

Stipulated Exhibit 27

No. SC101412

**In the
Supreme Court of Missouri**

MERRIE SUZANNE LUTHER, *et al.*,

Appellants,

v.

SECRETARY OF STATE DENNY HOSKINS, *et al.*,

Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Christopher K. Limbaugh

BRIEF OF RESPONDENT DENNY HOSKINS

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INTRODUCTION

This case is legally straightforward. Under the Missouri Constitution, “the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained* by the Constitution.” *State v. Clay*, 481 S.W.3d 531, 537 (Mo. banc 2016) (quoting *Liberty Oil Co. v. Dir. of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991)) (emphasis in *Clay*). As the Circuit Court rightly recognized, Article III, § 45 of the Missouri Constitution says *nothing* about mid-decade redistricting. D19: P4. If the framers of the 1945 Missouri Constitution wanted to prohibit mid-decade redistricting—a practice that had previously occurred in Missouri—they would have said so. Like the Circuit Court, this Court should reject Appellants’ invitation to fabricate a nonexistent and ahistorical temporal restriction on the General Assembly’s power to redistrict when it deems necessary.

The Court should affirm.

STATEMENT OF FACTS

On September 12, 2025, the Missouri General Assembly enacted House Bill 1 (2025) (“H.B. 1”). D4: P2 ¶ 10. H.B. 1 establishes new congressional districts and repeals the previous congressional map adopted in 2022. Governor Mike Kehoe signed H.B. 1 into law on September 28. D4: P2 ¶ 12.

Appellants assert—without citation—that H.B. 1 was enacted “in response to entreaties from the President of the United States.” Appellants’ Br. at 8. Although the General Assembly’s motivations in enacting—and Governor Kehoe’s reasons for signing—H.B.1 are not at issue in this case, those reasons are more nuanced than Appellants suggest. Among other reasons, the General Assembly enacted H.B. 1 to ensure Missouri’s political majority had fair representation in the federal government. See Governor Kehoe, Proclamation: Governor Kehoe Convenes the Second Extraordinary Session of the First Regular Session of the One Hundred Third General Assembly (Aug. 29, 2025).

In particular, the General Assembly and Governor acted in response to aggressive redistricting efforts in other States. See *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (“With an eye on the upcoming 2026 midterm elections, several States have in recent months redrawn their congressional districts in ways that are predicted to favor the State’s dominant political party.”). In particular, Missouri’s redistricting effort followed that in

California, where Republicans are now expected to hold only four out of 52 seats—despite the Republican presidential candidate winning almost forty percent of the vote in the 2024 general election. *See* Gerrymandering Project, Redistricting Report Card: California 2025 Congressional – Draft – AB604, Gerrymandering Project (Sept. 4, 2025);¹ *see also* Assem. Bill 604, 2025–2026 Reg. Sess. (Cal. 2025) (approved by Governor Aug. 21, 2025). Even under H.B. 1, Republicans are expected to win a smaller percentage of seats than Democrat majorities hold in other States, including Illinois, Virginia, and all the New England states.² For example, 43.47 percent of Illinois voters cast their votes for President Trump in 2024, *see id.*, but only three out of 17 U.S. House members from Illinois are Republicans, or 17.65 percent. And under the redistricting plan being pushed in Virginia, just one out of 11 house seats, or 9 percent, is projected to be held by a Republican despite President Trump winning 46.05% of the vote in 2024. *Id.*; *see Virginia Democrats unveil a redistricting map that would aim to give them 4 more US House seats*, CNN (Feb. 6, 2026).³ Looking at the percentage vote for Trump in 2024, Connecticut (41.89%), Maine (45.50%), Massachusetts (36.02%), New Hampshire (47.87%),

¹ <https://perma.cc/DCD2-5Z8T>

² *See Data Archive: Elections: 2024*, UCSB: The American Presidency Project (Dec. 31, 2024), <https://perma.cc/AE34-RZ7H>; *Directory of Representatives*, U.S. House of Representatives (2025), <https://www.house.gov/representatives>.

³ <https://perma.cc/WQR2-8QWW>.

Rhode Island (41.76%), and Vermont (32.32%), *none* of these States send a single Republican to the U.S. House of Representatives.⁴

On September 12, 2025, Appellants filed a petition in the Circuit Court of Cole County seeking declaratory judgment and injunctive relief against the enactment of H.B. 1. *See* D2: P7. Appellants alleged that H.B. 1 violated Article III, § 45 of the Missouri Constitution because it enacted new congressional districts greater than once per decade. *See* D2: P5–6 ¶¶ 34–44. Their petition asked the Circuit Court to “[d]eclare House Bill 1 in violation of Article III, Section 45” of the Missouri Constitution and “[e]njoin the Secretary of State . . . from using the map enacted by House Bill 1 to conduct any congressional election.” D2: P7 ¶ 49(a)-(b). The Circuit Court subsequently allowed Missouri Republican State Conference to intervene in support of H.B. 1. *See* D7.

Following a trial on stipulated facts, the Circuit Court rejected Appellants’ claim. The Circuit Court confirmed that the General Assembly’s “plenary authority” included the power to conduct mid-decade congressional redistricting. D19: P6. The Circuit Court rooted this holding in the longstanding principle that “[t]he Constitution is not a grant but a restriction

⁴ *See Data Archive: Elections: 2024*, UCSB: The American Presidency Project (Dec. 31, 2024), <https://perma.cc/AE34-RZ7H>; *Directory of Representatives*, U.S. House of Representatives (2025), <https://www.house.gov/representatives>.

upon the powers of the legislature.” D19: P3 (quoting *Liberty Oil*, 813 S.W.2d at 297). “[W]here the constitution is silent, the legislature may properly address the issue.” D19: P4 (quoting *State ex rel. Mathewson v. Bd. of Election Comm’rs of St. Louis Cnty.*, 841 S.W.2d 633, 636 (Mo. banc 1992)). Beyond the plain text and plenary power, the Circuit Court found that constitutional structure bolstered the General Assembly’s exercise of its redistricting prerogative. D19: P4–5 (contrasting § 45’s language against provisions of the Constitution which feature explicit prohibitory language).

The Circuit Court also rejected Appellants’ various arguments. It faulted Appellants for relying on out-of-context “dicta” from *Pearson v. Koster*, 359 S.W.3d 35 (Mo. banc 2012). See D19: P5. The Circuit Court also refused to transpose state legislative redistricting restrictions into § 45’s text. D19: P6 (“In any event, the implication raised by plaintiff is not enough to conclude that the inclusion of this language in Section 14 serves as a bar for the legislature to conduct a second redistricting pursuant to Section 45.”).

This appeal follows.

SUMMARY OF ARGUMENT

The Circuit Court correctly rejected Appellants’ constitutional challenge to the General Assembly’s authority to enact H.B. 1. It properly distinguished between the constitutional duty of the General Assembly to redistrict *at least* once per decade and the plenary legislative authority of the General Assembly to draw Missouri’s congressional districts as it sees fit—subject to the compactness, contiguity, and population equality requirements of § 45 and federal law. *See Pearson*, 359 S.W.3d at 38.

First, the General Assembly has discretion to conduct mid-decade redistricting under its plenary legislative authority and the U.S. Constitution’s Elections Clause. U.S. Const. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”). Under longstanding precedent, the General Assembly retains inherent authority to redistrict when it chooses unless Appellants identify “express” constitutional language prohibiting mid-decade redistricting. *See Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 835 (Mo. banc 1991) (quoting *Harrell v. Total Health Care, Inc.*, 781 S.W.2d 58, 63–64 (Mo. banc. 1989)). Section 45’s plain text lacks such language. Furthermore, its language does not, by implication, divest the General Assembly of its mid-decade redistricting power either.

Second, Missouri history and practice bolster this straightforward reading of § 45. Historical context demonstrates that the 1943–1944 Constitutional Convention enacted § 45 to mandate redistricting *at least* once per decade—because the General Assembly had failed to redistrict at all in the prior decades. By contrast, no evidence shows that the 1943–1944 Constitutional Convention delegates were concerned about mid-decade redistricting—even though they knew the General Assembly had previously redistricted mid-decade. And even after § 45’s ratification, federal courts recognized that the General Assembly could redistrict mid-decade, permitting it to do so again and again following adverse rulings against enacted maps.

Third, constitutional structure buttresses the General Assembly’s redistricting power. When the Missouri Constitution prohibits a legislative action, it says so. Even in the rare circumstances where the General Assembly is prohibited from action by implication, the restriction on plenary power “should be invoked only when it would be natural to assume by a *strong contrast* that that which is omitted must have been intended for the opposite treatment.” *Six Flags Theme Parks, Inc. v. Dir. of Revenue*, 179 S.W.3d 266, 270 (Mo. banc 2005) (quoting *Springfield City Water Co. v. City of Springfield*, 182 S.W.2d 613, 618 (Mo. 1944)) (emphasis added). No such “strong contrast” exists in § 45.

Fourth, binding and persuasive precedents support the General Assembly's redistricting power. This Court expressly confirmed that the General Assembly retains the power—in the absence of “express” constitutional prohibitions—to act with complete discretion, *Blaske*, 821 S.W.2d at 835, including realigning legislative districts. And in *Pearson v. Koster*, this Court identified only three limits on the General Assembly's federal redistricting power in § 45: contiguity, compactness, and equality of population. 359 S.W.3d at 38. A temporal limitation was not one of those three limits. *See id.* Additionally, out-of-state precedent interpreting similar state provisions confirms that, in the absence of a clear constitutional prohibition, state legislatures enjoy the power to redistrict mid-decade at will. *See, e.g., State ex rel. Meighen v. Weatherill*, 147 N.W. 105, 106 (Minn. 1914) (upholding the Minnesota Legislature's discretionary mid-decade redistricting power).

Despite this weight of authority, Appellants and Amici attempt several counterarguments. These are unpersuasive.

First, Appellants try (and fail) to negate the governing plenary power rule by falsely analogizing the General Assembly to commissions of limited powers. *Second*, Appellants and Amici mangle the negative-implication canon, reading nonexistent language into § 45. *Third*, Appellants and Amici garble precedents, drawing incorrect analogies between separation-of-powers and appropriations cases to divest the General Assembly of a power fully vested in

the General Assembly. *Fourth*, they either ignore or misconstrue the key constitutional history supporting the General Assembly's authority. *Fifth*, Appellants and Amici invoke out-of-state precedents that analyze materially different state constitutional texts and rely on premises this Court has long rejected.

Finally, even if the Court contemplates Appellants' arguments, it should not invalidate the 2025 Map in anticipation of the imminent deadlines for the 2026 midterm elections. The *Purcell* principle prohibits courts from altering election rules during election seasons—because doing so would cause chaos and be inequitable. See *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). With the filing period imminent, any court order against Missouri's federal congressional map should not apply until after the 2026 elections. See *Abbott*, 146 S. Ct. at 419 (applying *Purcell* and prohibiting alterations to Texas's congressional map for 2026 elections under nearly identical timing circumstances).

For all these reasons, this Court should affirm.

STANDARD OF REVIEW

“When reviewing a declaratory judgment, an appellate court’s standard of review is the same as in any other court-tried case.” *Rebman v. Parson*, 576 S.W.3d 605, 608 (Mo. banc 2019) (quoting *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 413 (Mo. banc 2001)). “[T]he trial court’s decision should be affirmed unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.” *Id.* (alteration in original). “Challenges to a statute’s constitutional validity are questions of law, which this Court reviews *de novo*.” *Id.* (quoting *City of Normandy v. Greitens*, 518 S.W.3d 183, 190 (Mo. banc 2017)).

ARGUMENT

I. The Circuit Court did not err in holding the General Assembly had authority to enact House Bill 1, because the Missouri Constitution imposes no temporal restrictions on the Legislature’s congressional redistricting power, in that neither Article III, Section 45 nor any other part of the Missouri Constitution imposes limitations on when the General Assembly may exercise its prerogative to enact congressional redistricting legislation pursuant to its responsibilities under § 45 and under Article I, § 4 of the U.S. Constitution (Response to Points Relied On I).

A. The Missouri Constitution’s plain text and plenary power doctrine demonstrate the General Assembly’s plenary redistricting authority.

Article III, § 45 of the Missouri Constitution states:

When the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled, which districts shall be composed of contiguous territory as compact and as nearly equal in population as may be.

The plain text of § 45 mandates redistricting after the Census, but it says *nothing* about the possibility of additional mid-decade redistricting. *See* D19: P3–4. It says only that the General Assembly “shall” redistrict *at least once* per decade—following the decennial census. As explained further below, this command makes perfect sense in light of the General Assembly’s failure to enact a redistricting plan during the early twentieth century. *See infra* Section

I.B.

The Missouri Constitution's silence on mid-decade redistricting is dispositive under the plenary power doctrine. "The general assembly's authority is plenary, except when *express* constitutional provisions intervene." *Blaske*, 821 S.W.2d at 835 (emphasis added) (quoting *Harrell*, 781 S.W.2d at 63–64). Even if Appellants could point to *any* relevant language limiting legislative power, "[a]ny constitutional limitation... must be strictly construed in favor of the power of the General Assembly." *Bd. of Educ. of City of St. Louis v. City of St. Louis*, 879 S.W.2d 530, 533 (Mo. banc 1994) (citing *Brown v. Morris*, 290 S.W.2d 160, 166 (Mo. banc 1956)) (emphasis added). This rule exists because "[d]eference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by any reasonable construction of that action or by any reasonable construction of the Constitution." *Liberty Oil*, 813 S.W.2d at 297. Here, no such provisions "intervene," *Blaske*, 821 S.W.2d at 835, and so the General Assembly retains the power to redistrict mid-decade.⁵

Beyond the plenary power doctrine, the General Assembly also draws mid-decade redistricting authority from the U.S. Constitution's Elections

⁵ Any holding that the Missouri Constitution prohibits mid-decade redistricting would "impermissibly distort[]" state law in violation of the U.S. Constitution's Elections Clause. *Moore v. Harper*, 600 U.S. 1, 36 (2023) (quoting *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring)). The State respectfully preserves that argument.

Clause. *See* U.S. Const. art. I, § 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”). This language “leaves with the States primary responsibility for apportionment of their federal congressional . . . districts.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 414 (2006) [hereinafter *LULAC*] (plurality opinion) (quoting *Grove v. Emison*, 507 U.S. 25, 34 (1993)). As the U.S. Supreme Court has made clear, “[w]ith respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition.” *Id.* at 415. That is why—even before the 1945 Constitution addressed federal redistricting—the General Assembly exercised its federal redistricting power despite state constitutional silence (as is still true in some States). *See, e.g., Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 702 (Tex. 2022) (citing *Mumme v. Mars*, 40 S.W.2d 31, 33 (Tex. 1931)) (explaining that Article III, § 28 of the Texas Constitution, by not mentioning mid-decade congressional redistricting, did not bar it, because redistricting was a legislative power, and the legislature held all power not expressly or impliedly forbidden by a state or federal constitutional provision).

Here too, Appellants simply cannot point to anything that negates the General Assembly’s federal constitutional authority to engage in mid-decade redistricting. Constitutional silence dooms Appellants’ claim. *See LULAC*, 548

U.S. at 415 (“With respect to a mid-decade redistricting . . . the Constitution and Congress state no explicit prohibition.”).

B. History confirms the framers did not intend to bar mid-decade redistricting.

The General Assembly *has* conducted mid-decade redistricting under Missouri’s previous Constitutions. Nothing in the 1945 Constitution suggests the framers intended to strip away that preexisting power.

Mid-decade redistricting is not new in Missouri. Following the General Assembly’s passage of an apportionment act in 1872, the General Assembly redistricted again in 1877—*before* the 1880 census. *See* D13, D14. As was widely understood, the General Assembly’s reason for doing so was to shore up the Democratic Party’s power in the wake of the 1876 election. *See Twenty-Ninth General Assembly*, *The Springfield Leader*, (Jan. 25, 1877) (available at State Historical Society of Missouri, <https://shsmo.newspapers.com/>) (“The special committee on congressional boundaries met and organized last night The committee agreed to redistrict the state, or at least change some of the congressional districts.”).⁶ Despite the clear partisan stakes of that mid-

⁶ *See also Jefferson City. Proceedings of the Legislature Yesterday*, *THE KANSAS CITY JOURNAL* (Jan. 20, 1877) (available at State Historical Society of Missouri, <https://shsmo.newspapers.com/>) (“Mr. Anthony, of Morgan, one of the special committee selected by the Democrats to redistrict the state, reported a bill this morning that aims to make, beyond peradventure, all the congressional districts of the state Democratic.”); *Re-Districting the State*, *THE SEDALIA WEEKLY EAGLE* (Jan. 26, 1877) (available at State Historical Society of

decade redistricting, the State is unaware of any legal challenge to that effort—strongly suggesting that it was broadly understood that the courts had no authority to prevent mid-decade redistricting. Indeed, mid-decade redistricting was also common nationwide at the time.⁷

In subsequent decades, Missouri swung from redistricting mid-decade to utterly failing to redistrict, even following the decennial Census. From 1901 to 1931, Missouri did not adjust its congressional districts at all,⁸ prompting several years of (now unconstitutional) at-large representation.⁹ This dereliction explains *why* the 1943–1944 Constitutional Convention delegates added § 45—to ensure that the 1901–1931 redistricting drought (and at-large representation) would not occur again.

To achieve that end, the Missouri Constitutional Convention agreed in 1944 on Amendment 7 to File No. 21, what became § 45. Amendment 7's history establishes that § 45 creates a mandatory floor for redistricting to occur

Missouri, <https://shsmo.newspapers.com/>) (“Among the first acts of our Democratic Legislature was the raising of a committee in the House to redistrict the State into Congressional Districts.”).

⁷ See Erik J. Engstrom, *Stacking the States, Stacking the House: The Partisan Consequences of Congressional Redistricting in the 19th Century*, 100 AM. POL. SCI. REV. 419, 421 (Aug. 2006) (noting how in Ohio, the general assembly redistricted seven times between 1878 and 1892).

⁸ Lloyd M. Short, *Congressional Redistricting in Missouri*, 25 AM. POL. SCI. REV. 634, 639 (1931).

⁹ ERIK J. ENGSTROM, *PARTISAN GERRYMANDERING AND THE CONSTRUCTION OF AMERICAN DEMOCRACY* 76 (2013).

at least once per decennial period, triggered by the decennial census and subsequent congressional reapportionment. See Debates of the 1943–1944 Constitutional Convention of Missouri—1943–44, vol. 22, 6750, 7030–32 (September 6, 1944). No evidence suggests the delegates deemed mid-decade redistricting to be a problem—even though they surely knew it had previously happened in Missouri. See File No. 21, Report No. 1 of Committee No. 23 on Phraseology, Arrangement and Engrossment, Article IV, Legislative Department, Congressional, State Senatorial and Representative Districts at 22–24 (September 19, 1944).¹⁰ The delegates’ silence reinforces that they did not intend to ban mid-decade redistricting. Cf. *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 63 (2004) (noting another case involving a “dog that didn’t bark”).

Moreover, mid-decade redistricting continued *after* § 45’s adoption. During the 1960s, Missouri struggled to establish constitutionally-compliant congressional districts. In 1965, a federal court declared the General Assembly’s 1961 congressional map unconstitutional. *Preisler v. Sec’y of State* (*Preisler I*), 238 F. Supp. 187, 190 (W.D. Mo. 1965) (per curiam). The court deferred drawing new congressional districts itself, reasoning that “the State Legislature of Missouri has an *unmistakable duty* to reapportion the

¹⁰<https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=1088&q1=congress&view=2up>

Congressional Districts of that State.” *Id.* at 191 (emphasis added). This holding would have made no sense if the Missouri Constitution was understood to prohibit mid-decade redistricting.

Again and again, the General Assembly redistricted and the federal district court rejected the map. See *Preisler v. Sec’y of State (Preisler II)*, 257 F. Supp. 953, 956, 980, 984–85 (W.D. Mo. 1966), *aff’d sub nom.*, *Kirkpatrick v. Preisler*, 385 U.S. 450, 450 (1967); *Preisler v. Sec’y of State (Preisler III)*, 279 F. Supp. 952, 955, 1004 (W.D. Mo. 1967), *aff’d sub nom.*, *Kirkpatrick v. Preisler*, 394 U.S. 526, 533 (1969); *Preisler v. Sec’y of State (Preisler IV)*, 341 F. Supp. 1158, 1160 (W.D. Mo. 1972). In total, the General Assembly conducted *three* mid-decade redistrictings in the 1960s in response to previous maps being thrown out by the courts.

In all these cases, the federal courts recognized that the General Assembly had the power to redistrict mid-decade. *E.g.*, *Preisler II*, 257 F. Supp. at 982 (“Primary responsibility . . . rests on the 1967 General Assembly of Missouri.”); *Preisler IV*, 341 F. Supp. at 1162 (“[U]nless and until the State of Missouri enacts a timely and constitutionally permissible new Congressional Redistricting Act . . .”). These courts recognized that the General Assembly can “take all necessary action”—redistricting mid-decade—“to comply with its duty under the Federal, *as well as its own State*, Constitution.” *Preisler I*, 238 F. Supp. at 191 (emphasis added). Yet under Appellants’ theory, all these

federal court rulings were legally erroneous—and the federal courts should have simply imposed a new map.

C. Constitutional structure reinforces the General Assembly’s plenary redistricting authority.

Constitutional structure reinforces that Missouri’s framers knew how to—but did not—prohibit mid-decade redistricting. When the Constitution limits legislative power, it explicitly says so: “the general assembly shall have no power.” To give just one example, Article III, § 37 states that the General Assembly “shall have no power” to issue bonds, except under specific circumstances. Mo. Const. art. III, § 37.

Phrases like “shall not” are “words of prohibition.” *Brooks v. State*, 128 S.W.3d 844, 847 (Mo. banc 2004). And the Missouri Constitution uses such phrases in several other parts of Article III. See, e.g., art. III, § 37 (“Limitation on state debts and bond issues.—The general assembly shall have no power to contract or authorize the contracting of any liability of the state, or to issue bonds thereof, except (1) to refund outstanding bonds, the refunding bonds to mature not more than twenty-five years from date. . . .”); *id.* at § 40 (“The general assembly shall not pass any local or special law: (1) authorizing the creation, extension or impairment of liens; (2) granting divorces; (3) changing the venue in civil or criminal cases. . . .”); *id.* at § 41 (“Indirect enactment of local and special laws—repeal of local and special laws.—The general assembly

shall not indirectly enact a special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.”); *id.* at § 42 (“Notice of proposed local or special laws.—No local or special law shall be passed unless a notice, setting forth the intention to apply therefor and the substance of the contemplated law, shall have been published in the locality where the matter or thing to be affected is situated at least thirty days. . . .”); *id.* at § 43 (“Title and control of lands of the United States—exemption from taxation—taxation of lands of nonresidents.—The general assembly shall never interfere with the primary disposal of the soil by the United States, nor with any regulation which Congress may find necessary for securing the title in such soil to bona fide purchasers.”); *id.* at § 44 (“No law shall be valid fixing rates of interest or return for the loan or use of money, or the service or other charges made or imposed in connection therewith, for any particular group or class engaged in lending money.”).

Section 45, of course, uses no such language. Section 45’s absence of prohibitory language confirms its lack of temporal restriction on redistricting. *See* D19: P5 (“That the Framers did not include those terms in Section 45 only further underscores that the Constitution permits, rather than prohibits, mid-decade congressional redistricting by the General Assembly here.”); *cf.* *Russello v. United States*, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section

of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (cleaned up)); *accord Selleck v. Keith M. Evans Ins., Inc.*, 535 S.W.3d 779, 784 (Mo. App. E.D. 2017); *Jantz v. Brewer*, 30 S.W.3d 915, 918 (Mo. App. S.D. 2000).

D. Precedent bolsters the General Assembly’s plenary redistricting authority.

This Court’s precedent confirms the General Assembly’s discretion to conduct mid-decade redistricting. In *Pearson v. Koster*, this Court analyzed Article III, § 45, and it recognized “*only* three requirements” on the General Assembly’s redistricting power: district contiguity, compactness, and equality of population. 359 S.W.3d at 38 (emphasis added). As long as districts complied with these three limitations, Missouri courts “*shall* respect the political determinations of the General Assembly” *Id.* at 40 (emphasis added). Beyond that, “the General Assembly . . . is vested in its representative capacity with all the primary power of the people and . . . has the power to enact any law not prohibited by the federal or state constitution.” *Three Rivers Junior Coll. Dist. of Poplar Bluff v. Statler*, 421 S.W.2d 235, 243 (Mo. banc 1967). That is why this Court in *Pearson* rejected an invitation to recognize an additional limitation on the redistricting power—namely that “political motivations of various types caused Missouri’s Congressional districts to be

reconfigured so as to eliminate a Congressional district now held by a Democrat.” *Pearson*, 359 S.W.3d at 41–42.

E. Out-of-state precedent supports the General Assembly’s plenary redistricting authority.

Out-of-state precedents analyzing materially similar state constitutions reinforce the State’s argument. “[A]ppellate court decisions from other states can be persuasive when they are based on similar facts and ‘sound principles and good reason.’” *Penzel Construction Co., Inc. v. Jackson R-2 Sch. Dist.*, 544 S.W.3d 214, 234 (Mo. App. E.D. 2017) (quoting *Craft v. Philip Morris Companies, Inc.*, 190 S.W.3d 368, 380 (Mo. App. E.D. 2005)). Although both parties can identify some out-of-state precedential support, the weight of cases reinforce the General Assembly’s mid-decade redistricting ability.

For example, the Minnesota Supreme Court grappled with a 1913 mid-decade redistricting of legislative districts. Employing principles familiar to Missouri courts today, the court permitted mid-decade redistricting. *Weatherill*, 147 N.W. at 106. The court held that Minnesota’s redistricting clause, without a clear statement restricting when the legislature could redistrict, set a floor, not a ceiling. *Id.*

As the *Weatherill* court explained, “in the absence of some constitutional limitation upon the subject, the Legislature would possess the power to redistrict the state at will” *Id.* The *Weatherill* court concluded that “the

theory that the Constitution imposes that as a duty, and not as a mere prohibition against reapportionment at some time other than at the first session after a census, seems most consistent with the manifest purpose to be attained.” *Id.* And, it demanded a clear statement to divest power: “[H]ad there been any intention to restrict or limit the time when a reapportionment might be made, those framing the Constitution had language at their command which, if employed, would not have left that intention shrouded in doubt or uncertainty.” *Id.* This logic cleanly demonstrates the limited function of § 45 and the proper use of the negative-implication canon. *Contrast* Appellants’ Br. at 21. Courts look for clear statements restricting legislative power and the absence of restricting language indicates an absence of a restriction. *See Weatherill*, 147 N.W. at 106. This Court should too.

Other States have also reinforced their legislatures’ ability to redistrict mid-decade, upholding legislative redistricting discretion in the absence of clear, restrictive language. For example, the Texas Supreme Court explained that Article III, § 28 of the Texas Constitution “neither expressly nor impliedly forecloses this [redistricting] power from being exercised at another time.” *Mexican Am. Legis. Caucus*, 647 S.W.3d at 702 (citing *Mumme*, 40 S.W.2d at 33). As in Missouri, where the redistricting power is explicitly housed in the legislature’s hands, “the Legislature is exercising its legislative power to make

laws, not ‘a power ordinarily and intrinsically belonging to another department of the government.’” *Id.*

The Georgia Supreme Court also refused to read in nonexistent restrictions on mid-decade redistricting. The court stated, “[h]ad the intent been to depart from the 1976 Constitution and limit the General Assembly to only one redistricting after each census, the framers of the 1983 Constitution could have made an express provision to that effect” *Blum v. Schrader*, 637 S.E.2d 396, 398 (Ga. 2006). As in Missouri, the Georgia Constitution “requires the General Assembly to reapportion itself at least once after each census if ‘necessary,’ but does not limit the exercise of that power to a once-in-a-decade occurrence. The frequency of reapportionment between censuses is *solely a matter of unfettered legislative discretion*, unrestricted by any state constitutional prohibition.” *Id.* at 399 (emphasis added). Interpreting § 45 to not allow mid-decade redistricting, would be out of step with jurisprudence in sister States with similar constitutional provisions.

F. Appellants and Amici’s counterarguments fail.

Throughout their briefing, Appellants and Amici make serial errors. *First*, they vitiate the plenary power rule by inappositely comparing the General Assembly to redistricting commissions of limited powers. *Second*, they botch the negative-implication canon. *Third*, Appellants and Amici distort this Court’s precedents. *Fourth*, they also misread the constitutional history. And,

finally, Appellants and Amici resort to unpersuasive out-of-state precedents. For all these reasons, their objections to the Circuit Court's judgment fail.

1. Appellants fail to negate the plenary power rule by analogizing the General Assembly to commissions of limited powers.

Appellants correctly concede that “[t]he Missouri Constitution ‘is not a grant of power, but rather a limitation on the power of the Legislature.’” Appellants’ Br. at 16 (quoting *State v. Shelby*, 64 S.W.2d 269, 271 (Mo. banc 1933)). This is the plenary power doctrine—which dooms Appellants’ case. See *supra* Section I.A.

Nevertheless, Appellants and Amici inject artificial ambiguity into § 45 by invoking cases involving delegated state legislative redistricting authority, now conferred on *commissions*. See *Preisler v. Doherty*, 284 S.W.2d 427 (Mo. banc 1955); *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932). In particular, Appellants and Amici place great weight on this Court’s 1955 decision in *Doherty*, see Appellants’ Br. at 20–21; *Wise* Br. at 15–20; *Healey* Br. at 6–7, but they badly misread it.

Doherty concerned constitutional controls on commissions, not the General Assembly. The distinction is dispositive. Commissions “only ha[ve] the authority expressly granted to [them] by the language of the constitution and implicitly necessary to carry out [their] express duties.” *State ex rel. Teichman v. Carnahan*, 357 S.W.3d 601, 607 (Mo. banc 2012) (citing *Thompson*

v. Comm. on Legislative Rsch., 932 S.W.2d 392, 395 (Mo. banc 1996)). Conversely, the General Assembly exercises plenary authority. *See Blaske*, 821 S.W.2d at 835. Indeed, *Doherty* itself recognized the importance of this distinction, as the Court was careful to note it was “not dealing with a law enacted by our General Assembly, which as a coordinate branch of our government has all of the legislative power of the State except that denied it by express limitations of the Constitution.” *Doherty*, 284 S.W.2d at 431–32; *see also id.* at 431 (“[T]he courts may not interfere with the wide discretion which the legislature has in making apportionments . . . when legislative discretion has been exercised.”). The Court should thus apply *Doherty* and affirm.

2. Appellants misunderstand and misapply the negative-implication canon.

Next, Appellants try to squeeze a temporal redistricting limit out of § 45 by invoking the disfavored negative implication (“*expressio unius*”) canon. *See* Appellants’ Br. at 16–18, 21–22. According to Appellants, the affirmative requirement that the General Assembly redistrict once per decade *implies* that it cannot redistrict at other times. *See id.* at 21–22. But this argument fails—for several reasons. *See* D19: P4 (rejecting this argument).

First, this Court has repeated that the negative implication canon “is to be used with great caution.” *Six Flags*, 179 S.W.3d at 269–70 (quoting *Pippins v. City of St. Louis*, 823 S.W.2d 131, 133 (Mo. App. E.D. 1992)); *see also*

Springfield City Water Co. v. City of Springfield, 182 S.W.2d 613, 618 (Mo. 1944) (“Great caution is required in the application of the maxim.”). Especially in “constitutional cases.” *C.S. v. Mo. State Hwy. Patrol Crim. Just. Info. Serv.*, 716 S.W.3d 264, 267 n.3 (Mo. banc 2025). “The maxim should be invoked only when it would be natural to *assume by a strong contrast* that that which is omitted must have been intended for the opposite treatment.” *Six Flags*, 179 S.W.3d at 270. Section 45 lacks any such ambiguity or “strong contrast,” so resorting to the canon is impermissible.

Second, in any event, Appellants misapply the negative-implication canon. Once again, § 45 unambiguously states that the General Assembly *must* redistrict once per decade. The negative implication of that command is that redistricting is *not* mandatory at other times. *See Tinnin v. Modot & Patrol Employees’ Retirement System*, 647 S.W.3d 26, 35 (Mo. App. W.D. 2022) (noting in the statutory context, “the word “shall” generally prescribes a mandatory duty” (quoting *Gross v. Parson*, 624 S.W.3d 877, 889 (Mo. banc 2021))). In other words, all agree that no one could sue the General Assembly for failing to redistrict a second time during a particular decade.

It is a logical axiom that a “minimum does not imply a maximum.” *See, e.g., Frasher v. Spradling*, 743 S.W.2d 109, 110–11 (Mo. App. W.D. 1988) (finding that a statutory minimum where the “ordinance says nothing about maximum compensation” does not imply a maximum). Appellants do not grasp

this. However, a simple hypothetical helps illustrate their error. Imagine a lease term says that a tenant shall pay his rent by the fifth day of each month. The negative implication is that the tenant is not liable for breaching the lease if he pays before the fifth day of the month, or perhaps that he is not required to pay rent a second time after paying once. But no one would say the tenant breached his lease by paying on the third day of the month, and no one would say the tenant is liable if he paid future months of rent early. So too here; once the General Assembly redistricts *once* per decade, it has satisfied its constitutional obligation. But the General Assembly is not barred if it does more than the minimum required of it.

3. Appellants distort this Court's precedents.

Turning to precedent, Appellants and Amici misread several Missouri cases.

Appellants rely heavily on *Pestka v. State*, 493 S.W.3d 405 (Mo. banc 2016), where this Court held that the Missouri Senate acted too late in overriding a veto of legislation under Article III, § 32 of the Missouri Constitution.¹¹ See Appellants' Br. at 16–17; *Pestka*, 493 S.W.3d at 407–09. But *Pestka* is distinguishable on several grounds.

¹¹ The operative component of the § 32 reads:

Every bill presented to the governor and returned with his objections shall stand as reconsidered in the house to which it is returned. If the

To start, Section 32, analyzed in *Pestka*, is materially different to § 45. Compare Mo. Const. art. III, § 45 (“When . . . , the general assembly shall” (emphasis added)), with *id.* art. III, § 32 (“If . . . , the general assembly shall” (emphasis added)). Section 32’s “if” “demonstrates that a veto session is not triggered unless and until a bill is returned by the governor on or after the fifth day before the end of the regular legislative session.” *Pestka*, 493 S.W.3d at 411; see also *In re Beyersdorfer*, 59 S.W.3d 523, 535 (Mo. banc 2001) (“If expresses a condition or limitation.”). Therefore, when this condition was not met, the Senate lacked the authority to override the Governor’s veto. *Pestka*, 493 S.W.3d at 407. “When,” on the other hand, expresses a temporal trigger for action, see, e.g., *State ex rel. Major v. Patterson*, 129 S.W. 888, 891 (Mo. 1910) (“at the time that”), not a condition that must be met to act. Therefore, contrary to Appellants’ assertion, *Pestka* does not create any “clear implication” that restricts the General Assembly’s redistricting power. See Appellants’ Br. at 17.

governor returns any bill with his objections on or after the fifth day before the last day upon which a session of the general assembly may consider bills, the general assembly shall automatically reconvene on the first Wednesday following the second Monday in September for a brief period not to exceed ten calendar days for the sole purpose of considering bills returned by the governor. . . .

Mo. Const. art. III, § 32.

Additionally, *Pestka*'s interpretation was necessary to avoid absurdity and rendering constitutional text surplusage. *Pestka*, 493 S.W.3d at 412 ("Not only does this construction render the limitation of 'on or after the fifth day' before the end of the regular legislative session meaningless, it also leads to an absurd result."). Here, the State's interpretation of § 45 suffers from none of those problems. Unlike in *Pestka*, declining Appellants' pleas to insert implied temporal restrictions into § 45 does not render any of the provision's language surplusage. Section 45 merely sets a floor that redistricting must take place at least once per decade. Also, unlike *Pestka*'s analytical focus on finding consistency in the text of § 32 itself, Appellants attempt to read in a negative implication from other, tenuously related parts of the Constitution, concerning state legislative, rather than congressional, redistricting, and commissions of limited, rather than plenary, power.

Finally, unlike § 32, § 45 has not been subject to a series of amendments wherein the "the people of Missouri gradually have restricted the legislature's power." *Pestka*, 493 S.W.3d at 412. In fact, before the 1945 Constitution enumerated § 45, the General Assembly exercised its plenary congressional redistricting power without any constitutional command. Section 45's objective was to ensure that the Legislature exercised that power—and duty—more frequently.

Next, Appellants misread *Conservation Commission v. Bailey*, 669 S.W.3d 61 (Mo. banc 2023). See Appellants' Br. at 17–18. That case concerned whether the “Missouri Constitution permits the General Assembly to limit the Conservation Commission’s authority to expend and use conservation funds for the constitutionally enumerated purposes.” *Conservation Commission*, 669 S.W.3d at 67. Contorting *Conservation Commission* to fit in their negative-implication theory, Appellants miss that case’s crucial distinguishable point: *Conservation Commission* concerns policing the executive-legislative separation of powers. See *Conservation Commission*, 669 S.W.3d at 69 (“Under this constitutional principle [separation of powers], the General Assembly ‘may not use its appropriation authority to encroach on powers vested solely in the separate, coequal branches of government.’” (quoting *Rebman v. Parson*, 576 S.W.3d 605, 609 (Mo. banc 2019))). Specifically, the General Assembly could not use its appropriations power to usurp the Commission’s authority, explicitly delineated under Article IV, §§ 40–44. *Id.* at 67. Contrary to what Appellants think, it was not an implication which divested the General Assembly of its power of the purse in *Conservation Commission*, but rather the “unambiguous[]” language of Article IV. *Id.* at 68.

Here, unlike in *Conservation Commission*, there is no such executive-legislative separation-of-powers problem. The General Assembly, and the General Assembly alone, exercises congressional redistricting authority. In

fact, any derogation thereof would represent a threat to the General Assembly's authority. Despite Appellants' continued attempts to conjure some temporal limitation on the General Assembly's § 45 powers, they cannot.

In *Conservation Commission*, this Court also foreclosed Appellants' invocation of *Rebman v. Parson*, 576 S.W.3d 605 (Mo. banc 2019). Citing *Rebman*, Appellants try to characterize that case's executive-legislative separation-of-powers conflict as somehow substantiating their negative-implication theory against the headwinds of plenary power. See Appellants' Br. at 18. They fail.

This Court has neatly summarized *Rebman*: "In *Rebman*, the General Assembly included language in an appropriation bill that prevented funds for administrative law judge (ALJ) salaries within the Department of Labor and Industrial Relations from being used on any ALJ appointed between 2012 and 2015." *Conservation Commission*, 669 S.W.3d at 69 (citing *Rebman*, 576 S.W.3d at 607–08). "This Court found that restriction to be unconstitutional, as 'executive departments are constitutionally empowered to make personnel choices without interference by the General Assembly.'" *Id.* (quoting *Rebman*, 576 S.W.3d at 610). As with *Conservation Commission*, *Rebman* involved the General Assembly's intrusion into the province of a coordinate branch. Here no such intrusion occurs. And, here, no textual or structural clues exist to divest the General Assembly of its plenary power. The General Assembly is

solely vested with the power to conduct congressional redistricting. *See* Mo. Const. art. III, § 45. Thus, *Rebman*, like *Conservation Commission* and *Pestka*, has no bearing.

Appellants' other case citations perform no better. Again, as with the legislative appropriations cases, Appellants cite cases where the General Assembly's authority is clearly constrained by other textual clauses of the Constitution, or where a particular exercise of legislative power infringed on a coordinate branch's authority or an enumerated individual right. For example, Appellants cite *State v. Hamey*, 65 S.W. 946 (Mo. 1902), which concerned alleged legislative intrusion on the right to trial by jury. Appellants' Br. at 21–22. As the *Hamey* court explained, “when the constitution defines the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference to add to the condition or to extend the penalty to other cases.” *Hamey*, 65 S.W. at 948. In the instant case, this friction, inviting an “implied prohibition against legislative interference,” does not exist. And, again, *Six Flags* governs.

Similarly, *Henderson v. Koenig*, 68 S.W. 72, 75 (Mo. banc 1902), *overruled on other grounds by State ex rel. Buchanan Cnty. v. Imel*, 146 S.W. 783 (Mo. banc 1912), is inapposite to Appellants' argument, and, if anything, supports the State's position. *See* Appellants' Br. at 22. In *Henderson*, other, explicit, textual provisions of the Constitution foreclosed legislative

adjustment of judicial salaries by certain means. *Henderson*, 68 S.W. at 74–75 (stating these provisions); *id.* at 75 (“The constitution has pointed out the precise and specific method by which county officers are to be paid . . .”). And, as with § 45’s *de minimis* redistricting requirement here, the Constitution placed a mandatory duty on the General Assembly to “regulate the fees of all county officers, and for this purpose may classify the counties by population.” *Id.* at 74. This type of mandatory responsibility conferred upon the General Assembly, just like Section 45’s command to redistrict at least once per decade, aligns perfectly with the Circuit Court’s judgment.

Appellants’ citation to *Citizens’ National Bank of Kansas City v. Graham*, 48 S.W. 910 (Mo. banc 1898), is puzzling and not relevant to Appellants’ negative-implication argument, discussing *in pari materia* analysis for later-passed statutes. *See id.* at 911.

Amici also misread Missouri precedent to advance their negative-implication theory. The Wise Amici argue that this Court’s 1932 *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932) case “confirm[s]” that the restriction should be read into § 45. *Wise Br.* at 16. But *Gordon* considered Article III, § 7 of the 1875 Constitution, which addressed *state legislative* apportionment. And the relevant constitutional text was completely different; indeed, Section 7 established that the apportionment would last “*until the next decennial census* by the United States shall have been taken . . . when the

apportionment shall be revised and adjusted on the basis of that census, and every ten years thereafter on the basis of the United States census” Mo. Const. art. III, § 7 (1875) (emphasis added). This designated endpoint does not exist in § 45. Additionally, if the General Assembly failed to pass a state legislative redistricting in that first session, § 7 would divest the redistricting power to the “Governor, Secretary of State and Attorney-General, within thirty days after the adjournment of the General Assembly” *Id.* This necessarily barred mid-decade redistricting because subsequent sessions of the General Assembly would be explicitly barred from redistricting and the power would then be explicitly divested to the executive branch.

The *Wise* Amici also lean heavily on *State ex rel. City of St. Louis v. Seibert*, 27 S.W. 624 (Mo. banc 1894). See *Wise* Br. at 9, 12–14. As a threshold matter, and fatally for the *Wise* Amici, they even admit that the “*expressio unius*” principles in *Seibert* are “distinct from the modern statutory negative-implication canon referenced” in *Six Flags*. *Wise* Br. at 9, n.5. And *Six Flags* is the relevant yardstick. They concede that *Six Flags* requires a “strong contrast” and default back to the unpersuasive point that the “contrast between Sections 10 and 45” is sufficiently “strong” to divest the General Assembly of authority. *Id.* In any event, *Seibert* is easily distinguishable because this Court was analyzing a sequential list for “[a]ll appropriations of money by the successive general assemblies.” *Seibert*, 27 S.W. at 624 (quoting

Mo. Const. art. IV, § 43 (1875)).¹² Lists, such as § 43, are naturally suitable for the *expressio unius* canon. *City of Columbia v. Henderson*, 399 S.W.3d 493, 496 (Mo. App. W.D. 2013) (citing *PDQ Tower Servs., Inc. v. Adams*, 213 S.W.3d 697, 699 (Mo. App. W.D. 2007); *State on inf. Huffman v. Sho-Me Power Co-op.*, 191 S.W.2d 971, 977 (Mo. banc 1946)). Today's § 45 is not; there is no list, simply an unambiguous command.

4. Appellants and Amici misunderstand the history.

While Appellants ignore the Constitutional Convention, Amici misinterpret it. No historical evidence suggests that the delegates of the 1943–1944 Constitutional Convention deemed mid-decade redistricting to be a problem. Despite the dearth of evidence, Amici contort historical square pegs to fit in the circular holes of their preferred narrative. *See Wise Br.* at 20–24. In particular, Appellants emphasize the Committee's statement that "[u]nder the rewriting of this section the first re-apportionment would be made in 1951 for the election in 1952." *Wise Br.* at 22 (quoting File No. 21, Report No. 1 of the Committee No. 23 on Phraseology, Arrangement and Engrossment, Art. IV, Legislative Department, Congressional, State Senatorial and Representative Districts at 23–24 (Sept. 19, 1944)). However, this rewrite had

¹² Today's Article III, § 36 sets a fairly similar list of appropriations with some minor variations from the 1875 version. *See* Mo. Const. art. III, § 36.

nothing to do with any explicit or implicit restriction on mid-decade redistricting.

First, § 45's plain text, like the adopted amendment preceding it, lacked any temporal restriction. If the Convention sought to restrict the General Assembly with a back-end temporal limitation, it would have said so. *Second*, the Committee commentary about the "first re-apportionment" explains that the new enumeration of districts would take place in 1951 for the census of 1950. The clue is in the full language, which the Appellants ignore. The Committee stated that "[u]nder the rewriting of this section," *id.*, 1951 was when the first *mandatory* redistricting take place. This makes sense. Under the prior amendment version, the General Assembly would be required to redistrict in 1950, *before the new number of representatives* was enumerated by Congress. 2 U.S.C. § 2a(a)–(b) (deadline for reporting apportionment to the States); *see also* 13 U.S.C. § 141(a)–(b) (deadline for calculating apportionment). Therefore, Missouri could have fewer drawn districts in 1952 than those to which it was entitled after the 1950 census. If § 45 sets a minimum threshold, 1951—after the new congressional apportionment—rather than 1950, is a logical correction.

Appellants and Amici also cannot make sense of the several mid-decade redistrictings in the 1960s. Appellants just ignore them. *See generally* Appellants' Br. Meanwhile, Amici attempt to discount their relevance by

proposing an *ad hoc* exception to their preferred one-redistricting-per decade rule for court orders. *See Wise Br.* at 25 n.12 (calling these 1960s maps “not mid-decade redistricting efforts” because the previous maps were “invalidated”); *Healey Br.* at 7 n.2 (suggesting that the courts “allow[ed] the General Assembly to enact . . . remedial map[s]”).

But that makes no sense. In those cases, the federal courts could have—and presumably would have—simply imposed a map following the 1960s cases if they believed the Missouri Constitution prohibited the General Assembly from redistricting more than once per decade. *See, e.g., People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1231–32 (Colo. 2003) (holding that “judicially-created districts are just as binding and permanent as districts created by the General Assembly” and that they can remain in effect until the next decennial census without offending the Elections Clause). Indeed, the General Assembly was not even a party in those federal cases, meaning that the federal courts did *not* order the General Assembly to repeatedly redistrict in the 1960s. *See Harris v. Hardeman*, 55 U.S. 334, 344 (1852) (“[D]ecrees and judgments bind only parties and privies.”). Instead, the federal courts left the General Assembly the *option* to redistrict multiple times during the 1960s—and the General Assembly did precisely that because no one perceived a state constitutional bar to multiple redistrictings during the 1960s.

5. Appellants' out-of-state precedents are unpersuasive.

Finally, Appellants and Amici spend significant time discussing a handful of out-of-state cases where courts imposed limitations on redistricting. *See* Appellants' Br. at 23–27; *Wise* Br. 26–29. Appellants and Amici primarily invoke Colorado, South Dakota, and California, but these cases, like the handful of other precedents, are distinguishable, incompatible with Missouri's methods of constitutional interpretation, and not persuasive.

Appellants and Amici rely heavily on the Colorado Supreme Court's decision in *People ex rel. Salazar*, 79 P.3d 1221. *See* Appellants' Br. at 23–25; *Wise* Amicus Br. at 26, 31. *Salazar* concerned a challenge to Colorado's mid-decade redistricting in the wake of a judicially-drawn map following the 2000 census. *See* 79 P.3d at 1227. The *Salazar* court remarked that “when the constitution specifies a timeframe for redistricting, then, by implication, it forbids performing that task at other times.” *Salazar*, 79 P.3d at 1238 (citing *People ex rel. Mooney v. Hutchinson*, 50 N.E. 599, 601 (Ill. 1898); *Denney v. State ex rel. Basler*, 42 N.E. 929, 931–32 (Ind. 1896)).

That reasoning is squarely foreclosed by this Court's plenary power precedents. In Missouri at least, the legislature retains authority unless it is *expressly* taken away. *Blaske*, 821 S.W.2d at 835. Unlike the Colorado Supreme Court, this Court cannot rely on a weak “implication” from constitutional silence to fabricate a new limit on legislative power. *See, e.g.,*

McGrew v. Mo. Pac. Ry. Co., 230 Mo. 496, 132 S.W. 1076, 1084 (Mo. banc 1910), overruled on other grounds by *McGrew Coal Co. v. Mellon*, 315 Mo. 798, 287 S.W. 450 (Mo. banc 1926) (“Constitutional limitations upon the legislative power may be made, it is true, either expressly or by implication, but the implication must at least be clear and strong and convincing, if not absolutely necessary.” (citations omitted)).

Salazar’s disfavored reasoning does not gain favor through Appellants and Amici citing more cases relying on this implicit restriction of redistricting analysis. A majority of the other precedents cited by Appellants and Amici, like *Salazar*, can be traced back to *People ex rel. Mooney v. Hutchinson*, 50 N.E. 599, 601 (Ill. 1898), which rested on a negative implication from different constitutional text. See *Salazar*, 79 P.3d at 1238; *Harris v. Shanahan*, 387 P.2d 771, 779–80 (Kan. 1963); *In re Below*, 855 A.2d 459, 462–63 (N.H. 2004) (citing *Salazar*); *In re Certification of a Question of Law from U.S. District Court, District of South Dakota, Western Division*, 615 N.W.2d 590, 595 (S.D. 2000). Even if not directly traced back to *Mooney*, all of the other cases share in this implicit restriction reasoning, often without analysis. See *Lamson v. Sec’y of Commonwealth*, 168 N.E.2d 480, 483–84 (Mass. 1960); *State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416, 424 (Wis. 1953); *Opinion of the Justices*, 47 So. 2d 714, 716 (Ala. 1950). But this disfavored reasoning is no

more persuasive because it is older or because it has propagated through several states.

Moving to South Dakota, Appellants invoke *In re Certification of a Question of Law from U.S. District. Court, District of South Dakota, Western Division*, 615 N.W.2d 590 (S.D. 2000). See Appellants' Br. at 25–26. But the South Dakota Constitution contains substantially different text.¹³ Unlike the Missouri Constitution, the South Dakota Constitution includes explicit deadlines for apportionment and judicial arrogation of redistricting if the legislature fails to comply by the deadline. *In re Certification*, 615 N.W.2d at 595; S.D. Const. art. III, § 5 (“If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.”).

¹³ Article III, § 5 of the South Dakota Constitution delineating reapportionment for state legislators reads:

Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census. An apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991. Such apportionment shall be accomplished by December first of the year in which the apportionment is required. If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.

S.D. Const. art. III, § 5.

Additionally, the South Dakota decision rested on in-state precedent interpreting a then-existing express prohibition on mid-decade redistricting. *See In re Certification*, 615 N.W.2d at 594–95 (“Any other conclusion must reverse these two long-standing precedents.”). The key precedent was a 1933 decision, interpreting a then-extant constitutional provision. *See id.* (citing *In re Opinion of the Judges*, 246 N.W. 295 (S.D. 1933)). That previous provision contained an express prohibition: mandating redistricting every ten years after the census “but at no other time.” *In re Opinion of the Judges*, 246 N.W. at 296 (quoting S.D. Const. art. III, § 5 (1889)). The South Dakota court noted that this “express prohibition” was “part and parcel of and inseparable from the affirmative command requiring action at the first session after each enumeration.” *Id.*¹⁴ That markedly different history renders South Dakota’s Constitution far from the “similar facts” required to make out-of-state authority useful. *Penzel*, 544 S.W.3d at 234 (quoting *Craft*, 190 S.W.3d at 380). Appellants are thus simply incorrect to assume that “both South Dakota and Missouri impose a temporal limitation on when redistricting may occur.” Appellants’ Br. at 25.

¹⁴ This decision was affirmed without analysis of the changed constitutional text in the second precedent. *See Kane v. Kundert*, 371 N.W.2d 172, 174 (S.D. 1985).

Appellants also point to the California Supreme Court's ruling in *Legislature v. Deukmejian*, 669 P.2d 17 (Cal. 1983). See Appellants' Br. at 26–27. But, unlike Missouri, the provision of the California Constitution examined in *Deukmejian* had specific language temporally bounding when reapportionment must take place—within the “first session after each census.” See Cal. Const. art. XXI, §1 (1879, as amended in 1980) (“In the year following the year in which the national census is taken under the direction of Congress and at the beginning of each decade . . . the Legislature shall, at its *first session after each census*, adjust such districts and re-apportion the representation . . .”) (emphasis added). Unlike, the “when” language in § 45, California's explicit designation that only the “first session” can redistrict sets a start and end time for redistricting. Additionally, like the South Dakota case, this California decision rested on precedent, which, like the Colorado decision, rested on a misapplication of the *expressio unius* canon. See *Deukmejian*, 669 P.2d at 23–25. For the reasons that *Salazar* was inapposite, so here too.

Therefore, these out-of-state precedents lack the “sound principles and good reason[ing]” such that they should not persuade this Court. See *Penzel Construction Co.*, 544 S.W.3d at 234.

II. Under the *Purcell* principle, this Court should not void the 2025 Map for the upcoming election.

With the 2026 midterm elections approaching, a judicial order to implement a new congressional map for those elections would cause chaos and be inequitable. *See State ex rel. Ellis v. Creech*, 259 S.W.2d 372, 374 (Mo. banc 1953) (highlighting that injunctive relief is discretionary and is “to be exercised in accordance with well settled equitable principles”). If this case were in federal court, the *Purcell* principle would apply and require any injunction in favor of Appellants to apply only *after* the 2026 elections. *See Abbott*, 146 S. Ct. at 419–20 (staying lower district court injunction issued after candidate filing for primary had started). This Court should follow the lead of the federal courts—and other state courts—and adopt the *Purcell* principle. Doing so prevents chaotic disruption to candidates planning their campaigns, state and local election officials running elections, and Missourians as they prepare to vote. *See Purcell*, 549 U.S. at 4–5 (“Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls.”).

As the U.S. Supreme Court recognized long ago, “where an impending election is imminent and a State’s election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though

the existing apportionment scheme was found invalid.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). “In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Id.* Such “considerations” exist here, where many Missourians have already initiated campaigns for the duly-enacted congressional districts and candidate filing deadlines approach. See § 115.349, RSMo. In such circumstances the U.S. Supreme Court “has recognized that ‘practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges.’” *Merrill v. Milligan*, 142 S. Ct. 879, 882 (Mem.) (2022) (Kavanaugh, J., concurring) (quoting *Riley v. Kennedy*, 553 U.S. 406, 426 (2008)). This is the “*Purcell* principle.” See *Purcell*, 549 U.S. at 1. *Purcell* derives from a universal, “basic tenet of election law: When an election is close at hand, the rules of the road should be clear and settled.” *Democratic National Committee v. Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring denial of application to vacate stay). Statewide elections are complex, and stability is important to several groups of people. First, candidates need to know what congressional map governs so that they can plan their campaigns; doing so, after all, requires fundraising, hiring, and other substantial planning. Second, “thousands of state and local officials and volunteers must participate in a massive coordinated effort to

implement the lawmakers' policy choices on the ground before and during the election, and again in counting the votes afterwards." *Id.* Third, voters need to know who their candidates will be, which is why alterations during elections damages voters' "confidence in the fairness of the election." *Id.* Allowing last-minute litigation challenges to congressional districts undermines all these reliance interests. *Id.* ("Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences.").

This Court should recognize the *Purcell* principle to prevent electoral chaos. State courts around the country have done so. *See, e.g., Moore v. Lee*, 644 S.W.3d 59, 65–66 (Tenn. 2022) (holding that a state analogue to the *Purcell* principle called for "restraint when asked to enjoin the effectiveness of constitutionally suspect reapportionment plans" and vacating a lower court injunction impacting "the electoral process in [the] state"); *Alliance for Retired Americans v. Secretary of State*, 240 A.3d 45, 50 (Maine 2020) ((discussing *Purcell* and noting that "when challenges to election laws are lodged on the eve of an election it is imperative that plaintiffs act as expeditiously as possible in their pursuit of relief"); *Liddy v. Lamone*, 919 A.2d 1276, 1288–1291 (Md. 2007); *Chi. Bar Ass'n v. White*, 898 N.E.2d 1101, 1107–08 (Ill. App. Ct. 2008). Other States have adopted a similar principle, if not explicitly referring to *Purcell*. *See Pender County v. Bartlett*, 649 S.E.2d 364, 376 (N.C. 2007)

(observing that since “candidates have been preparing for the 2008 election in reliance upon the districts as presently drawn” and “to minimize disruption to the ongoing election cycle, the remedy explained above shall be stayed until after the 2008 election”); *Fay v. Merrill*, 256 A.3d 622, 637–38 & n. 21 (Conn. 2021) (discussing how enforcing a declaratory judgment close to an election “presumably would implicate the factors identified by the United States Supreme Court in *Purcell v. Gonzalez* . . .”). As the Ohio Supreme Court explained, *Purcell*’s wisdom applies to state courts. *State ex rel. Ohio Democratic Party v. LaRose*, 257 N.E.3d 130, 137 (Ohio 2024) (“While built primarily on the principles of federalism, *Purcell* also stands ‘for the common-sense principle that judges—novices in election administration—should not meddle in elections at the last minute, . . . because when they do, they are more likely to do more harm than good.’” (cleaned up)).

Thus, even if the Court agrees with Appellants’ merits argument, it should hold that *Purcell* bars state courts from ordering Missouri to alter its election map until after the 2026 elections. Doing so is necessary to prevent courts from “improperly insert[ing] [themselves] into an active primary campaign.” *Abbott*, 146 S. Ct. at 419. The gears of state and local government are turning to facilitate the upcoming 2026 midterm election. For example, the first day for candidate filing for the August 4, 2026 primary election is

February 24, 2026.¹⁵ Unsurprisingly, candidates have already been planning and organizing their campaigns based on the duly-passed congressional map.¹⁶ See also *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring) (“Filing deadlines need to be met, but candidates cannot be sure what district[s] they need to file for.”). That is why, under nearly identical factual circumstances, the U.S. Supreme Court barred courts from altering Texas’s congressional map during the 2026 congressional elections. See *Abbott*, 146 S. Ct. at 419. There, a three-judge district court found that Texas’s map was an unconstitutional racial gerrymander on November 18, 2025. See *League of United Latin Am. Citizens v. Abbott*, --- F. Supp. 3d ---, EP-21-CV-00259-DCG-JES-JVB, 2025 WL 3215715 (W.D. Tex. Nov. 18, 2025). That was ten days after the opening of candidate filing for the primary election, and the U.S. Supreme Court declared that “[t]he District Court improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections.” *Id.* Here, the candidate filing season will be well

¹⁵ Missouri Secretary of State, *2026 Missouri Election Calendar* (2026), <https://www.sos.mo.gov/elections/calendar/2026cal>.

¹⁶ In each of Missouri’s eight congressional districts, candidates are already fundraising and organizing. See generally Federal Election Commission, *U.S. House Elections* (2026), <https://www.fec.gov/data/elections/house/>. The FEC provides data on fundraising for each Missouri district. For example, in Missouri’s 4th Congressional District candidate financial totals already exceed \$1 million. See FEC, *Missouri – House District 04* (2026), <https://www.fec.gov/data/elections/house/MO/04/2026/>.

underway by the time this Court hears this case, § 115.349.2 (candidate filing opens “the last Tuesday in February”), so this Court should refrain from upsetting election rules by court decision and thus “improperly insert[ing] itself into an active primary campaign.”

For all these reasons, if the Court contemplates Appellants’ arguments, it should not displace the current map until after the upcoming election. *See Reynolds*, 377 U.S. at 586 (holding that lower court “acted wisely” in maintaining existing map for upcoming elections even after entering final judgment finding that existing map was illegal).

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court affirm the judgment below.

Dated: February 9, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 10,747 words, excluding tables, the cover, the signature, and certificates, and complies with Missouri Supreme Court Rule 84.06(b); includes the information required by Rule 55.03; and includes information on how the brief was served on the opposing party.

/s/Graham Miller

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, a true and correct copy of the above was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in this case.

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