

SC101805

**In the
Supreme Court of Missouri**

RICHARD VON GLAHN,
Appellant,

v.

MISSOURI SECRETARY OF STATE DENNY HOSKINS,
Respondent.

Appeal from the Circuit Court of Cole County
The Honorable Daniel R. Green

RESPONSE TO ORDER TO SHOW CAUSE

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INTRODUCTION

Counsel for Appellants has taken the extraordinary step of requesting that this Court sanction the Secretary of State for saying that he will comply with a federal court order. Tellingly, the motion cites *zero* authority for the proposition that a state court can sanction a state official for complying with a federal court order enforcing federal legal rights. And federal law clearly prohibits any such order. *See United States v. Mich.*, 712 F.2d 242, 242 (6th Cir. 1983); *Badgley v. Santacroce*, 800 F.2d 33, 38 (2d Cir. 1986). Hence, this Court must deny the motion.

In the aftermath of this Court's decision in *von Glahn*, four plaintiffs—two candidates and two voters affected by the changed map—filed a complaint and a request for a temporary restraining order in the United States District Court for the Eastern District of Missouri. *See generally* Ex. A. None of the plaintiffs were parties to this Court's *von Glahn* litigation. *See id.* ¶¶ 1–10.

Plaintiffs asserted claims rooted exclusively in the U.S. Constitution. Specifically, they asserted that using anything but the HB 1 map used in the Primary Election would violate the Elections Clause (U.S. Const. art. I, § 4, cl. 1), the clause dictating selection of the House of Representatives (*id.* art. I, § 2), and the Equal Protection Clause (*id.* amend. XIV, § 1). Ex. A ¶¶ 50–109. Plaintiffs moved for the temporary restraining order against the Secretary. *Id.* at 26 (prayer for relief).

On September 8, the District Court issued a temporary restraining order against the Secretary. It found that plaintiffs were likely to succeed on their claims that conducting a Missouri election according to a map other than that of HB 1 “would disenfranchise voters of their votes in the primary election, in clear violation of Article I, Section 2.” Ex. B at 9. It likewise concluded that “[s]witching maps now would deprive many Missourians of their equal vote in the primaries and ‘impair the voters’ ability to express their political preferences’ by foisting new candidates on them on the eve of the election,” so as to violate the Equal Protection Clause. *Id.* at 10–11.

The District Court further determined that plaintiffs carried their burden for equitable relief. It found that both voters and candidates faced irreparable harm from the Secretary’s complying with this Court’s injunction: “Using a map other than HB 1’s would disenfranchise primary-election voters and undermine the nominations of candidates chosen in the primaries, leading to ‘certain’ and ‘great’ harm” *Id.* at 5. Meanwhile, the District Court saw the balance of equities satisfied because it would preserve status quo by “using the same map for the general election that Missouri used for its primaries—the HB 1 map.” *Id.* Finally, the District Court concluded that the public interest was satisfied. *See id.* at 12 (“Using a different map for the general election would wreak havoc on the fairness and orderliness of Missouri’s congressional elections, calling into question the candidacy of those nominated

in the primaries and the votes of those who voted in the primaries. Widespread voter confusion would inevitably follow.”).

ARGUMENT

The Court must not take the radical step of holding the Secretary of State in contempt for following a federal court order. In response to this Court’s show-cause order, Respondent states as follows.

First, the District Court’s order could not have been clearer. It specifically “enjoins, on federal law grounds, Secretary of State Hoskins—as well as his officers, agents, employees, and attorneys—from implementing, using, publishing, distributing, or mandating the use of any congressional district map other than the HB 1 map for the November 3, 2026 general election.” Ex. B at 13. All of this followed a federal legal holding that the State would violate the U.S. Constitution by not using the same map for the General Election as it used for the Primary Election. Ex. B at 13 at 8-11. The Secretary’s email on September 8, 2026 reflected the District Court’s order. The motion’s saying (at PDF p.3) that “nothing in the actual text of the federal order is ‘requiring the use of the CD25 Missouri First Map [aka HB1]’” is patently absurd. The District Court’s order could not have been more direct and the Secretary’s email simply sought to follow it.

Second, this Court’s order can no longer compel the Secretary. Per the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2, the

Secretary must follow the federal-law injunction issued by the federal court. So long as the District Court's order stands, the Secretary must obey it. *See, e.g., Mapp v. Bd. of Educ. of Chattanooga, Tenn.*, 341 F. Supp. 193, 198–99 (E.D. Tenn. 1972) (recognizing the nullity of a state-court order interfering with a federal-court desegregation order). The U.S. Supreme Court could not have been clearer: “No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.” *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Axiomatically, any state executive claiming authority (at any behest) “to nullify a federal court order is similarly restrained.” *Id.* at 19; *accord Mapp*, 341 F. Supp. at 199.

Nor does this Court possess any authority to countermand the District Court's decision on a question of federal law. As with any other matter, the Supremacy Clause demands that any state-court decree “must give way” to the operation of federal law. *Ridgway v. Ridgway*, 454 U.S. 46, 55 (1981); *see also Ex parte Virginia*, 100 U.S. 339, 346 (1879) (holding that state actions must yield to the Fourteenth Amendment “whether that action be executive, legislative, or *judicial*” (emphasis added)). “Faced with conflicting orders—one issued by a federal court to implement the Constitution, and the other issued by a state court as a matter of state practice—” the state official must follow “the priority prescribed by the Constitution.” *Madej v. Briley*, 370 F.3d 665,

667 (7th Cir. 2004) (per curiam); *accord Mapp*, 341 F. Supp. at 199 (enjoining parties from complying with a state-court order frustrating desegregation).

Moreover, the denial of the State's application for emergency relief before the U.S. Supreme Court has no bearing on the District Court's authority to issue its order or the Secretary's obligation to follow that order. As when this Court considers a party's request for transfer, the U.S. Supreme Court hears the vast majority of its cases (including emergency applications) in a *discretionary* posture. *Compare* Mo. Ct. R. 83.04 ("Transfer by this Court is an extraordinary remedy that is not part of the standard review process"), *with* Sup. Ct. R. 10 ("Review on a writ of certiorari is not a matter of right, but of judicial discretion."). Receiving an emergency stay from the U.S. Supreme Court requires an applicant to demonstrate, *inter alia*, "a reasonable probability' that this Court will grant certiorari." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). The U.S. Supreme Court's denying discretionary review (as occurred here) imparts no suggestion of that court's view of a case's merits. *See Teague v. Lane*, 489 U.S. 288, 298 (1989) ("As we have often stated, the 'denial of a writ of certiorari imports no expression of opinion upon the merits of the case.'").

As such, Respondent is aware of *zero* authority suggesting that an unreasoned disposal of a petition for discretionary relief before the Supreme Court bars a federal district court from considering similar federal

constitutional claims. Indeed, as the U.S. Supreme Court has recognized, “The possibility of appellate review by [the Supreme Court] of a state court determination may not be substituted, against a party’s wishes, for his right to litigate his federal claims fully in the federal courts. . . . ‘[A] party has the right to return to the District Court, after obtaining the authoritative state court construction for which the court abstained, for a final determination of his claim.’” *England v. La. State Bd. of Med. Examiners*, 375 U.S. 411, 465–66 (1964) (citation omitted). Hence, the *Onder* plaintiffs had the right to maintain their action in the District Court and the District Court likewise did not transgress any boundaries in ruling for the plaintiffs. *See Teague*, 489 U.S. at 298. The Secretary therefore remains bound by the federal court’s judgment. *See Cooper*, 358 U.S. at 18; *Mapp*, 341 F. Supp. at 199.

Third, the *Rooker-Feldman* doctrine clearly does not apply here. The “doctrine provides that, with the exception of habeas corpus petitions, lower federal courts lack subject matter jurisdiction over challenges to state court judgments.” *Ballinger v. Culotta*, 322 F.3d 546, 548 (8th Cir. 2003) (internal quotation marks omitted). But it does not control here for at least two reasons.

First, the *Onder* plaintiffs were not parties to the proceedings before this Court. *See Lance v. Dennis*, 546 U.S. 459, 466 (2006). *Rooker-Feldman* is “not simply preclusion by another name.” *Id.* It is straightforward why the *Rooker-Feldman* doctrine does not apply here. It would make no sense to say that

individuals lose their right to assert federal-constitutional rights in federal court because separate individuals lost state-law arguments in a state court. And under materially identical circumstances to the present case, the U.S. Supreme Court so held. *See id.*

In *Lance*, after the Colorado legislature had performed a mid-decade redistricting, the state attorney general sued the secretary of state seeking to require the use of the previous redistricting map. *Id.* at 460. The Colorado Supreme Court construed the Colorado Constitution “to limit congressional redistricting to ‘once per decade’” and “ordered the secretary of state to use the [previous plan].” *Id.* at 460–61 (quoting *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1231 (2003) (en banc)). Following the *Salazar* decision, four Coloradans, “unhappy with [the decision,] filed an action in the District Court seeking to require the secretary of state to use the legislature’s [new redistricting] plan.” *Id.* at 461. Those plaintiffs “argued that [the Colorado Constitution], as interpreted by the Colorado Supreme Court, violated the Elections Clause of Article I, § 4, of the U.S. Constitution.” *Id.* The Supreme Court held that the citizen-plaintiffs “were plainly not parties to the underlying state-court proceeding” and were “not in a ‘position to ask this Court to review the state court’s judgment.’” *Id.* at 465 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994)). Thus, *Rooker-Feldman* did not bar that federal action. *Id.* at 466. And this was true even though the secretary of state

was the defendant in both the original state suit and the federal suit. *See id.* at 460–61 & n.1.

A contrary position would rob many voters and candidates of their right to bring federal claims in federal court after the State lost a case in state court. And such a holding would violate the Due Process Clause, which generally prohibits judgments from extinguishing absent third parties’ claims. *See Taylor v. Sturgell*, 553 U.S. 880, 884–85 (2008).

Second, even if Appellant could establish some privity between the *Onder* plaintiffs and the Secretary, no party asked the District Court to reconsider any holding of this Court—in violation of *Rooker-Feldman* or 28 U.S.C. § 1257. *See* Ex. A at ¶¶ 50–109. This Court decided *state-law* questions. Even though Secretary made federal-constitutional arguments, this Court declined to rule on them. For example, Secretary Hoskins argued that an order to switch Missouri’s congressional map between the Primary and General Elections would violate the U.S. Constitution. *See* Brief for Sec’y Hoskins at 53–63, *von Glahn v. Hoskins*, No. SC101805 (Mo. Aug. 27, 2026). This Court left the argument unaddressed, holding it lacked *jurisdiction* to address them. *See* No. SC101805, slip op. at 5 n.5 (“In raising hypothetical scenarios and arguments wholly unrelated to whether the Missouri Constitution authorizes a referendum as to congressional redistricting passed by the General Assembly, the secretary also requests an advisory opinion, which this Court

lacks the authority issue.”). But the District Court saw those federal arguments as grounds for relief to redress the injuries of the candidate and voter plaintiffs in *Onder*. See Ex. B. at 8–9.

Contrary to the record, the motion here assumes that the District Court effectively engaged in an appeal of this Court’s decision. Not so. Off the bat, the motion concedes (at PDF p.2) that the District Court’s “order does not purport to overrule this [C]ourt’s injunction.” Quite right—nowhere does the District Court purport to review this Court’s decision. It instead analyzes whether the Secretary can lawfully undertake the election using a map other than HB 1 in compliance with the U.S. Constitution (and concludes that he can’t). Ex. B at 8–11.

Indeed, the *Onder* litigation in the District Court hardly looks like an appeal of this Court’s decision. Again, the plaintiffs were two candidates and two individual voters who were *never* parties to the *von Glahn* litigation in this Court. Ex. A ¶¶ 1–10. The defendants were the State of Missouri and the Secretary. *Id.* ¶¶ 11–12. Plaintiffs sought emergency order from the District Court enjoining the Secretary (again, a defendant) from using a map other than HB 1 per several provisions of the U.S. Constitution. *Id.* at 26 (prayer for relief). In issuing its decision, the District Court relied *solely* on the U.S. Constitution in finding the plaintiffs were entitled to temporary injunctive relief against the Secretary. Ex. B at 8–11.

All told, the motion is wrong to insinuate that *Onder* re-litigated matters decided by this Court. Frankly, there is no meaningful overlap. This Court issued the following holdings: (1) a state-law holding that the Missouri Constitution authorizes referenda against congressional maps; and (2) a state-law holding that Missouri may not use the same congressional map it used during the Primary Election *because of state law*. See No. SC101805, slip op. at 11, 13. By contrast, the *Onder* Plaintiffs asked the District Court to decide only *federal* questions: (1) whether the Elections Clause prohibits displacing the HB 1 congressional map, Ex. A ¶¶ 50–73, and (2) whether Missouri would violate the U.S. Constitution if it uses a different congressional map for the General Election than it used during the Primary Election, *id.* ¶¶ 74–109. Sure enough, the latter claims were the basis for the District Court’s temporary injunction. See Ex. B. at 6–11. Hence, the *Rooker-Feldman* doctrine does not apply.

Nor does the Anti-Injunction Act prevent the District Court’s action here. That act generally bars federal courts from enjoining state-court proceedings. See 28 U.S.C. § 2283. But that is simply not what happened here. The District Court did not enjoin this Court from issuing any state-law decisions; it merely relied on federal law to address federal constitutional claims.

Finally, even if the doctrine did apply or some other basis for error in the District Court’s order exists, the order is nonetheless binding on the Secretary

for the time being. Unless and until the District Court or a higher court issues a stay, the Secretary cannot disregard that order. *See Cooper*, 358 U.S. at 18; *Madej*, 370 F.3d at 667. Otherwise, he would be exposed to contempt proceedings in federal court.

* * *

The Secretary is in no position to do anything but obey the clear order of the United States District Court for the Eastern District of Missouri. Because this Court cannot countermand the District Court's order, any sanction imposed upon him for following that order would be profoundly unlawful and unjust.

CONCLUSION

This Court must deny the request to hold the Secretary of State in contempt.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed and served electronically via Missouri CaseNet on September 9, 2026 to all counsel of record.

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 2,819 words.

/s/ Louis J. Capozzi III

Solicitor General

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

CONGRESSMAN ROBERT “BOB”)
ONDER, RICHARD “RICK”)
BRATTIN, PATRICIA “PAT”)
THOMAS, and DEBRA HAVENS,)

Plaintiffs,)
v.)

Case No. _____

STATE OF MISSOURI and DENNY)
HOSKINS, in his official Capacity)
as Missouri Secretary of State,)

Defendants.)

COMPLAINT

Plaintiffs Congressman Bob Onder, Rick Brattin, Pat Thomas, and Debra Havens for their Complaint against the State of Missouri and Denny Hoskins, in his official capacity as Missouri Secretary of State, allege as follows.

Parties and Background

1. Plaintiff Robert “Bob” Onder is the duly elected United States Representative in Congress for Missouri’s third Congressional district. He is a

resident of St. Charles County, Missouri and is a registered voter in St. Charles County and the State of Missouri.

2. Congressman Onder is the Republican Nominee for congress in the Third Congressional District as adopted by the Missouri General Assembly in House Bill 1 (“HB 1”) in 2025.

3. Congressman Onder has an interest in a fair and accurate election process. *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 77 (2026).

4. Plaintiff Richard “Rick” Brattin is the Republican Nominee for congress in the Fifth Congressional district as adopted in HB 1.

5. Plaintiff Brattin is a resident of Cass County and is a registered voter in the State of Missouri.

6. Brattin has an interest in a fair and accurate election process. *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 77 (2026).

7. Plaintiff Patricia “Pat” Thomas is a registered Missouri voter living in Cole County, Missouri.

8. Thomas has an interest in a fair and accurate election process. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

9. Plaintiff Debra Havens is a registered Missouri voter living in Maries County, Missouri.

10. Havens has an interest in a fair and accurate election process. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

11. Defendant State of Missouri is a sovereign State of the United States of America.

12. Defendant Denny Hoskins is the Missouri Secretary of State.

13. Defendant Secretary of State is charged with administering Missouri's elections process, as well as approving or rejecting referendum petitions submitted to him (including the referendum petition at issue here).

14. Plaintiffs bring this action to prevent Defendants from unconstitutionally usurping the General Assembly's vested authority to reapportion the State of Missouri's congressional districting plan.

Background

15. On September 12, 2025, the Missouri General Assembly convened in a special session and passed HB 1, which redraws Missouri's eight Congressional districts.

16. Missouri's prior Congressional district map was enacted by the General Assembly in 2022.

17. Under those 2022 districts, Thomas and Havens would cast a congressional vote in the Third Congressional district. Under the new map established by HB1, Thomas and Havens would cast a vote in the Fifth Congressional district.

18. On December 9, 2025, a group called People Not Politicians,

through its executive director Richard von Glahn, submitted a referendum petition on HB1 to Defendant Secretary of State. The petition sought to suspend the effectiveness of HB1 until it was subject to a statewide public vote.

19. On May 13, 2026, the Missouri Supreme Court issued its unanimous decision in *Maggard v. State*. That Court held that mere submission of the referendum petition to the Secretary did not suspend HB 1 or preclude the State from implementing the congressional plan it enacted

20. The statutory deadline for the Secretary of State to issue a certificate of sufficiency or insufficiency on the referendum petition was August 4, 2026, the same date as the Congressional primary elections.

21. The August 4, 2026 Congressional primaries were held using the HB1 map.

22. 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.

23. Congressman Onder stood for and won the Republican nomination for the third Congressional district from voters casting ballots under the HB1 map.

24. Thomas and Havens both voted in the August 4 primary for candidates in the Fifth Congressional district.

25. Also on August 4, Defendant Secretary of State issued his

certificate of insufficiency, finding that “the referendum petition is insufficient under the Missouri Constitution because the Missouri Constitution does not authorize a referendum on congressional redistricting plans passed by the General Assembly.”

26. People Not Politicians and von Glahn challenged Defendant Secretary of State’s decision in state court.

27. The affidavit of Tammy Brown, Missouri election official, explains that implementing a new congressional map requires local election officials to transfer hundreds of thousands of individual voters in the MCVR system. See Exhibit 1.

28. Further, that is a meticulous process involving careful analysis of printed maps and multiple rounds of proofreading. *Id.*

29. The MCVR system locks shortly before absentee ballots are distributed and remains locked until an election is certified two weeks after election day. *Id.*

30. Even the state trial court found this evidence to be compelling. See, *von Glahn v. Hoskins*, No. 26AC-CC00440 (Cole County, Missouri), Final Judgment, Exhibit 2.

31. The MCVR system will remain locked until at least mid-November because of an ongoing Jackson County special election.

32. The state trial court concluded, therefore, that it would be

“impossible” for election officials to administer the 2026 congressional general election under any plan other than the HB 1 plan.

33. On September 3, 2026, the Missouri Supreme Court nonetheless ordered Defendants to use the 2022 Congressional district map instead of the HB 1 map for the November 3, 2026 general election. *von Glahn v. Hoskins*, No. --- S.W.3d --- (Mo. banc Sep. 3, 2026).

34. The Missouri Supreme Court did not address, much less overturn, the state trial court’s finding that it is “impossible” for election officials to administer the general election other than under the HB 1 plan.

35. As a result of the Missouri Supreme Court’s decision in *von Glahn*, the State must now do the “impossible” and administer Missouri’s November 3 general election using different maps than the maps used in the primary elections for the same offices.

36. Also, as a result of *von Glahn*, hundreds of thousands of registered voters who voted in the August 4 primary in the districts under HB 1 will be moved into different districts for the November 3 general election under the decision in *Von Glahn*.

37. Likewise, Congressman Onder and Rick Brattin won nominations by advocating to a particular set of voters in their respective HB1-designated districts. Under *von Glahn*, they must now run in the general election in districts which include many voters to whom they did not campaign in the

primary.

38. Thomas and Havens wish to vote in the general election in the Fifth Congressional district as they did in the primary but must now educate themselves about new candidates and issues because they are forced to vote in the general election for the Third Congressional district and for nominees whom they was not given a chance to vote for or against.

39. Cole and Maries Counties are in the Fifth Congressional District under HB 1 but are in the Third Congressional District under the 2022 plan.

40. Voters in Cole and Maries Counties voted in the Fifth Congressional District in the August 4 primary election but, under *Von Glahn*, will now vote in the Third Congressional District in the November 3 general election.

41. Thomas and Havens face the prospect of losing their fundamental right to vote in upcoming elections, including but not limited to the November 3, 2026 general election, if Defendants continue in the course of action ordered by *von Glahn*.

42. The entire State of Missouri has now been plunged into legal and electoral uncertainty over which Congressional maps govern Missouri's 2026 general election and which candidates represent whom. This Court should issue all appropriate relief without haste to ensure free and fair elections in November.

43. On September 3, 2026, the Attorney General applied to the Missouri Supreme Court for a stay of its decision in *von Glahn*.

44. On September 4, 2026, the Supreme Court denied that Application for Stay.

Jurisdiction and Venue

45. This Court has subject matter jurisdiction over the federal claims under 28 U.S.C. § 1331 because a provision of the U.S. Constitution and 42 U.S.C. § 1983 govern the disposition of this case.

46. This Court has supplemental jurisdiction over the state-constitutional claim under 28 U.S.C. § 1367.

47. This Court has the authority to issue the requested declaratory relief under 28 U.S.C. §§ 2201-2202 and this Court's inherent equitable authority.

48. This Court has personal jurisdiction over Defendants because each is either a state agency or sued in their official capacity as a state official, and the violations complained of concern their conduct in such capacities.

49. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) respecting Defendant State of Missouri because Plaintiffs allege said Defendant has undertaken efforts to carry out an unlawful Congressional election within this District and Division and moreover Congressman Onder is

a resident of St. Charles County and Havens is a resident of Maries County both of which are in this judicial district.

CAUSES OF ACTION

Violation of the Elections Clause

U.S. CONST. Art. I, § 4, cl. 1

50. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

51. An actual controversy exists within this Court's jurisdiction that would be resolved by a declaration of the rights and other legal relations of the parties in this action – namely, that *von Glahn*'s suspension of the General Assembly's duly enacted HB 1 plan and authorization of a referendum seeking to overturn HB 1 violates the Elections Clause of the U.S. Constitution.

52. The Constitution delegates and conveys the authority to prescribe the times, places, and manner of congressional elections only to "the Legislature" of "each State." U.S. CONST. art. I, § 4, cl. 1. Yet in Missouri, Defendants have been ordered not to use the General Assembly's duly enacted HB 1 for the ongoing 2026 general election. This unprecedented act violates both the U.S. and Missouri Constitutions.

53. Just two years ago, the U.S. Supreme Court reaffirmed the core

authority of state legislatures to draw congressional districts for the U.S. House of Representatives. The court emphasized how other state-governmental actors “do not have free rein” to transgress state legislatures’ authority to apportion congressional districts. *Moore v. Harper*, 600 U.S. 1, 34 (2023).

54. Despite that constitutional language, some state constitutions have expressly transferred authority over federal redistricting from state legislatures to other entities – like independent redistricting commissions. *See, e.g., Arizona State Legislature v. Arizona Independent Redistricting Comm’n*, 576 U.S. 787, 796–98 (2015). Jurists have disagreed on whether such delegations are constitutional. *See id.* at 826 (Roberts, C.J., dissenting).

55. This case does not require this Court to revisit that debate. Where the U.S. Constitution expressly vests authority in a particular actor, that authority cannot be taken away without a clear and express statement. *See Moore*, 600 U.S. at 34–36. In *Arizona State Legislature*, for example, the Arizona Constitution did “directly and immediately” transfer the Arizona’s Legislature’s authority over redistricting to another entity. 576 U.S. at 801. And in *State of Ohio ex rel. Davis v. Hildebrandt*, concluded that state law “ma[de] it clear” that the legislature had been partially divested of its authority over federal redistricting. 241 U.S. 565, 567–68 (1916) (holding it was “obvious” that state law was “conclusive” on that point).

56. The U.S. Constitution forecloses the holding of *von Glahn*. By vesting authority in the state legislature, the Elections Clause made a “compromise” that ensures a measure of deliberation, but in a representative body close to the people. *Ariz. State Leg.* at 837 (Roberts, C.J., dissenting).

57. The U.S. Constitution does not provide for a citizen veto of the legislature’s approved map. “*Hildebrant* in no way suggested that the state legislature could be displaced from the redistricting process, and *Hildebrant* certainly did not hold—as the majority today contends—that “the word [‘Legislature’ in the Elections Clause] encompassed a veto power lodged in the people.” *Ante*, at 2666. *Hildebrant* simply approved a State’s decision to employ a referendum *in addition to* redistricting by the Legislature. See 241 U.S., at 569, 36 S. Ct. 708. The result of the decision was to send *the Ohio Legislature* back to the drawing board to do the redistricting.” *Ariz. State Leg.* at 840 (J. Roberts Dissent)

58. In choosing to specifically entrust state legislatures with authority over federal congressional redistricting, the Framers of the U.S. Constitution ensured that such power would be exercised by officials “accountable by the people for the rules they write or fail to write.” *Democratic Nat’l Comm. v. Wis. State Leg.*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay). They also ensured that redistricting decisions would reflect “the collective wisdom of the whole people” – as expressed

through the people's elected representatives. *Id.*

59. Nor does the Elections Clause leave dissatisfied individuals without recourse. They are free to take their concerns to Congress itself, which can reset the reapportionment rules under the Elections Clause. *See Wise v. Circosta*, 978 F.3d 93, 112 (4th Cir. 2020) (en banc) (Wilkinson and Agee, JJ., dissenting) (emphasizing “the brilliance” of giving Congress the authority to check state legislatures).

60. Absent a clear statement in the Missouri Constitution transferring the apportionment power from the General Assembly to a ballot referendum, Defendants cannot proceed as directed by *von Glahn*. The General Assembly's “vested authority is not just the typical legislative power exercised pursuant to a state constitution. Rather, when a state legislature enacts statutes governing [federal] elections, it operates ‘by virtue of a direct grant of authority’ under the United States Constitution.” *Carson v. Simon*, 978 F.3d 1051, 1060 (8th Cir. 2020) (per curiam).

61. While the U.S. Supreme Court has recognized that express state constitutional amendments can divest legislatures of their apportionment power, the court has never held that a general referendum provision can curtail the legislature's exercise of that authority. *See Ariz. State Leg.*, 576 U.S. at 814 (holding that a State can adopt an express constitutional provision transferring the legislature's apportionment authority to an independent

commission).

62. Because the Framers of the Federal Constitution made “a deliberate choice” to vest reapportionment power in state legislatures, other state actors cannot use the vagaries of state law to transfer that power elsewhere. *Moore*, 600 U.S. at 34. Hence, state law must plainly delineate the legislature’s federal congressional-apportionment authority. *Cf. id.* at 34–36 (holding that state “courts do not have free rein” to intrude upon the legislature’s apportionment power absent “a fair reading” of state law limiting the power); *Carson*, 978 F.3d at 1060 (discussing how state officials cannot “override” the state legislature’s exercise of power under the Elections Clause).

63. Moreover, serious constitutional doubt persists about whether state-ballot initiatives can ever divest state legislatures of their congressional-apportionment authority. The “text, structure, or history of the Constitution” plainly show that Article I, Section 4 deliberately vests “the ‘Legislature,’” not “the people” with the power to reapportion congressional representation. *Ariz. State Leg.*, 576 U.S. at 825 (Roberts, C.J., dissenting). “Direct lawmaking by the people was ‘virtually unknown when the Constitution of 1787 was drafted.’” *Id.* at 793 (majority opinion). And the U.S. Supreme Court has never upheld the use of a ballot referendum to nullify a legislature’s congressional reapportionment against an Elections Clause challenge. *See id.* at 840 (Roberts, C.J., dissenting) (explaining how the only instance where the

Supreme Court considered the use of such a referendum did not involve Elections Clause challenge to state law in *Hildebrandt*).

64. Such clear-statement rules are fixtures of American constitutional law because they ensure that the relevant governmental actors actually intended to push the boundaries and potentially upset the careful balances struck by the U.S. Constitution's Framers. See *West Virginia v. EPA*, 597 U.S. 697, 736-37 (2022) (Gorsuch, J., concurring); Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 166–67 (2010). For example, even though the Constitution vests legislative power in Congress, courts allow Congress to delegate major policy decisions to the Executive Branch – but only if Congress provides a clear statement of authority. *West Virginia*, 597 U.S. at 723; *id.* at 746–49 (Gorsuch, J., concurring); *Paul v. United States*, 140 S. Ct. 342, 342 (2019) (statement of Kavanaugh, J., respecting denial of certiorari). Similarly, courts demand a clear statement before assuming Congress intended to legislate in areas of traditional state authority – to protect the U.S. Constitution's commitment to federalism. See *Sackett v. EPA*, 598 U.S. 651, 679-80 (2023); *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

65. Given its novelty and lack of textual support, *von Glahn* contravenes the United States Constitution's vesting of redistricting authority in the General Assembly. The Missouri Constitution's referendum provision does not expressly say that a referendum can overturn the exercise of the

General Assembly's federal redistricting decisions, and "state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections." *Moore*, 600 U.S. at 36.

66. To the contrary, the Missouri Constitution specifically recognizes the General Assembly's power to divide the State into congressional districts. *See* MO. CONST. art. III, § 45 (stating General Assembly "shall" perform this function). Given these provisions, Missouri has not made a deliberate and clear choice to override the Elections Clause's vesting the General Assembly with congressional apportionment authority. *See Ariz. State Leg.*, 576 U.S. at 817 (emphasizing how the State had made the deliberate choice of reallocating that authority to an independent commission).

67. And Missouri should have a chance to make that knowing choice before this unprecedented effort proceeds. Subjecting Missouri's congressional redistricting to ballot referenda will invite chaos. If opponents of a Congressional map succeed in using the referendum, every apportionment decision going forward could now become subject to a referendum. In effect, this could create apportionment paralysis – where the General Assembly is unable to implement a congressional map because successive referendum efforts nullify them. This threatens to wreak havoc on the General Assembly's basic obligations to reapportion congressional districts after each census.

68. The problem runs even deeper than that. Under *von Glahn*, nothing would stop a voter from proposing the federal congressional map in the first instance – thus entirely cutting the General Assembly out of the redistricting process. The provision of the Missouri Constitution governing citizen-proposed statutory initiatives is worded – in all material respects – identically to the referendum provision. See MO. CONST. art. III, §§ 49–53. That provision just generally refers to “laws” – without any specific reference to federal redistricting bills. See *id.* So, under the logic of *von Glahn*, voters can wield an absolute veto over the General Assembly’s duties under the Elections Clause.

69. Finally, no history in Missouri supports a reading like *von Glahn*. While a closely divided Missouri Supreme Court upheld the use of referenda for apportionment of seats in the General Assembly, see *State ex rel. Gordon v. Becker*, 49 S.W.2d 146, 149 (Mo. 1932), that case is inapt. In 1945, the Framers of Missouri’s current Constitution specifically overrode *Gordon*. See MO. CONST. art. III, § 7(h). The Missouri Constitution now provides in unqualified terms that “[n]o redistricting plan shall be subject to the referendum.” *Id.*; see also *id.* art. III, § 3(i).

70. Additionally, *Gordon* addressed federal and state legislative apportionment, which are governed by separate provisions in the Missouri Constitution. MO. CONST. art. IV, §7(Constitution of 1875); see MO. CONST. art.

III, §§ 3, 7, 10 (state legislative) and MO. CONST. art. III, § 45 (congressional). *Gordon* never considered whether, per the Elections Clause, the General Assembly retained sole authority to apportion congressional districts. Because the authority to set federal congressional districts is a power delegated by the U.S. Constitution, federal congressional reapportionment implicates uniquely federal interests not reflected in state-legislative reapportionment. *See Moore*, 600 U.S. at 34 (“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.”); *Carson*, 978 F.3d at 1060 (emphasizing how setting federal elections occurs “‘by virtue of a direct grant of authority’ under the United States Constitution”).

71. If anything, *Gordon* casts further doubt on Defendants’ legal theory. Chief Justice Atwood, in dissent, carefully analyzed Missouri constitutional history and concluded that the Missouri Constitution was not originally understood to extend the referendum even to state legislative apportionment. *See Gordon*, 49 S.W.2d at 152–57 (Atwood, C.J., dissenting) (contending that construction of prior Missouri constitutional provisions did not support the practice). And if such doubt exists for state legislative districting, it is hard to see how Defendants could satisfy the U.S. Constitution’s clear-statement rule applicable to federal congressional

redistricting efforts.

72. Defendants cannot identify any language that “makes it clear” that the Missouri Constitution transfers authority over federal redistricting away from the General Assembly. *Hildebrandt*, 241 U.S. at 568. While Missouri has chosen to allow voters to revisit legislation passed by the General Assembly, nothing in the Missouri Constitution expressly says that federal congressional reapportionment may be subjected to a referendum. See MO. CONST. art. III, §§ 49, 52(a). In other words, the people of Missouri have never made the conscious choice to undermine the Framers’ decision to vest this State’s legislature with the reapportionment authority.

73. With no express authority bestowed on the referendum process to overturn federal congressional apportionments, Defendants’ efforts – compelled by *von Glahn* – to revisit the General Assembly’s exercise of its authority under the Elections Clause are unlawful. Plaintiffs are entitled to a judgment declaring Defendants’ actions unlawful under the Elections Clause of the U.S. Constitution. The Court should grant appropriate declaratory and injunctive relief.

Violation of Article I, Section 2

42 U.S.C. § 1983; U.S. CONST. Art. I, § 2

74. Plaintiffs incorporate by reference all preceding paragraphs as if

fully set forth herein.

75. 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.

76. 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.

77. The 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).

78. 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. 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.

79. *Von Glahn* ignores those votes, stripping the nominees of the mandate in their respective districts which their voters conferred.

80. Article I, Section 2 forbids this result.

81. Changing the congressional map 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.

82. It is the wholesale dismantling of the election those voters already participated in.

83. *Von Glahn* does not even attempt to explain how State and local 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.

84. The Supreme Court has long recognized that primary and general elections are not separate events but a unified process.

85. 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).

86. 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”).

Violation of the Equal Protection Clause

42 U.S.C. § 1983; U.S. CONST. amend. XIV, § 1

87. Holding 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.

88. The 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).

89. The 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). Defendants are and have been acting under color of law.

90. By requiring Thomas and Havens to vote in a general election without allowing them to cast a ballot for the candidates in a primary for such election, *von Glahn* commands Defendants to violate Thomas’s and Havens’s

fundamental right to equal protection under the law.

91. The congressional map change in *Von Glahn* between the primary and general elections, forces hundreds of thousands of Missourians to vote in a district different from the one in which they cast their primary ballots.

92. 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.

93. They would thus be denied the right to choose their own representative through the integrated primary and general elections.

94. Meanwhile, voters who happened to remain in the same district would retain the full benefit of their primary vote.

95. The order in *Von Glahn* which changes the congressional map thus creates 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.

96. Thomas and Havens face the prospect of losing their fundamental right to vote in upcoming elections, including but not limited to the November 3, 2026 general election, if Defendants continue in the course of action ordered by *von Glahn*.

97. At the time *von Glahn* was decided, Missouri election officials,

candidates, political parties, and other advocates had already begun preparing for the general election under the HB1 Congressional map. Early voting and absentee-ballot distribution are imminent.

98. The order in *von Glahn* constitutes a judicial alteration of state election law “in the period close to an election.” *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

99. As the Supreme Court has repeatedly recognized, “[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring).

100. It is well-established that states have less say in regulating federal elections than “statewide and local elections.” *See Anderson*, 460 U.S. at 789.

101. The standard four-factor stay test does not govern this Court’s review of the order in *von Glahn*. Where, as here, the Missouri Supreme Court has ordered a change to state election law “close to an election,” the “traditional test for a stay does not apply (at least not in the same way) in election cases when a lower court has issued an injunction of a state’s election law in the period close to an election.” *Merrill*, 142 S. Ct. at 880; *La Union*, 119 F.4th at 408.

102. Chief among those considerations is the potential for a last-minute order “to confuse voters, unduly burden election administrators, or otherwise

sow chaos or distrust in the electoral process.” *Robinson v. Ardoin*, 37 F.4th 208, 228 (5th Cir. 2022).

103. Congressional redistricting is among the most complex and disruptive election changes a court can order. Implementing new district boundaries between the primary and general elections requires, at minimum: publishing new district maps; updated the Missouri Consolidated Voter Registration system in 117 separate local election authorities, re-notifying all affected voters of changed district assignments; reprinting and redistributing ballots statewide; and retraining election officials across dozens of counties – all within a window of 15 days before military ballots go out and 18 days before absentee voting begins.

104. Altering voters’ choices mid-election further harms the interests of the voters themselves, especially those such as Thomas and Havens, who were not permitted to vote in the primary: “It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues.” *Lubin v. Panish*, 415 U.S. 709, 716 (1974).

105. The redistricting mandate in *von Glahn* is incredibly complex and disruptive, and cannot constitutionally be implemented between the primary and general elections (if ever).

106. First, the underlying merits were not “entirely clearcut” in favor of

the party seeking a new map. The Missouri Supreme Court's own prior decision in *Maggard* acknowledged that it was "impossible" to determine with certainty whether the HB1 map had gone into effect. Legal questions that the state's highest court itself found irresolvable cannot satisfy the "entirely clearcut" standard.

107. Second, irreparable harm will result from *von Glahn*. Congressional candidates who prevailed in primary elections under the existing district boundaries face substantial harm – including disruption of campaign infrastructure, wasted resources, and educating and advocating to new voters in a truncated post-primary period – if those boundaries are altered before the general election.

108. Third, implementing a full congressional remap between the primary and general elections is not feasible without significant cost, confusion, and hardship to voters, candidates, and election administrators alike – as the scale of administrative disruption described above makes plain.

109. Because none of the conditions identified in *Merrill* are satisfied, the order in *von Glahn* compels Defendants to violate Plaintiffs' rights under the United States Constitution.

PRAYER FOR RELIEF

Brattin, Congressman Onder, Thomas, and Havens pray that this Court:

A. Declare, adjudge, and decree that the actions detailed herein are unlawful under Article I, § 4, cl. 1, Article I, § 2, and Amend. XIV, § 1 of the U.S. Constitution;

B. Issue declaratory relief stating that Defendants' failure to use the HB1 Congressional maps – as ordered by *von Glahn* – is unconstitutional;

C. Issue temporary, preliminary, and permanent injunctive relief to prevent Defendants from using any Congressional map other than the HB1 map until amended by the Missouri General Assembly; and

D. Award all other relief this Court deems equitable and just.

Respectfully submitted,

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Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CONGRESSMAN ROBERT “BOB”

ONDER et al.,

Plaintiffs,

v.

STATE OF MISSOURI and DENNY

HOSKINS,

Defendants.

Case No. 4:26-cv-01424-SRC

Memorandum and Order

On August 4, 2026, Missouri concluded its primary elections using the congressional districts laid out in House Bill 1 (“HB 1”). Missouri voters and candidates for federal office in Missouri request that the Court issue a temporary restraining order enjoining the use of any congressional district map other than HB 1, *see generally* doc. 2. All parties, including Intervenor People Not Politicians and Richard von Glahn, had notice and submitted briefing. Docs. 2, 12, 19–20, 29–30. Having considered the Verified Complaint, the affidavit attached to it, the parties’ and intervenors’ briefs, and applicable law, the Court grants Plaintiffs’ motion for a temporary restraining order.

I. Facts and Background

The Court treats the following uncontroverted facts, drawn from Plaintiffs’ verified complaint, docs. 1, 4, as true for the sake of resolving this motion for a TRO. *See* Fed. R. Civ. P. 65(b)(1)(A). Only a very narrow set of facts bear on the resolution of Plaintiffs’ request for a TRO. On September 12, 2025, the Missouri General Assembly passed HB 1, replacing the prior congressional district map enacted in 2022. Doc. 1 ¶¶ 15–16; doc. 12-4 at 11 (The Court cites to

page numbers as assigned by CM/ECF.); doc. 19 at 7. People Not Politicians and its executive director Richard von Glahn (who moved to intervene in this case, doc. 12) circulated a referendum petition seeking to suspend HB 1 until it passed a statewide vote. Doc. 1 ¶¶ 18; doc. 12 at 1–2. On August 4, 2026, the statutory deadline for doing so, the Missouri Secretary of State Denny Hoskins issued a certificate of insufficiency for the referendum petition. Doc. 1 at ¶¶ 20, 25; *see* Mo. Rev. Stat. § 116.150(3) (setting the statutory deadline to issue a certificate of insufficiency at “5:00 p.m. on the thirteenth Tuesday prior to the general election”).

The Complaint alleges, supported by a verified affidavit sworn under penalty of perjury, that Missouri’s primary election took place on August 4, 2026. Doc. 1 ¶ 21; doc. 1-1 ¶ 4. The primary election used the HB 1 map. Doc. 1 ¶ 21; doc. 12-1 at 5, 7. Neither Defendants nor Intervenors have disputed those facts; Intervenors’ briefing acknowledges that Missouri concluded its congressional primary elections on August 4, 2026. Doc. 12-1 at 7. The Complaint alleges that Plaintiffs Patricia Thomas and Debra Havens would cast votes in a different congressional district under the 2022 map than the one in which they cast their primary election votes under the HB 1 map. Doc. 1 ¶ 17. The Complaint further alleges that the HB 1 congressional districts in which Plaintiffs Congressman Robert Onder and Richard Brattin won nominations would change. Doc. 1 ¶¶ 2, 4, 37.

On September 3, 2026, the Missouri Supreme Court issued an opinion in *von Glahn v. Hoskins*, determining that, as a matter of state law, the Missouri Constitution authorizes referenda on the General Assembly’s adoption of new congressional district maps. *von Glahn v. Hoskins*, --- S.W.3d ---, No. SC101805, at *3 (Mo. Sep. 3, 2026) (en banc). The court enjoined Secretary of State Hoskins from using the HB 1 map for the November general election, retroactively deeming under state law that HB 1 “is not the law and has never been the law.” *Id.*

at *13–14, 12 n.8. Because the court concluded that any “claimed federal law violations” had been “waived and abandoned” by the Secretary of State, the court limited its holding to the single state-law issue of whether the Missouri Constitution authorized referendums on congressional redistricting plans. *Id.* at *5 n.5.

On September 4, 2026, Plaintiffs filed a complaint in this court, alleging claims under the Elections Clause; Article I, Section 2 of the U.S. Constitution; and the Equal Protection Clause. Doc. 1 ¶¶ 50–109. Plaintiffs moved for a temporary restraining order and a preliminary injunction and requested a “[TRO] and preliminary injunction hearing as expeditiously as possible.” Doc. 2 at 2. Plaintiffs moved to expedite the briefing and hearing schedule, asking the Court to resolve their motion for a TRO and preliminary injunction “as expeditiously as possible.” Doc. 3 at 2. Also on September 4, 2026, the Secretary of State filed an Emergency Application for Stay and Administrative Stay Pending Appeal before the Supreme Court, raising the same federal law claims. Emergency Appl. for Stay and Admin. Stay Pending Appeal, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 4, 2026). Justice Kavanaugh denied the application on September 8, 2026. *See Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 8, 2026). On September 5, Intervenor moved to intervene, requesting oral argument and the opportunity to “participate fully” in any hearings on Plaintiffs’ motion for a TRO and preliminary injunction.

Doc. 12-1 at 18.

Missouri law sets the deadline for finalizing the general-election ballot at 5:00 p.m. on the eighth Tuesday before the general election. Mo. Rev. Stat. § 115.125(2). The State has set the general election for November 3, 2026, meaning that the deadline for finalizing the ballot is

5:00 p.m. today, September 8. Doc. 1 ¶ 33; doc. 12-1 at 8; doc. 12-4 at 12.

Because no party or intervenor has disputed the facts described above and because many of those facts are matters of public record, the Court accepts the above facts as true for the purpose of this TRO.

II. Discussion

Before issuing a TRO, the Court must consider (1) the threat of irreparable harm to the movant (2) the balance between that harm and the injury that granting the injunction would inflict, (3) the movant's probability of success on the merits, and (4) the public interest. *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981); *see Tumey v. Mycroft AI, Inc.*, 27 F.4th 657, 665 (8th Cir. 2022). No single factor is dispositive, but the probability of success on the merits is the most important. *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013). The relevant inquiry is “whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined.” *Dataphase*, 640 F.2d at 113. The movant bears the burden of proving the necessity of injunctive relief. *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987).

A. Irreparable harm

Demonstrating irreparable harm requires showing “that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.” *Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 895 (8th Cir. 2013) (citation omitted). The party facing the harm must have “no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages.” *Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319 (8th Cir. 2009). Plaintiffs meet that burden here.

Plaintiffs face irreparable harm absent a TRO because many Missouri voters would have to cast their general-election votes for candidates whom they had no role in nominating.

Candidates who had no choice but to campaign and raise money in the HB 1 districts that Missouri’s highest election authority presented to them, have spent their funds and campaign efforts in districts that would no longer exist. Using a map other than HB 1’s would disenfranchise primary-election voters and undermine the nominations of candidates chosen in the primaries, leading to “certain” and “great” harm, *Novus Franchising, Inc.*, 725 F.3d at 895, not merely “speculative” or “possible” harm, *MPAY Inc. v. Erie Custom Comput. Applications, Inc.*, 970 F.3d 1010, 1020 (8th Cir. 2020) (alteration and citation omitted). The primary ballots cannot simply be recounted under the 2022 districts, as the district boundaries and candidates would not be the same for all voters. And the harm could not be more imminent: under state law, the deadline for finalizing the ballot is today, September 8. *See* Mo. Rev. Stat. § 115.125(2).

B. Balance of Harms

Conducting state elections in accordance with the Missouri Constitution undoubtedly qualifies as an important interest. But the Eighth Circuit has observed that “there can be little harm to other parties where . . . ‘a stay preserves the status quo and promotes confidence in our electoral system.’” *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 609 (8th Cir. 2020) (quoting *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020)). Preserving the status quo entails using the same map for the general election that Missouri used for its primaries—the HB 1 map. *See* doc. 1 ¶ 21. Whatever harm Defendants, Intervenor, or others might suffer under a TRO pales in comparison to the irreparable harm that Plaintiffs and, palpably notable here, the public would suffer if the Court does not issue a TRO.

C. Probability of success on the merits

i. Elections Clause

Article I, Section 4 of the federal Constitution gives to state legislatures the ability to establish “the Times, Places, and Manner of holding Elections for Senators and Representatives.” U.S. Const. art I, § 4, cl. 1. While it recognizes the “need for congressional oversight,” the Elections Clause doesn’t “disarm States from adopting modes of legislation that place the lead rein in the people’s hands.” *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 816 (2015). Because the “dictionaries of the founding era . . . capaciously define[d] the word legislature,” *Moore v. Harper*, 600 U.S. 1, 25 (2023) (internal quotation marks omitted), “includ[ing] the referendum within state legislative power for the purpose of apportionment” does not offend the Elections Clause, *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916); see also *Hawke v. Smith*, 253 U.S. 221, 230–31 (1920) (describing *Hildebrant*’s holding).

In *Hildebrant*, the Supreme Court considered an Elections-Clause challenge to Ohioans’ rejection of new congressional districts by popular referendum. *Hildebrant*, 241 U.S. at 566–67. The Ohio Constitution permitted its voters “to approve or disapprove by popular vote any law enacted by the General Assembly.” *Id.* at 566; see Ohio Const. Art. II, § 1 (1912) (“[T]he people reserve to themselves the power . . . [to] reject [laws] at the polls on a referendum vote.”). The Court held that the referendum, as part of the state’s legislative power, did not violate the Elections Clause. *Hildebrant*, 241 U.S. at 569.

Missouri’s Constitution grants the people of Missouri the “power to approve or reject by referendum any act of the general assembly.” Mo. Const. Art. III, § 49. Interpreting its own

Constitution, the Missouri Supreme Court has held that redistricting is “subject . . . to a

referendum as the default” because “redistricting by the General Assembly is a legislative act.” *Von Glahn v. Hoskins*, No. SC101805, at *7 (Mo. Sep. 3, 2026) (en banc).

Plaintiffs are not likely to succeed on the merits of their Elections-Clause claim because the referendum is a licit part of the legislative power in Missouri. States may choose to vest parts of the legislative power in bodies other than the General Assembly, and Missouri has so chosen. *See Ariz. State Legis.*, 576 U.S. at 813; *Moore*, 600 U.S. at 23; Mo. Const. Art. III, § 49. In turn, states may permit their voters to challenge redistricting maps by referendum without running afoul of the Elections Clause. *See Hildebrant*, 241 at 569.

Plaintiffs argue that a state constitutional provision must, under the Elections Clause, “supply [a] clear, deliberate statement” to “divest its legislature of redistricting authority.” Doc. 2-1 at 6 (citing *Ariz. State Legis.*, 576 U.S. at 843 (Roberts, C.J., dissenting)). This argument is unavailing for two reasons.

First, the referendum doesn’t *divest* the Missouri legislature of redistricting authority, as the people are part of the Missouri legislature through the referendum process. *See* Mo. Const. Art. III § 49 (locating referendum provision in article on “legislative department”); *von Glahn*, No. SC101805, at *8 (“[T]he referendum and initiative petition power . . . is an essential part of the state’s lawmaking process under the Missouri Constitution.”). Second, to the extent a clear statement rule applies in the Elections-Clause context, the Missouri Constitution’s referendum provision is as clear as the Ohio Constitution’s provision upheld in *Hildebrant*—both referendum powers apply to any law of the General Assembly. *Compare* Mo. Const. Art. III, § 49 with Ohio Const. Art. II, § 1 (1912); *see Hildebrant*, 241 U.S. at 566.

The Court therefore finds that Plaintiffs are not likely to succeed on the merits of their Elections-Clause claim. Next, the Court turns to Plaintiffs’ Article I, Section 2 claim.

ii. Article I, Section 2

Article I, Section 2 of the Constitution provides 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, cl. 1. The Supreme Court has stated 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 Article I, Section 2.” *United States v. Classic*, 313 U.S. 299, 318 (1941).

Missouri law dictates that “all candidates for elective office shall be nominated at a primary election . . .” Mo. Rev. Stat. § 115.339. Afterwards, “[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.” Mo. Rev. Stat. § 115.343. Using such a structure for elections renders the primary an “integral part of the election process. *See Morse v. Republican Party of Va.*, 517 U.S. 186, 207 (1996) (describing a primary election as “an ‘integral part of the election machinery’” when a state “effectively divided its election into two stages, the first consisting of the selection of party candidates and the second being the general election (quoting *Classic*, 313 U.S. at 318)); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 211, 226–27 (1986) (treating primary elections that led to the nomination of a party’s candidate as integral parts of the election process). The Eighth Circuit held in 1949 that Missouri’s then-existing primary election system—which, like the present system, provided that “no one can be elected to office without receiving nomination at a primary election”—was “an integral part of the general election laws of the state for the election of public officers, including Members of Congress.” *Klein v. United States*, 176 F.2d 184, 187 (8th Cir. 1949).

Because voters have already cast their ballots in the primaries, doc. 1 ¶ 21, replacing the applicable map for the general election would disenfranchise voters of their votes in the primary election, in clear violation of Article I, Section 2. Voters reassigned to different district would have cast their votes in vain for candidates now connected to other districts, effectively nullifying their votes.

Intervenors' only rebuttal is that Plaintiffs' Article I, Section 2 claim "rest[s] entirely on the premise that HB 1 was lawfully in effect when the August 4, 2026 primary was conducted." Doc. 12-4 at 18. But Plaintiffs' Article I, Section 2 claim does not depend on the legal status of the HB 1 map. Whether or not HB 1 was the governing law during the primary election, voters—including Plaintiffs—voted in primary elections within the congressional districts drawn by HB 1. *See* doc. 1 at ¶¶ 21–22, 24. And they didn't do so of their own accord. Instead, they did so based on the parameters set by Missouri's highest election authority, the Secretary of State. Mo. Const. Art. IV, § 14.

The Court therefore finds that Plaintiffs have a high probability of success on the merits of their claim under Article I, Section 2.

iii. Equal Protection Clause

The Fourteenth Amendment prohibits states from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. Included in equal protection is "a citizen['s] . . . right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (collecting cases). And "[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).

The Equal Protection Clause's aegis covers the rights not only of voters but also of candidates: a state cannot "unfairly or unnecessarily burden . . . an individual candidate's equally important interest in the continued availability of political opportunity" because "voters can assert their preferences only through candidates or parties." *Lubin v. Panish*, 415 U.S. 709, 716 (1974). Primary-election procedures, as "state action within the meaning of the Fourteenth Amendment . . . must be . . . consistent with the Equal Protection Clause." *Bullock v. Carter*, 405 U.S. 134, 140–41 (1972). And when a state "limit[s] the choices available to voters, [it] impairs the voters' ability to express their political preferences," requiring the "[s]tate [to] establish that its classification is necessary to serve a compelling interest." *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

Plaintiffs have demonstrated a sufficient likelihood of success on the merits of their Equal Protection Clause claim. In the August primaries, voters have already cast their ballots and candidates already ran using the HB 1 map. Doc. 1 at ¶¶ 21–24. Replacing the HB 1 map after the primary would sort "hundreds of thousands" of voters into different districts and cause candidates to run in districts covering voters to whom those candidates have not campaigned. *Id.* at ¶¶ 36–37. Using any map other than HB 1's for the general election creates two classes of voters: those who happen to stay in their HB 1 congressional districts, and those who do not. Likewise, it divides candidates between those who retain the same electorate, and those who do not. In both situations, those who "do not" are divested of their fundamental electoral rights.

Switching maps now would deprive many Missourians of their equal vote in the primaries and "impair the voters' ability to express their political preferences" by foisting new candidates on them on the eve of the election. *See Socialist Workers Party*, 440 U.S. at 184. Defendants have not offered an interest to establish the necessity of these arbitrary geographic

classifications, nor do they want to. *See generally* doc. 11. So these classifications burden or outright divest the right to vote—“the essence of a democratic society” and “the heart of representative government”—without justification. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

Like their response to Plaintiffs’ Article I, Section 2 claim, Intervenor’s argue that the Equal-Protection claim presumes the lawfulness of the HB 1 map when the primary occurred.

That contention is irrelevant to the Equal-Protection claim as it was to the Article I, Section 2 claim. The primary already happened, and the clock cannot be turned back, so Missouri must honor the equal right to vote of all its eligible voters, regardless of geography.

The Court therefore finds that Plaintiffs have shown a high probability of success on the merits of their Equal-Protection-Clause claim. Because the Court finds an adequate likelihood of success for two out of the three claims, the Court turns to the public’s interest in temporary relief.

D. Public interest

The public interest favors enjoining the Secretary from using the 2022 map for the general election. Disenfranchising voters across the state and denying them their constitutional right to have their primary votes counted significantly harm the public interest. “[I]t is always in the public interest to protect constitutional rights.” *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds*, *Phelps-Roper v. City of Manchester*, 697 F.3d 678 (8th Cir. 2012) (en banc).

On top of that, “[t]he public has an interest in the fair and orderly operation of election[s]” *Org. for Black Struggle*, 978 F.3d at 609. The Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 423 (2020) (per curiam) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)); *Merrill v. Milligan*,

142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of application for stays) (“When an election is close at hand, the rules of the road must be clear and settled.”); *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026). In *Purcell v. Gonzalez*, the Supreme Court explained that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls,” a risk that grows “[a]s an election draws closer.” *Purcell*, 549 U.S. at 4–5.

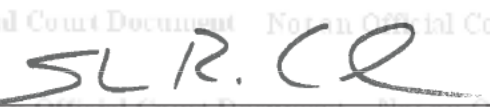
Admittedly, courts normally invoke the *Purcell* principle to caution against federal-court intervention in the election decisions of state legislatures, and no federal court has ordered the use of the 2022 map. But *Purcell* does not cut against injunctive relief here. This case presents *Purcell* in reverse, but with no less weight. Injunctive relief “may be inequitable if it is issued shortly before an election, when candidates, election officials, and voters have relied on the rules in place at that time.” *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of stay). Issuing a TRO here would preserve, rather than disturb, the election rules that candidates, election officials, and voters have relied on. If anything, the public interest concerns that the *Purcell* principle invokes—avoiding voter confusion, disincentivizing voting, and preserving the fair and orderly operation of elections—support issuing a TRO. Missouri already held its primaries using the HB 1 map. Doc. 1 ¶ 21. Using a different map for the general election would wreak havoc on the fairness and orderliness of Missouri’s congressional elections, calling into question the candidacy of those nominated in the primaries and the votes of those who voted in the primaries. Widespread voter confusion would inevitably follow. The public interest factor thus weighs in favor of a TRO.

III. Conclusion

Accordingly, the Court grants Plaintiffs' [2] motion for a temporary restraining order and enjoins, on federal law grounds, Secretary of State Hoskins—as well as his officers, agents, employees, and attorneys—from implementing, using, publishing, distributing, or mandating the use of any congressional district map other than the HB 1 map for the November 3, 2026 general election. The Court finds that a hearing is not necessary because all parties have participated fully through their briefing, and because all parties agree on the material facts. The Court also denies Plaintiffs' [3] Motion to Expedite as moot.

This order remains in effect for 14 days from the date of issuance. The Court will set a preliminary injunction hearing by separate order. Neither Defendants nor Intervenor Defendants asks the Court to set a bond, and having considered the issue, the Court finds a bond unnecessary on these unique facts and circumstances. *See* Fed. R. Civ. P. 65(c). As provided in Rule 65(d)(2), this temporary restraining order binds “only the following who receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties’ officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).”

So ordered this 8th day of September 2026.


STEPHEN R. CLARK
CHIEF UNITED STATES DISTRICT JUDGE