only where a state shall neglect to make them.”). No one, however, could have imagined that any State would allow approximately 3.3% of a State’s voting population to unilaterally override the State’s congressional map for an entire election cycle. *See* Mo. Const. art. III, §§ 52(a), 52(b). Of course, it would be laughable to think that just 3.3% of the electorate could represent “the will of the people,” as founders like John Jay and Richard Henry Lee envisioned.

Through the Elections Clause, the founders ultimately settled on vesting regulatory authority over elections in state legislatures—as “the *representative* body which ma[kes] the laws of *the people*.” *Smiley v. Holm*, 285 U.S. 355, 365 (1932) (emphasis added) (internal quotation marks omitted). Yet according to this Court’s opinion, Article III, Section 52(b) of the Missouri Constitution mandates that HB 1 cannot take effect (and is thus temporarily repealed) *until* voters weigh in. *See* Op., pp. 13–14. That would mean that about 3.3% of registered voters can block a law enacted by the People’s elected representatives. To the extent that the U.S. Constitution’s Elections Clause means *anything*, it certainly prohibits that profoundly antidemocratic arrangement.

Of course, 110 years ago in *Ohio ex rel. Davis v. Hildebrandt*, 241 U.S. 565 (1916), the U.S. Supreme Court held that the U.S. Constitution’s Elections Clause did not prevent Ohio from subjecting congressional maps to a referendum. Likewise, in *State ex rel. Carroll v. Becker*, this Court held that Missouri’s Governor may veto redistricting legislation without running afoul of the Elections Clause. *See* 45 S.W.2d 533 (Mo. banc 1932), *aff’d*, 285 U.S. 380. But that has nothing to do with the questions at issue here. HB 1 *has* been approved by the Governor’s signature. Yet this Court has nonetheless suspended the use and implementation of a congressional map even *before* the People vote. *See* Op., pp. 13–14. That is unprecedented. Neither *Hildebrandt* nor *Carroll* suggest that just 3.3% of a State’s voters can submit a referendum petition to displace a lawfully-enacted congressional map for an entire election cycle.

Hildebrandt never held that the Elections Clause permitted a small fraction of Ohioans to suspend the State’s congressional map for an entire election cycle. Rather, the 1915 referendum at issue in *Hildebrandt* arose in a non-election year. *See* 241 U.S. at 566. Also, the referendum “vote was taken and the law was disapproved” before the congressional elections in November 1916. *See id.* Thus, the U.S. Supreme Court never considered whether a small percentage of voters could suspend a congressional map for an entire election cycle. *See id.* Also, *Hildebrandt* merely recognized the ability to *veto*

redistricting legislation via a referendum vote. *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 840 (2015) (Roberts, C.J., dissenting) (discussing *Hildebrandt*). “The result of the decision was to send the *Ohio Legislature* back to the drawing board to do the redistricting.” *Id.* (emphasis in original). *Hildebrandt* never suggested that just 3.3% of registered voters could force a State to use their preferred map for an entire election cycle. Little will be left of the Elections Clause if *that* result is permissible.

The Secretary is likely to prevail on his application for stay under the U.S. Constitution’s Elections Clause.

II. The Court’s injunction puts the entire 2026 congressional election at risk and will inflict irreparable injury on the Secretary of State, the State of Missouri, and the public interest.

Next, the Court’s injunction will inflict irreparable injury on the Secretary of State, the State of Missouri, and the public interest. *Cf. Comprehensive Health of Planned Parenthood Great Plains v. State*, 726 S.W.3d 716, 741 (Mo. App. W.D. 2025) (“Because the State of Missouri and state officials are parties against whom the preliminary injunction is sought, we analyze the ‘balance of harms’ and ‘public interest’ factors together.”); *Labrador v. Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring) (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers))).

This Court is now the first court—*ever*—to enjoin a congressional map after the completion of a Primary election. But as the Circuit Court found, and as local election officials testified, this Court’s injunction will “put the entire election at risk.” D50, ¶ 6; D63, ¶¶ 170–71. Again, the Circuit Court found that “changing the maps at this late juncture is not just ‘impractical,’ it is impossible.” D63, ¶¶ 170–71.

Indeed, that is why *every* other court to confront the remedial question posed here has declined to enjoin implementation of the congressional map after the Primary election. *See, e.g., Covington v. North Carolina*, 316 F.R.D. 117, 176–77 (M.D.N.C. 2016) (Opinion of Wynn, Circuit Judge) (allowing general election “to proceed as scheduled under the challenged plans” despite being determined unconstitutional after the primary); *Page v. Va. State Bd. of Elections*, 58 F. Supp. 3d 533, 554, (E.D. Va. 2014) (Opinion of Duncan, Circuit Judge) (“[G]eneral principles of equity dictate that Virginia’s 2014 elections should proceed as scheduled under the challenged districting plans” after plan found invalid one month before general election.), *vacated on other grounds sub nom., Cantor v. Personhuballah*, 135 S. Ct. 1699 (2015); *Vera v. Richards*, 861 F. Supp. 1304, 1351 (S.D. Tex. 1994) (Opinion of Jones, Circuit Judge) (ordering election held on unconstitutional map after primary had already been held), *aff’d sub nom., Bush v. Vera*, 517 U.S. 952 (1996); *see also Terrazas v. Slagle*, 821 F. Supp. 1154, 1159 (W.D. Tex. 1992) (per curiam three-judge

panel) (“Primary elections for offices chosen by the electorate in separate geographical districts obviously make no sense unless the districts are the same for the ensuing general election as for the primary.”).

This Court’s first-of-its-kind injunction will inflict grave injury on the State and the public by placing the entire election at risk. The Court should stay this abnormal injunction to prevent irreparable harm to the State and to all Missourians, who have an overriding interest in the 2026 General Election proceeding in accordance with federal law. *See Foster*, 522 U.S. at 73–74 (holding that State may not run federal election in conflict with federal timing of 2 U.S.C. § 7, which requires an election this year on November 3, 2026).

III. A stay of the injunction would not injure von Glahn, who seeks unconstitutional suspension of a duly-enacted congressional map *without* the consent of the vast majority of Missourians.

A stay of the injunction would inflict no meaningful injury on Appellant von Glahn. And, even if this Court disagreed, von Glahn’s supposed injury certainly would not outweigh the injury to the State of Missouri and the public of not having a congressional election in November 2026.

We are here because von Glahn has attempted to weaponize Missouri’s referendum procedures in an unprecedented (and profoundly antidemocratic) manner. Again, HB 1 passed overwhelmingly in the General Assembly and it was signed by Missouri’s Governor. D63, ¶¶ 2–3. Yet von Glahn has tried to weaponize the Missouri Constitution’s referendum provisions to suspend the

State’s congressional map merely by *submitting* a referendum petition. Forget about a referendum vote.

In Missouri, a referendum petition need only be signed by “five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a). And, assuming equipopulous districts, that would mean approximately 3.3% of Missouri’s voters could suspend a duly-enacted congressional map, merely by submitting signatures and without any referendum vote by a majority of Missouri’s electorate. Thus, this Court’s injunction permits von Glahn to weaponize Missouri’s referendum process to achieve his partisan ends—even *though* the vast majority of the People disagree, as expressed through their elected representatives.

For the reasons described above, the U.S. Constitution and federal law forbid this arrangement. Thus, von Glahn suffers no injury because he can have no cognizable interest in suspending Missouri’s congressional map in manner prohibited by the U.S. Constitution and federal law. *See Poe*, 144 S. Ct. at 923 (Gorsuch, J., concurring) (“[T]here is always a public interest in prompt execution’ of the law, absent a showing of its unconstitutionality.” (quoting *Nken*, 556 U.S., at 436)).

Even if this Court disagreed, and found some injury to von Glahn, any injury to von Glahn cannot possibly be greater than the injury to the State of Missouri and the public in potentially not having an election *at all* because

HB 1 is enjoined. This Court already recognized this point in *Hadley v. Junior College District of Metropolitan Kansas City*, 460 S.W.2d 1, 2–3 (Mo. 1970)—where it declined to order a new election map for an imminent election even *after* a finding of unconstitutionality by the U.S. Supreme Court. Indeed, “[i]n awarding or withholding immediate relief, a court is entitled to *and should* consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Id.* at 2 (emphasis added).

This Court should follow *Hadley* and stay its injunction pending emergency appeal to the U.S. Supreme Court.

IV. In the alternative, the Court should grant an administrative stay to allow time for briefing and deliberation in the U.S. Supreme Court.

At the very least, the Court should grant an administrative stay of the injunction pending emergency appeal to the U.S. Supreme Court. “Administrative stays do not typically reflect the court’s consideration of the merits of the stay application. Rather, they ‘freeze legal proceedings until the court can rule on a party’s request for expedited relief.’” *Texas*, 144 S. Ct. at 798 (citation omitted). For example, a couple weeks ago, the Chief Justice of the United States administratively stayed an injunction to allow for briefing and deliberation even though the Chief Justice ultimately agreed with the lower court’s injunction on the merits. *Compare* Admin. Stay Order, *Nat’l Park*

Serv. v. Nat’l Tr. for Historic Pres., No. 26A203 (U.S., filed Aug. 21, 2026), *with Nat’l Park Serv. v. Nat’l Tr. for Historic Pres.*, No. 26A203, 2026 WL 2564318, at *4–7 (U.S. Aug. 31, 2026) (Roberts, C.J., dissenting).

This illustrates the broader point that “administrative stay[s] reflect[] no view of the underlying merits.” *Texas*, 144 S. Ct. at 798. Rather, “an administrative stay buys the court time to deliberate” so that it may adequately analyze “the four *Nken* factors.” *Id.* Thus, “[a]fter receiving an emergency application, [the U.S. Supreme] Court frequently issues an administrative stay to permit time for briefing and deliberation.” *Id.* This Court should do the same here—even if it disagrees that the Secretary of State has satisfied the *Nken* factors.

CONCLUSION

The Court should grant the motion for stay pending appeal. Alternatively, the Court should grant an administrative stay to allow time for briefing and deliberation in the Supreme Court of the United States.

Date: September 3, 2026

Respectfully submitted,

CATHERINE L. HANAWAY
ATTORNEY GENERAL

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Counsel for the Respondent

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2026, a true and accurate copy of the foregoing was filed electronically using the Court's electronic filing system to be served via operation of the Court's electronic filing system upon all counsel of record.

Louis J. Capozzi III

Exhibit A

IN THE SUPREME COURT OF MISSOURI

RICHARD VON GLAHN,

Petitioner,

v.

Case No. SC101805

DENNY HOSKINS, IN HIS OFFICIAL
CAPACITY AS MISSOURI SECRETARY OF
STATE,

Respondent.

**DECLARATION OF DENNY HOSKINS IN SUPPORT OF RESPONDENT’S
MOTION FOR A STAY PENDING APPEAL**

I, Denny Hoskins, declare as follows:

1. I am Missouri’s Secretary of State. That means I am the State’s chief elections officer and responsible for overseeing safe and secure elections in Missouri, including the State’s federal elections.

2. Missouri’s 2026 General Elections are scheduled for November 3, 2026. *See* Mo. Rev. Stat. § 115.121.1.

3. The date of Missouri’s General Election is mandated by federal law. *See Foster v. Love*, 522 U.S. 67, 73–74 (1997) (holding that the State may not run a federal general election in conflict with federal timing of 2 U.S.C. § 7).

4. In preparation for the 2026 General Election, Missouri ran its primary to select federal congressional candidates on August 4, 2026. *See* Mo. Rev. Stat. § 115.121.2. This election was held based on the federal congressional map, Missouri House Bill 1 (2025) (“HB 1”), that was in place at the time of the election, and the

results have been certified. *See* Official Results, State of Missouri – Primary Election, August 04, 2026.¹

5. On September 3, 2026, the Missouri Supreme Court held that the HB 1 congressional map used in the primary is subject to a referendum vote. The court further enjoined the State “from implementing, using, or mandating the use of the congressional redistricting in HB 1 for the November 2026 general election.” *von Glahn v. Hoskins*, No. SC101805, at slip op. 13 (Mo. banc Sept. 3, 2026).

6. Based on substantial evidence, the Circuit Court in this case found it would be “impossible” for Missouri election officials to switch the governing congressional map before the 2026 elections. *von Glahn v. Hoskins*, No. 26AC-CC00440, at ¶¶ 170–71 (Cole Cnty. Cir. Ct. Aug. 19, 2026) (“Trial Court Op.”). The Circuit Court cited concerns about Missouri’s Centralized Voter Registration (“MCVR”) database, which locks and often prevents changes to district lines whenever there are ongoing elections in Missouri. *See id.* ¶ 171. That is true between now and November 3 because special elections are being conducted in different parts of the State. *Id.*

7. The Circuit Court also credited the affidavit of Tammy Brown, a longtime and trusted election official in Jackson County. *See id.* ¶ 170. She swore under oath that it would not be feasible for Jackson County’s election officials to comply with a court order to change the congressional map in advance of the 2026 general election. *See id.*

¹ <https://enr.sos.mo.gov/>.

8. The Missouri Supreme Court was aware of these factual findings, which were extensively briefed and discussed at oral argument. Nevertheless, the Missouri Supreme Court simply ignored them. Moreover, the Missouri Supreme Court provided no guidance or instruction on how Missouri *could* comply with its order.

9. At a minimum, any attempt to implement the Missouri Supreme Court's order will almost certainly result in Missouri violating the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20302 ("UOCAVA"). UOCAVA requires absentee ballots to be transmitted to military personnel and overseas Americans no later than 45 days before an election. This year, that deadline is September 19.

10. But in order to comply with the Missouri Supreme Court's order, counties across Missouri must manually reassign voters to new congressional districts. As Tammy Brown's affidavit explained, in Missouri's larger jurisdictions (like Jackson County), this process would ordinarily take 2 weeks. Stipulated Ex. 28 ¶ 7, *von Glahn v. Hoskins*, No. 26AC-CC00440 (Cole Cnty. Cir. Ct. filed Aug. 18, 2026). Tammy Brown expressed the opinion that—if Jackson County election officials worked nights and weekends—that they could complete this process in 7-10 days. *Id.* But even after that, local election authorities must then design and test ballots to ensure votes will be counted accurately. *Id.* ¶ 11. This process normally takes about 2 weeks. *Id.* An additional week is usually needed to print ballots. *Id.*

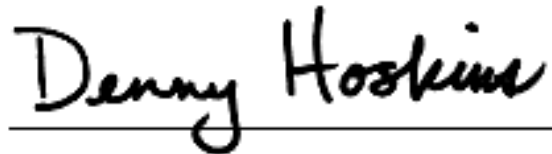
11. Altogether, it seems likely to take at least one month for local election officials to comply with the Missouri Supreme Court's order. That is obviously more than the 16 days (starting over Labor Day weekend) that election officials will have

to try to comply with the Missouri Supreme Court's order. It thus seems practically certain that—absent a stay—Missouri will be forced to violate UOCAVA.

12. In summary, the Missouri Supreme Court's decision puts the State in an impossible situation. Unless that decision is stayed, I am confident Missouri will be forced to violate federal law. And I am gravely concerned that Missouri's ability to hold timely congressional elections in 2026 will be jeopardized.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of September, 2026


Secretary of State

IN THE SUPREME COURT OF THE UNITED STATES

DENNY HOSKINS, IN HIS OFFICIAL CAPACITY
AS MISSOURI SECRETARY OF STATE,

Applicant,

v.

RICHARD VON GLAHN,

Respondent.

Case No. 26A_____

DECLARATION OF CHRISTOPHER BRUNDICK IN SUPPORT OF APPLICANT'S APPLICATION FOR STAY PENDING APPEAL

I, Christopher Brundick, declare as follows:

1. I am a citizen of Missouri and reside in Argyle, Osage County, Missouri.
2. I registered to vote in Missouri. I voted in Missouri's congressional primary on August 4, 2026, and I intend to vote in the general election on November 3, 2026.
3. Under the congressional map used in the primary election, Osage County was located in Congressional District 5. Rick Brattin and Emanuel Cleaver won their parties' respective primaries parties in the August 4, 2026 primary election. See Official Results, State of Missouri – Primary Election, August 04, 2026.¹
4. In the primary, I voted for my preferred candidate in Congressional District 5, and I looked forward to continuing to participate meaningfully in the selection of my representative in the general election.
5. However, the Missouri Supreme Court's opinion and injunction in *von Glahn v. Hoskins*, No. SC101805 (Mo. banc Sept. 3, 2026), will prevent me from doing so. That court has ordered Missouri to use an old congressional map for the upcoming

¹ <https://enr.sos.mo.gov/>.

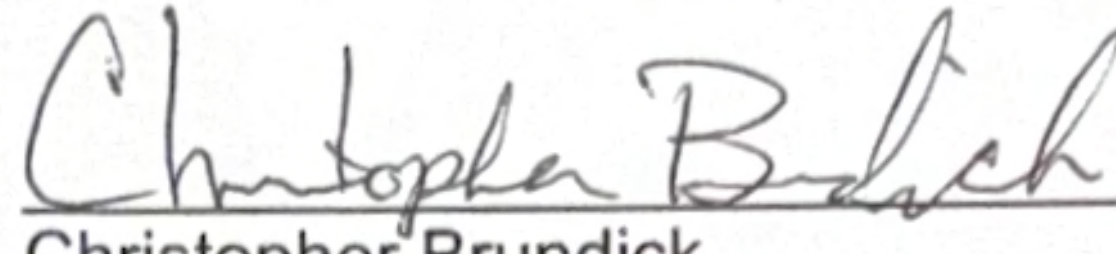
general election. If the only map is used, Osage County will no longer be located in Congressional District 5, but in Congressional District 3. I will no longer be able to select Rick Brattin or Emanuel Cleaver on my ballot because they will be listed on ballots for Congressional District 5. In Congressional District 3, I will have the option of selecting between Bob Onder and Bethany Mann, the primary winners of that district selected by different voters. See note 1. I did not vote—nor could have—for either of them in the primary election.

6. By not being able to select from either of the candidates who won the primary in which I participated, I believe that my right to vote and participate in selecting my congressional representative in the general election has been meaningfully infringed.

7. Although I can write in Rick Brattin or Emanuel Cleaver's name on the ballot in the general election, this does not restore my right to vote and select my representative. First, the practical operation of not having their names printed on the ballot for my congressional district "impose[s] serious restrictions upon [my] choice of candidates" in the general election. See *United States v. Classic*, 313 U.S. 299, 313 (1941). But even if their names not being on the ballot did not seriously restrict my choice of representative, neither candidate could be Missouri's elected representative for Congressional Districts 3 and 5. Thus, my ability to participate meaningfully in the selection of my congressional representative will be infringed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 4th day of September, 2026

A handwritten signature in cursive script, appearing to read "Christopher Brundick", written over a horizontal line.

Christopher Brundick