No. 26A304

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.

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY AND ADMINISTRATIVE STAY PENDING APPEAL

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September 8, 2026

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REPLY

Late last Thursday, the Missouri Supreme Court derailed an imminent federal congressional election, ignored federal constitutional arguments against its order, and deemed any consequences resulting from its decision "irrelevant." *See* App., 5a n.5, 11a–13a n.8. Since Secretary Hoskins sought emergency relief from this Court on Friday night, the chaotic fallout from the Missouri Supreme Court's irresponsible decision has only multiplied. Multiple lawsuits have already been filed against the State seeking a return to the old congressional map, *see* Complaint, *Onder v. Missouri*, No. 4:26-cv-1424 (E.D. Mo., Sept. 4, 2026); Complaint, *Berry v. Hoskins*, No. 4:26-cv-1419 (E.D. Mo., Sept. 4, 2026), and more are expected. Local election officials in counties are now left to make individual decisions on whether to try to change the congressional map, or stick with the map used to run the Primary and hold out for a federal court order. Candidates are confused about what districts they are running in. Jack Harvel, *Court ruling raises questions about Missouri primary winners under a different map*, Kansas City Star (Sept. 4, 2026) (noting confusion by candidates in both parties).[1] And Respondent's own lawyer is openly acknowledging that candidates who lost their Primary Elections can bring election contests, though he is advising them not to do so. *See* Jacob Barker, *A 'crisis' in Missouri elections? Supreme Court puts the blame on one state official*, St. Louis Post

[1] https://www.kansascity.com/news/politics-government/article317133985.html.

Dispatch (Sept. 6, 2026).[2] All this occurs in the shadow of a federal deadline to start mailing ballots in *eleven days*. 52 U.S.C. § 20302(a)(8). Without relief from this Court, Applicant has no idea how to manage this chaos, which results from a blatantly unconstitutional court order.

Respondent tries to distract from this extraordinary situation with two threshold procedural arguments—both of which boil down to simply allowing state courts to ignore federal constitutional arguments. *First*, Respondent asserts the presence of an adequate and independent state-law ground ("AISG"). Opp., at 14–17. In a footnote, the Missouri Supreme Court held that Secretary Hoskins waived his federal constitutional arguments because his certificate of insufficiency on the referendum could not incorporate an attached Attorney General opinion by reference. App., at 5a n.5; *see also id.* at 599a (Secretary's Certificate); *id.* at 600a–606a (Attorney General's Opinion). It is undisputed that the Missouri Supreme Court *first* applied this "rule" in this case. Opp., at 16–17. This "rule"—which Respondent expressly disclaimed at trial and did not argue below—appears in no statute. This "waiver" ruling is, unfortunately, a transparent attempt by the Missouri Supreme Court to insulate its decision from this Court's review—something this Court consistently disallows. *See, e.g.*, *NAACP v. Flowers*, 377 U.S. 288, 297 (1964) (finding it "wholly unacceptable" for the respondent to assert AISG when state "courts have not heretofore applied their rules respecting the preparation of briefs

[2] https://www.stltoday.com/news/local/government-politics/article_e84fc694-888c-493d-947b-db809e7e9781.html.

with the pointless severity shown here"). The Secretary's answer made the federal legal arguments; the trial court accepted them; and they were briefed and argued at the Missouri Supreme Court. *See* App., at 39a–46a; 257a–58a, 311a–13a, 323a–29a, 599a, 604a–606a, 1391a–97a, 1490a–1501a, 1570a–82a. That is not waiver.

Additionally and bizarrely, the Missouri Supreme Court said that Secretary Hoskins's referendum certificate *could not* rely on federal law—leaving him with no state-court avenue to raise federal constitutional defenses. *Id.*, at 5a n.5. This Court's precedents require litigants to comply "only" with "firmly established and regularly followed state practice." *Ford v. Georgia*, 498 U.S. 411, 423–24 (1991) (quotation omitted). But Respondent does not even bother to explain how Applicant could have preserved his federal arguments here. That's because there was no alternative state-law procedure. Finding an AISG here would abrogate a host of precedents and give state courts free rein to invent novel state-law procedural rules on the fly to obstruct this Court's review of federal constitutional questions.

Second, Respondent insists Applicant would not obtain any relief from a stay. Not so. The State's consistent position—in Secretary Hoskins's certification decision, before Missouri's courts, and before this Court—is that federal law requires it to use the same congressional map for the General Election that it used in the Primary Election. App., at 257a–58a, 311a–13a, 323a–29a, 599a, 604a–606a, 1490a–1501a. Only the Missouri Supreme Court's injunction is stopping that. If this Court grants a stay, the State will use the HB 1 map for the 2026 General Election. A stay thus provides full relief. It really is that simple.

On the merits, Respondent largely dodges Applicant's arguments and relies on misdirection. Start with the Elections Clause claim. Respondent suggests that he is merely defending the same statewide referendum vote this Court allowed in *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 566 (1916). Opp., at 23–26. But neither *Hildebrant* nor any prior judicial decision *ever* sanctioned what Respondent bundles into the concept of "referendum." There is a huge difference between a statewide vote, which *Hildebrant* considered, 241 U.S. at 566—and a small minority of voters voiding a congressional map *before* any statewide vote by submitting a signed petition. It is telling that Respondent can cite no example in American history where the latter, profoundly antidemocratic scenario occurred. *See* Opp., at 23–28.

Respondent also barely tries to defend the constitutionality of a court dramatically altering a congressional map between a completed primary election and a general election—disenfranchising hundreds of thousands of primary votes in the process. He relies heavily on this Court's decision in *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982), which held that state parties can replace candidates who die or are found ineligible after a primary election. *Id.* at 14. As *Rodriguez* itself acknowledges, that is nothing like a judicial order rendering a primary election utterly pointless and, by judicial fiat, forcing a blatantly unequal "general election." *Id.* at 10. The trial court found that such an injunction would "materially" disadvantage hundreds of thousands of Missourians in the upcoming election. App., at 45a. That finding has never been contested—not by Respondent,

and not by the Missouri Supreme Court. Instead, the Missouri Supreme Court treated that finding and the U.S. Constitution as "irrelevant." *Id.* at 5a n.5, 12a n.8.

Finally, Respondent fails to meaningfully contest the other stay factors. Respondent does not dispute this case is cert-worthy. On irreparable harm, Respondent does not challenge the Secretary's careful, math-backed explanation for why, absent relief, Missouri will be forced to violate UOCAVA.

Nor does Respondent rebut the Secretary's explanation of the equities. Respondent does not dispute that the chaos present here dwarfs that in *any* of this Court's *Purcell*-related cases. Stay Appl., at 2. Respondent just thinks—despite this Court's order in *Malliotakis v. Williams*, 146 S. Ct. 809 (2026)—that state courts have free rein to void primary elections and derail imminent general elections. Opp., at 36. And while Respondent acknowledges that the trial court, a 25-year veteran election official, and the Secretary all question whether it is even *possible* to comply with the Missouri Supreme Court's order, Opp., at 38–39, Respondent insists that does not matter because Secretary Hoskins should have rejected his referendum petition faster, *id.* at 35–37. Respondent's account of the Secretary's actions is slanted and implausible. But *even if* it is entirely correct, Respondent does not explain how that could justify disenfranchising hundreds of thousands of innocent Missourians, derailing political campaigns, burdening election officials, and jeopardizing Missouri's ability to hold a timely federal election. It cannot. If *Purcell*-related concerns ever justified a stay, this is the case.

The Court should grant an administrative stay and a full stay pending appeal.

I. Respondent's threshold procedural arguments fail and endorse giving state courts a blank check to insulate their decisions from this Court's review.

A. The Missouri Supreme Court's manufactured AISGs do not obstruct this Court's review.

This Court plays an essential role in reviewing federal constitutional questions arising from state courts. *See Cohens v. Virginia*, 19 U.S. 264, 309 (1821). Yes, when state-court decisions rest on independent and *adequate* state-law grounds, this Court lacks jurisdiction. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969). But this Court has rejected—many times—assertion of an AISG when state procedural rules are "unacceptably burdensome." R. Fallon et al., *Hart and Wechsler's: The Federal Courts and the Federal System*, at 538–39 (7th ed., 2015) (collecting cases, including *Lee v. Kemna*, 534 U.S. 362 (2002); *Osborne v. Ohio*, 495 U.S. 103, 123–25 (1990); *Douglas v. Alabama*, 380 U.S. 415 (1965); *Shuttlesworth v. City of Birmingham*, 376 U.S. 339 (1964); *Int'l Longshoremen's Ass'n, AFL-CIO v. Davis*, 476 U.S. 380 (1986)).

That is easily true here because it would have been *impossible* for Applicant to comply with the Missouri Supreme Court's newly invented procedural rules. Indeed, the court's two attempts to manufacturer AISGs contradict each other and cut off all review of Applicant's federal constitutional defenses.

Start with the first AISG—the so-called "waiver." In a footnote, the Missouri Supreme Court asserted that the Secretary "waived" his federal arguments. App., 5a n.5. The reason? For the time ever—a point Respondent does not and cannot dispute, Opp., at 16–17—the court held that the Secretary's referendum certificate must preserve all potential federal constitutional defenses that he may raise in future

litigation. *Id.* And even though the Secretary's certificate incorporated by reference attached an Attorney General opinion that raised the federal constitutional defenses he now raises in this case, *id.* at 599a–605a, the Missouri Supreme Court deemed that insufficient to preserve the federal defenses, *id.* at 5a n.5. Because the federal constitutional arguments were not pasted into the certificate itself, the Missouri Supreme Court deemed them waived in this subsequently-filed case. *Id.* Respondent now argues that this is an AISG. Opp., at 15.

Even in isolation, this novel "rule" is hard to take seriously. It would be one thing if Missouri never raised any of the arguments that it now makes before this Court. *See, e.g.*, *Cardinale*, 394 U.S. at 438. But Missouri raised these arguments *as defenses* in its answer, in its trial brief, in its briefing and argument before the Missouri Supreme Court, and in the Missouri Attorney General's opinion letter expressly incorporated into the Secretary's certificate of insufficiency. *See* App., at 257a–58a, 311a–13a, 323a–29a, 599a, 604a–606a, 1391a–97a, 1409a–14a, 1490a–1501a, 1570a–82a. The trial court also agreed with and adopted *all* of Missouri's federal constitutional defenses in its judgment. *Id.*, at 39a–46a.

Moreover the Missouri Supreme Court's new rule makes no sense. It requires the Secretary to anticipate future legal challenges *before they are filed* and preemptively address *future defenses* in his certificate. App., 5a n.5. Unsurprisingly, before last Thursday, the Missouri Supreme Court had *never* suggested the Secretary's certificate (or any legal document) could not incorporate by reference, or that the Secretary had to include all future federal legal defenses in the certificate.

That is why Respondent never argued this point in any lower court. Remarkably, Respondent explicitly disclaimed this argument at trial:

> [T]he Secretary's certificate of insufficiency included in a letter, styled as an opinion of the Attorney General. That's something that I have not seen before. *I don't know that there's anything particularly wrong with it*, but there's an opinion there.

App., at 1273a–1274a (emphasis added). Nevertheless, the Missouri Supreme Court relied on an argument Respondent expressly waived to invent a new waiver rule. When the court suggested it would invent this procedural rule during oral argument, the Secretary's counsel promptly noted: "[M]y friend clearly and expressly waived this argument in trial court." Oral Argument, at 19:02–20:51.[3] Yet, without addressing the obvious waiver, the Missouri Supreme Court created a new rule anyways—that the Secretary cannot incorporate an attached Attorney General opinions by reference. App., at 5a.

Altogether, the novelty of the Missouri Supreme Court's waiver dooms Respondent's AISG argument because "only a 'firmly established and regularly followed state practice' may be interposed by a State to prevent subsequent review by this Court of a federal constitutional claim." *Ford*, 498 U.S. at 423–24 (citation omitted); *see NAACP v. Patterson*, 357 U.S. 449, 457–58 (1958) (procedural rule not AISG where "petitioner could not fairly be deemed to have been apprised of [a procedural rule's] existence"). Of course, if the Secretary had *any* notice that the Missouri Supreme Court would disregard his federal defenses due to incorporation

[3] https://www.courts.mo.gov/contentitem.jsp?id=120533&case=SC101805.

by reference, he could have easily copied-and-pasted the Attorney General's attached opinion into his certificate of insufficiency. Federal constitutional rights do not depend on somehow divining the need for a couple additional keystrokes. *See Staub v. City of Baxley*, 355 U.S. 313, 320 (1958).

Even more remarkably, at the same time the Missouri Supreme Court fabricated its new "waiver" rule, it contradicted that rule with *another new rule*. App., 5a n.5. That court's opinion simultaneously holds that the Secretary's certificate *cannot* consider federal constitutional arguments and that only state-law arguments may be invoked to reject a referendum. *Id.* So even if Secretary Hoskins had copied-and-pasted the federal arguments he incorporated by reference into the certificate, the Missouri Supreme Court would have held he erred in considering those arguments. *See id.* Indeed, neither the Missouri Supreme Court nor Respondent have explained how Secretary Hoskins *could have* preserved his federal constitutional arguments. That's because there was no other way. The Missouri Supreme Court's catch-22 does not merely put Applicant between a rock and a hard place; it asks him to walk through a solid rock.

Under the circumstances present here, the Missouri Supreme Court's newly invented procedural rules cannot obstruct this Court's review of federal questions using the AISG doctrine. "Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 U.S. 22, 24 (1923). Sure, state courts may require

litigants asserting federal rights to comply with *established*, reasonable, and available state-law rules. *Ford*, 498 U.S. at 423–24. But they cannot invent burdensome new rules on the fly, cut off any path to assert federal constitutional arguments, and expect this Court to abdicate its duty to ensure compliance with federal law.

B. Applicant only needs a stay to obtain relief.

Respondent claims that Applicant's injuries would not be redressed by a stay—but only an injunction. Opp., at 18–20. This is so, Respondent reasons, because Article III, Section 52(b) of the Missouri Constitution retroactively voided the HB 1 map (effectively making it disappear) when the Missouri Supreme Court certified Respondent's referendum petition on Thursday. *See id.* This strange state-law disappearing act does not obstruct this Court's review.

To start, the Secretary's merits arguments target the disappearing act itself. The substance of the Secretary's defense is that the Missouri Supreme Court's injunction, issued under Article III, Section 52(b) of the Missouri Constitution, is unconstitutional as applied to federal congressional maps. Stay Appl., at 15, 17–18; App., at 257a–58a, 311a–13a, 599a, 604a, 1490a–1501a. If this Court agrees and stays the Missouri Supreme Court's injunction, it would make no sense to say the HB 1 map no longer exists—because Article III, Section 52(b) would itself be invalid as applied here. That has been the Secretary's position throughout this litigation, *id.*, and that is why he will enforce the HB 1 map if this Court stays the Missouri Supreme Court's injunction.

In any event, state-law legal fictions cannot blind this Court to the reality that the Missouri Supreme Court's injunction violates the U.S. Constitution by disenfranchising voters in the Primary Election. The Primary Election occurred—as it *must*—under state law. Mo. Rev. Stat. §§ 115.307, 115.339. It is an "integral" part of Missouri's process for choosing federal congressional candidates. *Missouri ex rel. McClellan v. Kirkpatrick*, 504 S.W.2d 83, 86 (Mo. 1974) (citing Mo. Const. art. VIII, § 3); *Pollard v. Bd. of Police Comm'rs*, 665 S.W.2d 333, 340 (Mo. 1984) ("The primary, moreover, is an integral part of the electoral process." (citing *United States v. Classic*, 313 U.S. 299 (1941); *Smith v. Allwright*, 321 U.S. 649 (1944))). Missouri's Primary is therefore a fundamental part of the manner by which federal representatives are "chosen … by the People" of Missouri—which implicates Article I, Section 2 of the U.S. Constitution. *Classic*, 313 U.S. at 318–19. State law cannot force this Court to pretend that election did not occur—which would only allow the Missouri Supreme Court to plainly circumvent federal rights. *See Moore v. Harper*, 600 U.S. 1, 34–35 (2023) ("As in other areas where the exercise of federal authority or the vindication of federal rights implicates questions of state law, we have an obligation to ensure that state court interpretations of that law do not evade federal law.").

* * *

In short, both of Respondent's threshold state-law procedural arguments boil down to the same point: This Court should ignore federal constitutional defenses and

give state courts unchecked power to insulate their own rulings from review. That is not, and has never been, the law.

II. This Court is likely to grant review and reverse.

A. The Elections Clause forbids discarding a duly-enacted congressional map based on a referendum petition signed by just 3.3% of a State's voters.

Respondent does not dispute that the Secretary faced a circumstance that no other State's chief election officer has faced before in American history: A campaign to suspend Missouri's congressional map—*not* through a referendum vote—but through a referendum petition, which only needs signatures from just 3.3% of Missouri's registered voters. Mo. Const. art. III, § 52(a). Respondent's exploitation of the Missouri Constitution's suspension of legislation pending a referendum vote, Mo. Const. art. III, § 52(b), is profoundly anti-democratic and patently unconstitutional under the Elections Clause. If this Court permits Respondent's tactic here, and permits state courts to suspend *federal* congressional maps even a month after the Primary Election, that will sound the death knell of the Elections Clause.

Respondent makes a few contrary arguments, but all fail.

1. For the first time in this litigation, Respondent challenges the Secretary's standing to raise federal defenses under the Elections Clause. Opp., at 21–22. This is clearly wrong. To start, this Court has recognized that "a relator [suing] on behalf of the State" can invoke this Court's appellate jurisdiction over state-court decisions implicating the Elections Clause. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (citing *Smiley v. Holm*, 285 U.S. 355 (1932); *Hildebrant*, 241 U.S.

565). And here, the Secretary is the stand-in for the entire State because he is Missouri's chief elections officer. *See* Mo. Const. art. IV, § 14. An order against him binds the entire State, which is why Respondent sued only the Secretary and why the Missouri Supreme Court's injunction *against him* changes Missouri's congressional map. App., at 13a–14a, 61a.

Independently, the Secretary has standing because he is injured by a state-court order to violate the U.S. Constitution. *See ASARCO Inc. v. Kadish*, 490 U.S. 605, 617–24 (1989). To be clear, the Secretary did not *initiate* this action; he is a defendant—sued in his official capacity because he represents the *entire State* in this context. *See* App., at 13a–14a, 61a; Mo. Const. art. IV, § 14. Now that the Missouri Supreme Court has ignored his federal constitutional defenses and ordered him to violate the U.S. Constitution, the Secretary has standing to appeal to this Court. "[A]s a result of the state-court judgment, th[is] case has taken on such definite shape that [the Secretary is] under a defined and specific legal obligation"—namely holding a congressional election under Missouri's 2022 map instead of the HB 1 map. *ASARCO*, 490 U.S. at 618. Even if the Secretary somehow lacked standing to bring his defenses as claims in the first instance, *but see Lance*, 549 U.S. at 442 (citing *Smiley*, 285 U.S. 355; *Hildebrant*, 241 U.S. 565), *ASARCO* establishes that the Secretary may appeal the state-court injunction "sought and secured by respondent[], along with the relief that may flow from that ruling, [a]s invalid under federal law." 490 U.S. at 618.

This rule is essential to guarding the Supremacy Clause. Respondent's contrary position—that the Secretary lacks standing to appeal an adverse state injunction issued in violation of federal law—would blast a hole through the Supremacy Clause. States could easily bypass virtually any provision of the U.S. Constitution, without this Court's review, simply by resorting to "government by injunction" against state officials tasked with enforcing the court's order. But "this Court is responsible for assuring 'that state courts will not be the final arbiters of important issues under the federal constitution.'" *Id.* at 621 (quoting *Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940)). This Court should reject Respondent's remarkable contention that—under Article III—this Court somehow *lacks jurisdiction* to review an injunction *ordering* a state official to take action that violates the U.S. Constitution and federal law. *See Bd. of Ed. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 241 n.5 (1968) (State officials had standing because "they are in the position of having to choose between violating their oath [to support the U.S. Constitution] and taking a step—refusal to comply with [state law]—that would be likely to bring their expulsion from office.").

Respondent's invocation of *Bethune-Hill* is thus multiply inapt. Opp., at 22. That case involved an attempt by *one house of the state legislature* to speak for the entire legislature. *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663–64 (2019). That is not the case here. The Secretary is speaking on behalf of the State. And so is the Attorney General, who possesses authority to litigate on the State's behalf "in any proceeding or tribunal in which the state's interests are

involved." Mo. Rev. Stat. § 27.060; *see also Missouri ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 135–36 (Mo. 2000) (holding that the Attorney General has broad authority to represent the General Assembly as she sees fit). "In this regard, [Missouri] has adopted an approach resembling that of the Federal Government, which centralizes the decision whether to seek certiorari by reserving litigation in this Court to the Attorney General and the Solicitor General." *Bethune-Hill*, 587 U.S. at 664 (cleaned up). *Bethune-Hill* made clear that Virginia's Attorney General had authority to seek certiorari in defense of the State's Elections Clause interests (even if the Virginia House of Delegates could not). *Id.* So *Bethune-Hill* confirms—rather than undermines—Applicant's standing to invoke the Elections Clause here.

2. Respondent's Elections Clause merits defense boils down to two propositions, both of which are wrong.

First, Respondent insists this Court already blessed what the Missouri Supreme Court did in *Hildebrant*, 241 U.S. 565. Opp., at 23–26. That is mistaken. Neither *Hildebrant* nor *any other case in U.S. history until now* addressed or sanctioned what Respondent wants—3.3% of voters voiding a map in an election year *before* a statewide vote. Yes, as Respondent notes, the Ohio Constitution's referendum provision also has a suspension provision (though Applicant is unaware of anyone ever attempting to wield it like Respondent did here). But that suspension provision was not at issue in *Hildebrant*. *Hildebrant* arose in a non-election year and no one contended that a small minority of citizens could force the use of their preferred map for two years. 241 U.S. at 566–67. As Chief Justice Roberts

explained, "[t]he result of the [referendum vote] was to send" the redistricting question back to "the *Ohio Legislature*." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n* ("*AIRC*"), 576 U.S. 787, 840 (2015) (Roberts, C.J., dissenting) (emphasis in original). Even if this Court grants this application, Respondent will have that same opportunity.

Unable to point to any historical precedent, Respondent mostly relies on a sleight-of-hand. Because this Court blessed a particular type of referendum process in *Hildebrant*, Respondent claims it must bless *any* referendum arrangement—even one that is applied in a dramatically different way than the one it considered before. Opp., at 23–26. But just because this Court has sanctioned A (a statewide referendum vote) does not mean it must sanction C where C=A+B, and B is a profoundly antidemocratic freezing mechanism this Court never endorsed. And to be clear, many States have referenda where laws are *not* frozen before statewide popular votes. *See Alaska 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." (cleaned up)); *Barnes v. Maryland ex rel. Pinkney*, 204 A.2d 787, 793 (Md. 1964); *Nevada v. Howard*, 248 P. 44, 45–46 (Nev. 1926). Thus, Respondent is wrong to suggest that pre-statewide vote freezing mechanisms are inherently intertwined with an endorsement of statewide referendum votes. Opp., at 23–26. And again, no one in *Hildebrant* contended that a small minority of citizens could void a map *before* a statewide vote. *See* 241 U.S. at 566 (case played out in non-election year).

Second, Respondents point to *Moore, AIRC*, and *Hildebrant* for a remarkably broad proposition—that state constitutions can delegate the state legislature's redistricting authority *in any manner whatsoever*. Opp., at 23–24. This Court, however, has never so "abdicat[ed]" its duty to review Elections Clause claims. *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring). Here, as in many contexts, this Court consults history, and this Court has upheld state judicial review and gubernatorial vetoes on that basis. *See Moore*, 600 U.S. at 19–22; *Smiley*, 285 U.S. at 368–69. It has also upheld statewide referenda votes and independent redistricting commissions—because those at least plausibly promote democratic values. *See AIRC*, 576 U.S. at 797–98; *id.* at 816–17; *id.* at 822–24. None of those cases remotely resemble this one. And the fact that Respondent cites *zero* historical analogues for his radical approach is a "telling indication of [a] severe constitutional problem." *Free Enterprise Fund v. Public Co. Accounting Bd.*, 561 U.S. 477, 505–06 (2010) (quoting 537 F.3d. 667, 669 (D.C. Cir. 2008) (opinion of Kavanaugh, J.)).

Under Respondent's ahistorical approach, however, anything goes. A State could permanently empower the Chair of the Republican Party to draw congressional maps. Or perhaps a State could empower just one person to unilaterally void a congressional map (at any time) by submitting a piece of paper. The implausibility of those hypotheticals confirms that Respondent's absolutist approach is wrong.

And notably, Respondent does not dispute that—if his legal theory is accepted—the Missouri General Assembly's authority over redistricting will be effectively destroyed. He does not dispute that it is easy for political groups to obtain

signatures to submit referendum petitions. Stay Appl., at 20. Nor does he contest that political groups will be incentivized to suspend the State's congressional map *every* time Missouri redistricts. *See id.* And he acknowledges this could happen after the decennial Census, when the old map has the wrong number of seats. Opp., at 26. The only reassurance he offers is that the General Assembly could enact an emergency clause, *id.*, but that requires two thirds of both legislative houses and searching judicial review, Mo. Const. art. III, § 29. That unrealistic escape-hatch is cold comfort for the General Assembly.[4]

* * *

In opposing the Secretary's Elections Clause claim, Respondent chants federalism "like a mantra." *SEC v. Jarkesy*, 603 U.S. 109, 138 (2024). But federalism is not advanced by allowing 3.3% of a State's voters to unilaterally override a *state* legislature. And on the federal side of the balance, federalism is undermined when state courts can disrupt imminent federal elections. This Court should not

[4] Unable to defend Respondent's reading of this Court's precedent, an amicus resorts to 2 U.S.C. § 2a(c) and 2c. Campaign Legal Center Br., at 12–14. Respondent never raised this argument below. Amicus is also wrong. *AIRC* held that § 2a(c) "permits" use of redistricting commissions in addition to referenda. 576 U.S. at 809. But that is no different than what this Court has already approved under the Elections Clause. And no Court has read the Elections Clause or § 2a(c) to permit just 3.3% of voters to suspend a State's duly-enacted congressional map one month *after* a primary election. To do so would put § 2a(c) at war with the U.S. Constitution for the reasons Missouri has argued.

Amicus's reading of § 2c fairs no better, and has never been endorsed by any court. Amicus cites no judicial precedent—at any level—that has ever read § 2c to *require* courts to enforce state redistricting laws. Section 2c was enacted as part of the Uniform Congressional District Act of 1967 to abolish the use of at-large congressional districts in certain circumstances. That is plainly what its text accomplishes. *See* 2 U.S.C. § 2c. Amicus twists the text beyond recognition by insisting that § 2c somehow gives States a blank check to redistrict *however* they want and *whenever* they want.

leave a fundamental pillar of the federal government vulnerable to such cavalier treatment. *See Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (reaffirming federal courts will not "abdicat[e]" review under the Elections Clause).

B. The Missouri Supreme Court's injunction—issued a month *after* the Primary Election—violates the U.S. Constitution.

Respondent does not dispute that the Missouri Supreme Court's order renders the Primary Election pointless—disenfranchising hundreds of thousands of voters. He also does not dispute the trial court's finding that hundreds of thousands of Missourians will "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" "support" or "oppose" through voting "in the primary." App., at 20a, 45a–46a. From either of those undisputed premises, it follows that the order under review violates the Equal Protection Clause. *See United States v. Mosley*, 238 U.S. 383, 386 (1915); *Am. Party of Tex. v. White*, 415 U.S. 767, 795 (1974); *Gray v. Sanders*, 372 U.S. 368, 379 (1963).

Attempting to rebut this point, Respondent leans almost completely on this Court's decision in *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982). Opp., at 28–32. But *Rodriguez* helps—rather than harms—the Secretary's position. There, an incumbent in the Puerto Rico legislature passed away while in office. 457 U.S. at 3. Puerto Rico had a procedure for "filling interim vacancies." *Id.* at 5. Specifically, the late incumbent's party would appoint a replacement "without the necessity of a full-scale special election." *Id.* This Court rejected a claim that the State's failure to host a special election resulted in an equal protection violation

because it advantaged the late incumbent's political party. *Id.* at 12. However, this Court carefully noted that nothing in its opinion should be understood to apply to elections:

> To be sure, *when a state … has provided that its representatives be elected*, 'a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.' However, the Puerto Rico statute at issue here does not restrict access to the electoral process or afford unequal treatment to different classes of voters or political parties. *All qualified voters have an equal opportunity to select a district representative in the general election.*

Id. at 10 (emphasis added) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); citing *Gray v. Sanders*, 372 U.S. at 379–380). Thus, *Rodriguez* explicitly affirms that the Equal Protection Clause squarely applies here—where all "qualified voters" in Missouri will *not* "have an equal opportunity to select a district representative in the general election"—because voters moved by the court's order are disadvantaged compared to those not moved. *Id.*

Respondent's invocation of circuit precedent fairs no better. *Donatelli v. Mitchell* recognizes the exact distinction that *Rodriguez* itself recognizes: "The Court in *Rodriguez* found no equal protection violation [because] … '[a]ll qualified voters ha[d] an equal opportunity to select a district representative in the general election.'" 2 F.3d 508, 517 (3d Cir. 1993) (quoting *Rodriguez*, 457 U.S. at 10). That will not be true in Missouri if voters are forced to vote under a different map on Election Day (assuming that a timely election will occur at all). *Republican Party of Oregon v. Keisling* is also inapposite. 959 F.2d 144 (9th Cir. 1992). That case concerned a

voting claim under the First Amendment, not the Fourteenth Amendment—as the court made clear in its opinion. *Id.* at 145.

Later, in a footnote, Respondent asserts that the Secretary "cannot show that staying the judgment below is necessary to prevent an equal protection violation without first establishing that Missouri law leaves no other lawful means of addressing the alleged mismatch"—such as through statutes providing for party nomination of alternative candidates. Opp., at 40 n.9 (Mo. Rev. Stat. § 115.363). It is astonishing that Respondent believes that—in order to avoid an equal protection violation—Missouri should simply ignore the Primary results and have parties decide which candidates to nominate instead. That would flagrantly violate Article I, Section 2 (even under Respondent's incorrect telling). *See Classic*, 313 U.S. at 318–19. But in any event, permitting parties to nominate replacement candidates will be impossible as of today at 5:00 p.m. Mo. Rev. Stat. § 115.379.1–.2. Under Missouri Law, "[w]henever a candidate for nomination or election to an office is disqualified after 5:00 p.m. on the eighth Tuesday prior to a … general election … , his or her name shall be printed on the … ballot, as the case may be." *Id.* § 115.379.2. "The election and canvass shall proceed, and, if a sufficient number of votes are cast for the disqualified candidate to entitle him or her to nomination or election had the candidate not become disqualified, a vacancy shall exist on the general election ballot." *Id.* Applicant is aware of no party that, in the midst of the State's ongoing chaos, has nominated a replacement congressional candidate to run under the new districts. Instead, both Democrat and Republican nominees are still

wondering whether they are, in fact, running in the General Election—where absentee ballots will be transmitted in just 12 days. *See* Jack Harvel, *Court ruling raises questions about Missouri primary winners under a different map*, Kansas City Star (Sept. 4, 2026).[5]

Respondent also offers no persuasive rebuttal to Article I, Section 2—even while suggesting that Missouri should discard *all* 1.2 million primary votes to avoid an Equal Protection violation. Opp., at 40 n.9. Article I, Section 2 "applies to the entire process by which federal legislators are chosen." *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 227 (1986). This process includes the Primary and General Elections. *See Classic*, 313 U.S. at 318–19. Yet Respondent suggests that so long as Missourians had a right to vote in *a* Primary, that is *good enough* to satisfy their right to have their ballots counted. Opp., at 32–33.

But Missourians are deprived of their right to "cho[o]se" *their* representative when they are cut off from an integral aspect of Missouri's process for selecting representatives. U.S. Const. art. I, § 2; *see Mosley*, 238 U.S. at 386. "It is simply inconsistent with the concept of election of Representatives by districts that a candidate should be chosen in part by persons outside the district elected to these posts as such." *Montano v. Lefkowitz*, 575 F.2d 378, 385 (2d Cir. 1978) (Friendly, J.). As Judge Friendly aptly put it, "[i]f the state provides a primary election to select party candidates for the House of Representatives, the voters in each district are entitled to participate in it on the same basis both of equality and of independence

[5] https://www.kansascity.com/news/politics-government/article317133985.html.

from other districts having possibly divergent interests that they enjoy in the election itself." *Id.* at 385–86. There is "no constitutional justification" for using candidates selected from districts "which have no relationship to the congressional district where the [general] election is to be held." *Id.* at 386. Respondent asks this Court to simply "close [its] eyes to [this] fact." *See Classic*, 313 U.S. at 319.

The Missouri Supreme Court's injunction violates Article I, Section 2 by forcing hundreds of thousands of Missouri's voters to consider nominees in the General Election that they had no opportunity to select in the Primary. App., at 20a, 45a. Indeed, as one voter attested, "I did not vote—nor could have—for either of [my general-election candidates] in the primary election." App., at 1670a. The Missouri Supreme Court's injunction thus plainly cuts off voters from the right to choose *their* representative. *Contra* U.S. Const. art. I, § 2.

III. The other stay favors overwhelmingly favor a stay.

Much on the remaining stay factors is undisputed. To start, Respondent does not dispute that this case is cert-worthy. *See Does 1-3 v. Mills*, 142 S. Ct. 17, 17–18 (2021) (Barrett, J., concurring in denial of stay). It obviously is—as Missouri's ability to hold a timely federal election is jeopardized.

Respondent also does not contest the Secretary's irreparable harm analysis. Stay Appl., at 32–38. The Secretary's declaration spells out the math of why the Missouri Supreme Court's order will force Missouri to violate the federal election calendar. App., at 1665a–1668a (citing 2 U.S.C. § 7; 52 U.S.C. § 20302). Respondent provides no response. Respondent instead confusingly states that the Secretary's request for relief in advance of UOCAVA disproves his claim. Opp., at 39 n.8.

Obviously not. The HB 1 districts were just in place. Voters are assigned to those congressional districts; ballots have been tested and printed; if this Court grants a stay, voting will start on time. If the Court denies a stay, it will not. The impending violation of UOCAVA alone justifies a stay.

Turning to the equities, Respondent also does not really disagree with Applicant's account of how *he* would be affected by a stay. Stay Appl., at 5. Even if this Court grants this application, Respondent will get his statewide vote on the HB 1 map. That is what he has publicly insisted his referendum campaign is primarily about. *See, e.g.*, at 1244a. And Respondent does not dispute that Missouri has its own *Purcell* principle (a fact he knew about from the beginning of his campaign), nor does he dispute that the Missouri Supreme Court inexplicably just ignored that principle. Stay Appl. at 36–37 (citing *Hadley v. Junior Coll. Dist. of Metro. Kan. City*, 460 S.W.2d 1, 2–3 (Mo. 1970)). The fact that the Missouri Supreme Court "impermissibly distort[ed]" state law by ignoring *Hadley* is yet another violation of the Elections Clause justifying a stay. *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring); *accord Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (endorsing Chief Justice Rehnquist's approach in *Bush v. Gore*).

At the same time, Respondent only barely contests the State's claim that it is facing a "federal election-administration disaster." Stay Appl., at 1. Respondent cites a newspaper article where two election officials suggest that they can switch maps, though they acknowledge "[i]t will take some work." Kacen Bayless, *'We will be ready.' Jackson County says it will comply with Supreme Court map ruling*, The

Kansas City Star (Sept. 4, 2026).[6] Against that, Respondent ignores the trial court's finding that it would be "impossible" to switch maps, App., at 52a; the affidavit of an election official with 25-years' experience of running Missouri elections, *id.*, at 1024a–27a; and the Secretary of State's declaration, *id.*, at 1665a–1668a. Respondent also ignores his own counsel's acknowledgment to the press that the losers of the Primary Election could try to challenge their losses in the Primary Election. *See* Jacob Barker, *A 'crisis' in Missouri elections? Supreme Court puts the blame on one state official*, St. Louis Post Dispatch (Sept. 6, 2026).[7]

Regardless, this Court *knows* how chaotic the fallout in Missouri is. This Court has repeatedly recognized that court orders to change congressional maps are extraordinarily disruptive. That is why this Court has repeatedly stayed court orders that have changed congressional maps even months before upcoming elections. *See Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (per curiam); *Malliotakis*, 146 S. Ct. 809 (staying New York court order several months before primary election). Whereas this Court stayed an order changing Alabama's congressional map seven weeks before the start of mail-in voting, *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of stay), mail-in voting starts in Missouri in just *eleven* days, 52 U.S.C. § 20302(a)(8). Of course, if a federal court had enjoined Missouri's congressional map last Thursday, this Court would deem it frivolous under

[6] https://perma.cc/9CN3-3KP4.

[7] https://www.stltoday.com/news/local/government-politics/article_e84fc694-888c-493d-947b-db809e7e9781.html.

Purcell and summarily stay the injunction. Notably, Respondent does not dispute that the chaos present here dwarfs that in any of this Court's *Purcell*-related cases.

Respondent instead offers three other responses. *First,* Respondent tries to minimize the Missouri Supreme Court's unprecedented order by citing two cases, *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), and *Vera v. Bush*, 933 F. Supp. 1341 (S.D. Tex. 1996), where—according to Respondent—courts invalidated an "existing map after the primary had taken place" and even though "no new map had been drawn." Opp., at 40. But Respondent severely misinterprets these decisions.

Busbee was a pre-clearance action—"commenced by the State of Georgia"—under Section 5 of the Voting Rights Act. 549 F. Supp. at 497. The court's decision affected only two of Georgia's districts, not the entire congressional map. *Id.* at 518–19. The court "retain[ed] jurisdiction" over the action to promptly establish a new redistricting "plan" with Georgia's input. *Id.* at 518. It also established a detailed scheduled for hosting a *primary* and a general election in the two affected districts—preventing a mismatch between the primary and general electorates. *Id.* at 519–20. That is nothing like what the Missouri Supreme Court did here.

Respondent also misunderstands *Vera*. Respondent claims that *Vera* enjoined Texas's "map" after a primary and "without a remedial map." Opp., at 40. But that court did not invalidate the entire Texas congressional map; it made modest changes that "affected" a small number of districts relative to the State's size. 933 F. Supp. at 1342. Further, to avoid the violations of Article I, Section 2 and the Equal Protection Clause present here, that court held that voters in the "affected

congressional districts will participate in an open primary conducted along with the 1996 presidential elections," and with "runoff elections [to] be held [on] December 10, 1996" "if necessary." *Id.* No such order exists here; and Missouri does not see how it could ignore the federal election calendar without a federal court order. *Cf. id.* The chaos here thus dwarfs even *Vera*—the most chaotic judicial election order Respondent could find.

Second, Respondent suggests that *Purcell* is irrelevant when a state court destabilizes a federal election. Opp., at 36–37. But this Court already suggested otherwise in *Malliotakis*, when this Court stayed a disruptive state court order three months before the June 2026 Primary Election New York. *See* 146 S. Ct. 809; *id.* at 811 (Alito, J., concurring in grant of stay) (recognizing that stay restored lawful status quo that existed before state court decision).

And once again, the implications of Respondent's extreme theory prove too much. Under his approach, a state court could change the congressional map in the middle of mail voting—or two days before Election Day—and this Court would be powerless to act. The *Purcell* principle's primary rationale—preventing disruption to *federal* elections "in the thick of election season," *Democratic National Committee v. Wisconsin State Legislature*, 592 U.S. 1039, 1041 (2020) (Roberts, C.J., concurring)—fits better here than in any other *Purcell*-related case. No reasonable equitable principle suggests this Court should categorically blind itself to state courts destabilizing federal elections.

Third, Respondent mimics the Missouri Supreme Court and insists that this Court should ignore severe consequences to punish Secretary Hoskins's handling of the referendum petition. Opp., at 35–37. This inequitable argument fails.

To start, Respondent's account of the Secretary's actions is incomplete and implausible. It is undisputed that the Secretary confronted a scenario never encountered before in Missouri or any other State—an effort to exploit state law by a tiny minority of voters to freeze a duly enacted congressional map before any statewide vote. Faced with this unprecedented effort, Secretary Hoskins handled Respondent's referendum petition exactly as Missouri law instructs him to do. He promptly sent the hundreds of thousands of signatures Respondent gathered to all the county election officials for signature verification. *See* Mo. Rev. Stat. § 116.130. That takes a long time. That is why state law gives everyone until August 4—the day of the Primary Election—to finish the job. Mo. Rev. Stat. § 116.150.3. By the time all of Missouri's county election officials completed review in the summer of 2026, Missouri *already* faced an imminent primary election. Rejecting the referendum petition then would have placed *that election* in chaos. *Contra Hadley*, 460 S.W.2d at 2–3.

But assume that Respondent is correct and Secretary Hoskins acted improperly in deferring his rejection of the referendum petition until the state-law deadline. So what? Respondent seems to think that punishing Secretary Hoskins *personally* somehow justifies inflicting catastrophic harms on all of Missouri, unrelated political campaigns, election officials, and voters across the State. But this

Court has invoked *Purcell* to grant stays even when state governments are alleged to have engaged in *illegal* behavior—like racial discrimination. *See Merrill*, 142 S. Ct. 879–80. By contrast, no one here alleges Secretary Hoskins *broke the law*. At most, taking everything Respondent says as true, Secretary Hoskins took advantage of a state-law deadline to improve his chances of defending a law enacted by the state legislature.[8] *See* Mo. Rev. Stat. § 116.150. Applying equity, any potential transgression cannot justify punishing an entire State, election officials, campaigns, and millions of voters—who likely will not be able to participate in a timely federal election absent a stay. *See* App., at 52a.

* * *

In applying equity, the Court should not lose sight of the bigger picture. This Court has recognized that orders to alter congressional maps are disruptive even several months *before* an upcoming primary election. *Abbott*, 146 S. Ct. at 419; *Malliotakis*, 146 S. Ct. 809; *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring in grant of stay). Here, the order under review voids a primary. It leaves election officials, candidates, and voters scrambling and unsure what to do with voting starting in just *eleven days*. The equities are more lopsided here than in any other

[8] Respondent also heavily emphasizes the Attorney General's mundane observation that challenged election rules are more likely to stay in effect as an election approaches. Opp., at 35–36. Any election lawyer knows that, which is why *Democracy Docket* (founded by Marc Elias, founder of the firm representing Respondent) observed back in *March* that basic equity would likely require Missouri to use the HB 1 map for the 2026 General Election. App., at 1244a–1245a.

case where this Court has granted a stay in an election-related case. The Court can and should end this chaos.

CONCLUSION

The Court should grant an immediate administrative stay and a stay pending appeal as soon as possible.

September 8, 2026

Respectfully submitted,

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