

No. SC101805

IN THE SUPREME COURT OF
MISSOURI

RICHARD VON GLAHN,

Appellant,

v.

DENNY HOSKINS,

Respondent.

Appeal from the Circuit Court of Cole County, Missouri

The Honorable Daniel Green

Case No. 26AC-CC00440

Brief of Amici Campaign Legal Center, ACLU, and ACLU of Missouri

Filed with Consent of All Parties

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INTERESTS OF AMICI CURIAE

Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization dedicated to securing free and fair elections for all voters. CLC has litigated numerous voting rights and redistricting cases before the U.S. Supreme Court and state courts across the country, including but not limited to serving as counsel for *amici curiae* in both *Moore v. Harper*, 600 U.S. 1 (2023), and *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015)—two decisions that directly govern the federal Elections Clause questions presented in this appeal. CLC also appeared before this Court on behalf of Missouri voters in *Wise v. State*, 732 S.W.3d 827 (Mo. banc 2026), and *League of Women Voters of Missouri v. State*, 730 S.W.3d 591 (Mo. banc 2026). CLC has an interest in the sound interpretation of the federal Elections Clause, the Guarantee Clause, and the Missouri Constitution, each of which the judgment below misconstrues to narrow rather than protect the People’s reserved power to legislate by referendum on congressional redistricting.

The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan organization with more than 1.5 million members, founded in 1920 and dedicated to the principles of liberty and equality. In support of those principles, the ACLU has appeared as counsel or amicus curiae in numerous cases involving electoral democracy and voting rights, including *Wise v. State*, 732 S.W.3d 827 (Mo. banc 2026), and *Moore v. Harper*, 600 U.S. 1 (2023).

The American Civil Liberties Union of Missouri (“ACLU-MO”) is the statewide affiliate of the ACLU, with over 20,000 members and a longstanding interest in and history

of protecting the constitutional rights of all Missourians. Through direct representation or on behalf of *amicus curiae*, the ACLU-MO regularly engages in litigation to protect fundamental rights related to voting, and referendum and initiative petitions. These cases include, but are not limited to *Maggard v. State*, 733 S.W.3d 411 (Mo. banc 2026); *Wise v. State*, 732 S.W.3d 827 (Mo. banc 2026); *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. banc 2026); *State v. League of Women Voters of Missouri*, 730 S.W.3d 591 (Mo. banc 2026); *Missouri State Conference of the National Association for the Advancement of Colored People v. State*, 730 S.W.3d 550 (Mo. banc 2026); *Coleman v. Ashcroft*, 696 S.W.3d 347 (Mo. banc 2024); *State ex rel. Fitz-James v. Bailey*, 670 S.W.3d 1 (Mo. banc 2023); *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484 (Mo. banc 2022); and *Missouri State Conference of the National Association for the Advancement of Colored People v. State*, 607 S.W.3d 728 (Mo. banc 2020).¹

¹ No party or party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief. No person other than Amici or their counsel made a monetary contribution to this brief's preparation or submission.

STATEMENT OF CONSENT

This brief is filed with the consent of all parties.

JURISDICTIONAL STATEMENT

Amici adopt the jurisdictional statement set forth in Appellant's brief.

STATEMENT OF FACTS

Amici adopt the statement of facts set forth in Appellant's brief.

ARGUMENT

The Circuit Court’s judgment upholding the Secretary of State’s refusal to certify the referendum petition on HB 1 is wrong on numerous fronts. Amici address the judgment’s errors of federal law: first, its egregious misreading of the Elections Clause and second, its curious and wrong resort to the Guarantee Clause.

The Elections Clause provides no basis to preclude a referendum on HB 1. From *Hildebrant* in 1916 to *Moore v. Harper* in 2023, the U.S. Supreme Court has repeatedly held that “the Legislature” in the Elections Clause means the state’s lawmaking power in whatever form the state constitution prescribes—including the People’s right to referendum explicitly protected in the Missouri Constitution. The “clear statement” rule the Circuit Court derived from the Elections Clause to reject the referendum petition exists nowhere in precedent, rests on a false premise, defies Missouri’s ordinary rules of construction, and would be unworkable in practice. Moreover, Congress has exercised its superseding Elections Clause authority to *require* states to use congressional districts established “by law,” including referenda where state law so provides. Thus, to the extent there is an Elections Clause problem in this case, it is that Secretary of State Denny Hoskins—an executive official—unilaterally halted an exercise of legislative power by the People in whom the Elections Clause vests redistricting authority.²

The Guarantee Clause supplies no alternative basis for the Circuit Court’s erroneous decision. The Clause is famously unenforceable. Its fulfillment is committed to Congress

² The Secretary did so based on a flawed and incorrect interpretation of the law provided by another executive branch official, Missouri Attorney General Catherine Hanaway.

alone, not to the courts and still less to a state executive official. Moreover, the U.S. Supreme Court, a century ago, dismissed as “plainly without substance” the contention that a referendum could deny a republican form of government.

The Circuit Court’s judgment should be reversed, the referendum placed on the November 2026 ballot, and HB 1 suspended pending the People’s exercise of their valid lawmaking authority on the subject.

I. The Elections Clause offers no basis to preclude a referendum on HB 1.

The Elections Clause offers no basis to preclude a referendum on HB 1. The Elections Clause commits the times, places, and manner of congressional elections “in each State” to “the Legislature thereof.” U.S. Const. art. I, § 4, cl. 1. A century of settled precedent confirms that its reference to “the Legislature” does *not* mean the state’s representative assembly alone, but the state’s lawmaking process in whatever form its constitution prescribes—including the referendum, initiative, and executive veto. Missouri’s constitution prescribes a lawmaking process in which the People “reserve power to approve or reject by referendum *any act of the general assembly*, except as hereinafter provided.” Mo. Const. art. III, § 49 (emphasis added). The constitution enumerates only two exceptions: bills addressing specified emergencies and certain appropriations. *Id.* § 52(a).³ Neither disallows a referendum on a congressional redistricting bill like HB 1.

³ The state constitution elsewhere states that the referendum does not reach any redistricting “plan” adopted by a bipartisan commission for the state house and senate. *Id.* §§ 3, 7. Those provisions are not exceptions to § 49’s “any act” rule—as commission plans are not acts of the General Assembly—though they do show the framers knew how to place redistricting beyond the referendum’s reach when so intended. The only constitutional provision addressing congressional redistricting, *id.* § 45, contains no comparable carve-out.

The Circuit Court and the Secretary were wrong to find in the Elections Clause any barrier to the People's exercise of that reserved power. Precedent confirms that Missouri's referendum is part of "the Legislature" of which the Elections Clause speaks. The Elections Clause imposes no "clear statement" rule for interpreting the referendum's scope because the Clause incorporates the legislative power however defined in the state constitution. And Congress has also *required* states to elect representatives from congressional districts enacted "by law," including referenda where a state constitution so provides. For these reasons, the only Elections Clause problem in this case was created by the Secretary himself when he—an executive branch official—unilaterally shut down a core component of Missouri's lawmaking process.

A. A century of unbroken precedent confirms that the referendum right is part of "the Legislature" under the Elections Clause.

The U.S. Supreme Court has repeatedly affirmed that the referendum is part of the legislative power in which the Elections Clause vests congressional redistricting authority.

The Court first settled the question in *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916). In 1912, Ohioans added to their constitution a reserved referendum right "to approve or disapprove by popular vote any law enacted by the General Assembly." *Id.* at 566. When the Ohio General Assembly conducted a controversial mid-decade congressional redistricting three years later, Ohio voters exercised that right, gathering sufficient signatures and voting to reject the law. *Id.* A proponent of the law sued to invalidate the referendum in state court on grounds that it was not part of the state's legislative power and that any attempt to make it so would violate federal law, including

the Elections Clause. *Id.* at 566-67. The Ohio Supreme Court rejected the claims, holding that referendum was part of the state’s legislative power under the state constitution. *Id.* at 567. The U.S. Supreme Court agreed, dismissing the claim that congressional redistricting referenda offend the Elections Clause. *Id.* at 569.

The Circuit Court tried to cast *Hildebrant* as “not controlling,” but the Ohio referendum right upheld then is materially indistinguishable from Missouri’s today. Ohio vested the legislative power in a General Assembly but reserved for the People the power to adopt or reject “any law,” subject to certain exceptions. *State ex rel. Davis v. Hildebrant*, 114 N.E. 55, 56 (Ohio 1916) (citing Ohio Const. art. II, § 1 (1912)). Missouri similarly vests the legislative power in the General Assembly but reserves for the People the power to approve or reject “any act,” subject to certain exceptions. Mo. Const. art. I, § 1; art. III, §§ 49, 52(a). Nothing in Ohio’s constitution *specifically* authorized referenda for congressional redistricting. And contrary to the Circuit Court’s claim (D63 pp. 19-20), the Supreme Court’s decision did not rest on a determination that such specificity was required. *See* 241 U.S. at 567-68. What put congressional redistricting within the referendum’s reach was the clarity of it applying to “any act.” *Id.* at 568. So too here. *See State ex rel. Randolph Cnty. v. Walden*, 206 S.W.2d 979, 983 (Mo. banc 1947) (“We have held the word ‘any’ to be all-comprehensive and the equivalent of ‘every.’”).⁴

After *Hildebrant*, Missourians almost immediately put their referendum right to use

⁴ As explained above, *see* n. 3, Article III, §§ 3 and 7 puts state house and senate redistricting “plans” of bipartisan redistricting commissions beyond the reach of referenda, but not redistricting “acts” of the General Assembly.

in congressional redistricting. Only 26 referenda have ever been put to voters since the initiative and referendum powers were added to the Missouri Constitution in 1908.⁵ *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 489 n.8 (Mo. banc 2022). One of those was a 1922 referendum on congressional districts enacted by the General Assembly, in the very first redistricting cycle following *Hildebrant*. Voters rejected it by a wide margin.⁶

A decade later, the U.S. Supreme Court extended *Hildebrant*'s reasoning to the executive veto in a pair of cases, including one from Missouri. In *Smiley v. Holm*, 285 U.S. 355, 369 (1932), the Court upheld the use of Minnesota's gubernatorial veto on a legislatively enacted congressional plan as consistent with the Elections Clause. The Court observed that congressional redistricting "involves lawmaking in its essential features." *Id.* at 366. And where a state constitution makes the Governor's veto or the People's veto part of the lawmaking power, "the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law." *Id.* at 371. In *Carroll v. Becker*, 285 U.S. 380 (1932), decided the same day, the Court applied the same reasoning to uphold the Missouri Governor's veto of the General Assembly's 1931 congressional redistricting bill.

⁵ The 1908 amendment to the 1875 Constitution provided for referenda in terms materially similar to the Ohio Constitution at the time and the Missouri Constitution today. *See* Mo. Const. art. II, § 57 (1921), available at <https://hdl.handle.net/2027/hvd.li2fpv?urlappend=%3Bseq=46%3Bownerid=27021597765584997-50>.

⁶ *Missouri Proposition 17, Congressional Redistricting Referendum (1922)*, Ballotpedia, [https://ballotpedia.org/Missouri_Proposition_17,_Congressional_Redistricting_Referendum_\(1922\)](https://ballotpedia.org/Missouri_Proposition_17,_Congressional_Redistricting_Referendum_(1922)).

In 2015, the U.S. Supreme Court crystallized these principles in *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787 (2015) (“*AIRC*”), a decision the Circuit Court barely mentions. In *AIRC*, the Court held that a citizen initiative vesting congressional redistricting authority in an independent commission rather than the legislature was a permissible form of lawmaking under the Elections Clause. *Id.* at 813. Central to its holding was *Hildebrant*, which the Court read to establish that “[f]or redistricting purposes, . . . ‘the Legislature’ did not mean the representative body alone.” *Id.* at 805. Congressional redistricting is a “legislative function, to be performed in accordance with the State’s prescriptions for lawmaking, which may include the referendum and the Governor’s veto,” as well as the citizen initiative. *Id.* at 808-09. Nothing about the Elections Clause’s text limits its delegation of legislative authority to the General Assembly, the Court reasoned, as founding era dictionaries “capaciously” defined “the Legislature” to mean “the power that makes laws.” *Id.* at 813. Furthermore, the Clause’s “history and purpose” supported a definition encompassing initiative and referenda, given “the animating principle of our Constitution that the people themselves are the originating source of all the powers of government.” *Id.* The Missouri Constitution declares this principle expressly in its opening clause: “[t]hat all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” Mo. Const. art. I, § 1.

Finally, if this precedent left any doubt, *Moore v. Harper*, 600 U.S. 1 (2023), dispelled it. In *Moore*, the Court expressly reaffirmed *Hildebrant*, *Smiley*, and *AIRC* as an

unbroken line establishing that the Elections Clause does not vest state legislatures with “exclusive and independent authority when setting the rules governing federal elections.” *Id.* at 26. When enacting congressional districts, state legislatures are not insulated from “the ordinary exercise of state judicial review,” *id.* at 22, nor may they disregard “the ordinary constraints on lawmaking in the state constitution,” *id.* at 29-30. In Missouri, these ordinary constraints include the People’s reserved power to approve or reject “any act of the general assembly.” Mo. Const. art. III, § 49.

From *Hildebrant* to *Moore*, the U.S. Supreme Court has made clear that the Elections Clause vests redistricting authority in the state’s legislative power, not just the General Assembly. The referendum on HB 1 is within Missouri’s lawmaking power, not outside it. The Circuit Court erred in reading federal law to suggest otherwise.

B. The Elections Clause imposes no “clear statement” rule for interpreting the scope of state legislative power.

In construing the Missouri Constitution to exempt congressional redistricting from the referendum power, the Circuit Court applied a “clear statement rule” supposedly derived from federal law. According to the Circuit Court (D63 pp. 15, 18), the Elections Clause demands “a clear statement before courts may determine that a state has reallocated power over redistricting from the state legislature” because the Clause assigns redistricting specifically to the General Assembly. But there is no such rule. It has no basis in precedent, rests on a false premise, defies Missouri’s ordinary rules of construction, and would be unworkable in practice.

First, a clear-statement rule appears nowhere in a century of Elections Clause

precedent. *Hildebrant* never suggested its holding depended on a redistricting-specific authorization, and Ohio's constitution contained none. Neither Minnesota's constitution in *Smiley* nor Missouri's in *Carroll* specifically authorized a veto of congressional redistricting bills; the general veto power sufficed. If the Elections Clause *did* require a specific authorization before a state constitution's general lawmaking provisions could touch congressional redistricting, these U.S. Supreme Court cases were all wrongly decided. Nor did the Circuit Court's clear-statement rule appear in *AIRC*, which endorsed removing the redistricting function from the representative assembly altogether.

Second, the purported "rule" rests on a premise that contradicts how the U.S. Supreme Court has defined "the Legislature"—that is, *not* the General Assembly but rather the whole of a state's legislative power as prescribed in its constitution. *AIRC*, 576 U.S. at 805, 824. A clear-statement rule presupposes a default delegation to depart from. But the Elections Clause creates no federal default allocation to the General Assembly that the referendum power (itself part of legislative power) could "displace," and thus creates no logical place for a clear-statement rule in this context.

Nor, for that matter, does the Missouri Constitution delegate redistricting in a way that could trigger a clear-statement requirement. The Circuit Court's judgment (D63 p. 6) points to Article III, § 45, but that provision is not a grant of authority. The only provision vesting "legislative power" in the General Assembly is Article III, § 1; the rest of the constitution "only *limits* the General Assembly's plenary legislative power," as this Court recently explained in *Luther v. Hoskins*, 730 S.W.3d 567, 571 (Mo. banc 2026) (emphasis added). Section 45 is therefore a limit on the General Assembly, a mandate to redistrict

after each census according to substantive requirements. A provision that only constrains the General Assembly's legislative power cannot be read to give it default immunity from the other mandatory prescriptions on lawmaking, like the veto and referendum. *See State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 704 (Mo. banc 1952) ("The legislative authority in Missouri is not wholly with the General Assembly. The governor is a factor in legislation." (citation omitted)); *No Bans on Choice*, 638 S.W.3d at 489 ("In establishing the right of referendum, the people of Missouri constitutionally reserved a share of the legislative power for themselves." (citation omitted)).

Third, the Circuit Court's novel approach contravenes *Moore*'s requirement that state courts reviewing election laws operate within "the ordinary bounds of judicial review." *Moore*, 600 U.S. at 36. The ordinary bounds of judicial review in Missouri are marked by certain longstanding canons of construction. Constitutional text must be given its plain, ordinary, and natural meaning. *Wright-Jones v. Nasheed*, 368 S.W.3d 157, 159 (Mo. banc 2012). The word "any" means every. *Walden*, 206 S.W.2d at 983. And, especially relevant here, the initiative and referendum provisions must be construed liberally, "to make effective the people's reservation of that power." *Boeving v. Kander*, 496 S.W.3d 498, 506 (Mo. banc 2016); *accord No Bans on Choice*, 638 S.W.3d at 490; *see also id.* at 489, 492 (identifying the referendum as a fundamental "constitutional right" that "exists to serve as a check on the legislature" (quoting *State ex rel. Drain v. Becker*, 240 S.W. 229, 230-31 (Mo. banc 1922))). The Circuit Court disregarded these principles: it read "any act" to exclude an entire category of acts, it construed the referendum right narrowly rather than liberally, and it applied an interpretive canon of its own invention to affirm an executive

official's unilateral denial of Missourians' fundamental right to referendum. This is not the hallmark of ordinary judicial review and should not be sanctioned by this Court.

Fourth, the Circuit Court's new interpretive canon would be unworkable and contrary to established historical practice. The Elections Clause covers the entire field of "times, places, and manner" regulations, not redistricting alone. As this Court explained in *Carroll*, "[t]he 'manner' of holding elections includes the qualifications of judges, the form of ballots, and other details, all of which are fixed by law, and can be provided only by establishing a rule, not merely for one election, but for all elections." *State ex rel. Carroll v. Becker*, 45 S.W.2d 533, 537 (Mo. banc 1932), *aff'd*, 285 U.S. 380 (1932). Missouri regulates congressional elections through general election laws—providing for registration, ballot form, canvassing, certification, and so forth—many of which are applicable to congressional and state elections alike. On the Circuit Court's logic, no such acts could be the subject of referendum without specific constitutional authorization. A referendum power applicable to "any act" would apparently not be clear enough, leaving a wide range of election legislation (including acts concerning *state* elections) exempted from the People's veto. The same logic would apply to the Governor's veto: nothing in the state constitution specifically authorizes a veto of congressional election regulations. This would unsettle *Carroll* and cast doubt on decades of vetoed election bills. Neither the Elections Clause nor the Missouri Constitution imposes an interpretive canon that would so limit and destabilize state election-related lawmaking. *See AIRC*, 576 U.S. at 824.

The Elections Clause thus imposes no clear-statement rule. Even if it did, the Missouri Constitution satisfies it. Reserving the referendum over "any act of the general

assembly,” subject to only two exceptions that do not apply here, is as “clear” as constitutional text gets. HB 1 is within the referendum power, and the Circuit Court erred in ruling otherwise.

C. Congress exercised its superseding Elections Clause authority to accommodate congressional redistricting decisions by entities other than representative assemblies.

The Circuit Court’s reasoning is additionally erroneous because it ignores that Congress has exercised its superseding Elections Clause authority to affirm the power of citizens to reject state legislature’s congressional redistricting maps by referendum. As explained above, the U.S. Supreme Court has repeatedly held that the Elections Clause’s usage of the term “Legislature” extends to lawmaking processes involving citizens. But the Elections Clause also grants Congress superseding authority to regulate congressional redistricting. *See* U.S. Const. art. I, § 4, cl. 1 (authorizing Congress “at any time by Law [to] make or alter such Regulations” enacted by the states).

The U.S. Supreme Court has held that Congress expressly amended its statutes regulating congressional redistricting starting in 1911 to accommodate states that incorporated initiative or referendum powers in their lawmaking processes.

From 1862 through 1901, the decennial congressional apportionment Acts provided that a State would be required to follow federally prescribed procedures for redistricting unless ‘the legislature’ of the State drew district lines. In drafting the 1911 Act, Congress focused on the fact that several States had supplemented the representative legislature mode of lawmaking with a direct lawmaking role for the people; through the processes of initiative (positive legislation by the electorate) and referendum (approval or disapproval of legislation by the electorate).

AIRC, 576 U.S. at 809. The *AIRC* Court explained that “[t]o accommodate that

development,” Congress “eliminated the statutory reference to redistricting by the state ‘legislature’” and instead used the phrase “redistricted *in the manner provided by the laws thereof*.” *Id.* (emphasis in original).

The phrase “by the laws thereof” was used again when Congress enacted the current version of 2 U.S.C. § 2a(c), and the phrase “by law” was used when Congress enacted 2 U.S.C. § 2c in 1967. Section 2c provides that “[i]n each State . . . there shall be established *by law* a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected *only* from districts so established.” 2 U.S.C. § 2c (emphasis added). In *Branch v. Smith*, the U.S. Supreme Court held that the phrase “by law” in § 2c is not limited to congressional redistricting by state legislatures—indeed, the Court characterized that argument as “implausib[le].” 538 U.S. 254, 271 (2003). The question at issue in *Branch* was whether state and federal courts could, consistent with § 2c, impose congressional redistricting maps, and the Court answered that question in the affirmative. *Id.* at 271-72.

Two points are relevant here regarding § 2c. *First*, even if the Circuit Court (and the Secretary) were correct about the first half of the Elections Clause—a proposition that is directly contravened by a century of precedent as explained above—its position would still fail because Congress has the final word on regulating congressional redistricting. And its Elections Clause statutes, *see* 2 U.S.C. § 2a(c) & 2c, *require* this Court to respect Missouri voters’ exercise of their power to block the General Assembly’s congressional redistricting map. *Second*, federal law expressly prohibits Missouri’s congressional election from occurring under a map that is not consistent with the “law” of the State—including its

constitutional provisions regarding the People's exercise of their referendum power. *See* 2 U.S.C. § 2c (permitting congressional elections to occur “only” pursuant to the districts established “by law” (emphasis added)). The “law” of Missouri includes its prohibition on laws subject to referenda being given operative effect.

The Elections Clause thus *compels* this Court to reverse the judgment of the Circuit Court and give effect to the People's referendum on congressional redistricting.

D. The Elections Clause undermines the Secretary's refusal to certify the referendum petition and place the issue on the ballot.

The Secretary's certificate of insufficiency rests entirely on his assessment that “the Missouri Constitution does not authorize a referendum on congressional redistricting plans passed by the General Assembly.” Stip. Ex. 5 at 2. That assessment in turn was based on an attached and incorporated opinion of the Missouri Attorney General, whose primary rationale was that the Missouri Constitution “would need to speak through a clear statement divesting the legislature of its authority under the U.S. Constitution's Elections Clause.” *Id.* at 3. As explained *supra* Part I.A-C, that reasoning gets it exactly backward: the Elections Clause does not preclude a referendum on HB 1, demand a clearer statement than the Missouri Constitution already provides, or allow disregard Congress's command to abide the state constitution's lawmaking procedures for congressional redistricting.

Thus, to the extent the Elections Clause bears on this case, it cuts against the Secretary, not the referendum petition. The referendum is “part of the legislative power” and a core component of the legislative branch in which the Clause vests authority over congressional elections. *Hildebrant*, 241 U.S. at 569; *AIRC*, 576 U.S. at 805. An executive

branch official who significantly delays and then unilaterally halts that process based on a hollow constitutional theory has not enforced or respected the Elections Clause. He has instead obstructed the very lawmaking power the Elections Clause protects. Reversing the judgment below would not create an Elections Clause problem but rather eliminate one created by the Secretary himself.

II. The Guarantee Clause offers no basis to preclude a referendum on HB 1.

The Guarantee Clause offers no basis to disregard the People’s referendum power under the Missouri Constitution and preclude a referendum on HB 1. The Guarantee Clause provides that the United States “shall guarantee to every State” a “Republican Form of Government.” U.S. Const., art. IV, § 4. Three things have long been accepted about this provision: (1) the Clause is non-justiciable, (2) the power to enforce the Clause belongs to Congress, and (3) states’ referendum and initiative rights—including as applied to redistricting—do not infringe the Clause. The Circuit Court and the Secretary ignored all three of these bedrock principles.

First, the Guarantee Clause is non-justiciable. The U.S. Supreme Court has “several times concluded” that Article IV, § 4 “does not provide the basis for a justiciable claim.” *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019); *see also Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 151 (1912). The Circuit Court acknowledged that the Guarantee Clause is nonjusticiable, but then went on to opine that Missouri’s referendum right is “inconsistent with a republican form of government” (D63 pp.24-25). The Circuit Court’s bold contention that the Guarantee Clause “forbid[s] the application” of the Missouri Constitution to redistricting legislation finds no support in the law, and the Circuit Court

cites none. In fact, if the Circuit Court (or this Court) were to “[i]nvalidate[]” Article III, § 52(b) in this context as the Circuit Court suggests (D63 p. 23), it would be stepping far outside its authority and past practice in any court. *See In re Initiative Petition No. 348, State Question No. 640*, 820 P.2d 772, 784 n.20 (Okla. 1991) (“Even in the few early cases in which the Court considered guarantee-clause cases on the merits, there is not a single precedent in which an act or statute was invalidated.”) (citing cases). At any rate, the Clause is nonjusticiable, and the Circuit Court’s assertions on the matter constitute an advisory opinion that is both wrong and that the Circuit Court is not authorized to offer. *See State ex rel. Heart of Am. Council v. McKenzie*, 484 S.W.3d 320, 324 n.3 (Mo. banc 2016).

Second, the Guarantee Clause is enforced by Congress, not by a state executive branch official. It is well-established that “the United States guarantees to every State a republican form of government.” *Minor v. Happersett*, 88 U.S. 162 (1874); U.S. Const., art. IV, § 4. This is a guarantee made *by* the federal government *to* the states. The U.S. Supreme Court has long held that “it rests with Congress to decide what government is the established one in a State . . . as well as its republican character.” *Luther v. Borden*, 48 U.S. 1, 42 (1849); *Hildebrant*, 241 U.S. at 570 (describing “authority to uphold the guaranty of a republican form of government” as “conferred [] exclusive[ly]” on Congress); *see also Texas v. White*, 74 U.S. 700 (1868) (holding that the power to enforce the Guarantee Clause is “primarily a legislative power, and resides in Congress”), overruled on other grounds by *Morgan v. United States*, 113 U.S. 476 (1885). Ignoring this well-established precedent and citing no law from Congress, the Secretary took it upon himself to “enforce” the Clause by

unilaterally invalidating Missourians’ referendum right—and the Circuit Court upheld this usurpation.

The Guarantee Clause cannot be used to subvert the referendum process, which is an instrument of popular sovereignty. *State ex rel. Pollock v. Becker*, 233 S.W. 641, 644 (Mo. banc 1921); *see also id.* at 646 (Graves, J., concurring) (“It is absolutely against all reason” to allow the General Assembly to “cut the people off from the constitutional rights to refer all measures,” and still hold that the People “yet retain the legislative right.”). In *Pollock*, the General Assembly passed a law abolishing certain government offices and attempted to exempt the act from the referendum process. *Id.* at 642. This Court rejected this attempt, holding that the General Assembly’s gambit would “completely destroy[]” the People’s referendum right. *Id.* at 648 (Walker, J., concurring). Here, a single executive branch official is seeking to evade popular sovereignty by perversely characterizing the people’s exercise of their constitutional rights as somehow contrary to our form of government. The Court should uphold the referendum process enshrined in the Missouri Constitution and reject the Secretary’s ill-conceived invocation of the federal Guarantee Clause.

The Circuit Court found (D63 pp. 25-26) that the Secretary was justified in ignoring the Missouri Constitution to prevent “a sliver of the electorate” from pausing an act of the Legislature via exercise of the referendum right. But the U.S. Supreme Court has already explained why this reasoning is wrong. In *Hildebrant*, the Court explained that the “assumption” that applying a state’s referendum right to redistricting “annihilates representative government, and causes a state . . . to be not republican in form” is a flawed

one. 241 U.S. at 569. That is because enforcement of the Guarantee Clause falls to Congress, and Congress has never found state referendum rights to violate the Guarantee Clause. *Id.* While states may have some “implied duty” to provide a republican form of government, *Minor*, 88 U.S. at 175, Congress has the exclusive authority to enforce the Guarantee Clause, and state actors have an express duty to uphold the Missouri Constitution—including its referendum right.

Third, Missouri’s referendum right applied to a redistricting plan is compatible with the Guarantee Clause. Contentions otherwise are “plainly without substance.” *Hildebrant*, 241 U.S. at 569. Courts that have analyzed referendum and initiative rights in light of the Guarantee Clause have found no conflict between them. When Oregon adopted a constitutional amendment establishing a referendum and initiative right, the Oregon Supreme Court held that “the initiative and referendum amendment does not abolish or destroy the republican form of government, or substitute another in its place.” *Kaddery v. City of Portland*, 74 P. 710, 720 (Or. 1903). The *Kaddery* Court recognized that under the amendment “the people may exercise a legislative power, and may, in effect, veto or defeat bills passed and approved by the Legislature and the Governor.” *Id.* Nevertheless, this did not “materially curtail[]” the authority of the legislature or the executive and did not “overthrow[] the republican form of government.” *Id.*⁷ Other state courts to address the issue have come out similarly. *See, e.g., McKee v. City of Louisville*, 616 P.2d 969, 972 (Colo. 1980) (“Like the right to vote, the power of initiative is a fundamental right at the

⁷ Missouri’s referendum right is even *more* protected from encroachment than Oregon’s. *See Pollock*, 233 S.W. at 646 (Graves, J., concurring).

very core of our republican form of government.”); *In re Initiative Petition No. 348*, 820 P.2d at 780 (“[W]hile the [referendum and initiative power] undoubtedly restricts, it does not abolish government by representation and thus does not breach the federal guaranty of Article IV, § 4.”).

The Circuit Court ignored this precedent. In concluding that the Missouri Constitution’s referendum right “cannot be squared” with a republican government (D63 p. 26), the Circuit Court makes zero mention of *Hildebrant*’s discussion of this question, and disregards analysis from other state courts on the subject. The Circuit Court also does not explain how Missouri’s referendum right could violate the Guarantee Clause only in the context of redistricting, but not when applied to other topics. While the Circuit Court elsewhere attempts to distinguish congressional redistricting from other legislation on the basis of the federal Elections Clause, that flawed distinction has no bearing on the court’s Guarantee Clause analysis. To put it simply, if the mechanics of the referendum right “cannot be squared” with a republican form of government when applied to redistricting legislation, then the referendum right cannot be applied to *any* act of the General Assembly. But that is plainly wrong, as this Court has consistently recognized—and protected—Missouri’s referendum right. *See, e.g., No Bans on Choice*, 638 S.W.3d at 492 (“[T]he establishment of the constitutional right of referendum was a fundamental expression of the power held by the people.”); *Pollock*, 233 S.W. at 644; *id.* at 648 (Walker, J., concurring) (“[T]he power thereby reserved [via referendum] is in the people, and that upon which it is to be exercised is the Legislature.”).

The Missouri Constitution, the U.S. Constitution, and over a century of precedent are clear: the People's referendum right does not violate the Guarantee Clause. The assertions to the contrary by the Secretary and the Circuit Court are in error.

CONCLUSION

The Circuit Court's judgment should be reversed.

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Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on August 25, 2025, the foregoing brief was filed electronically and served automatically on the counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06(b); and (3) contains 6,211 words (excluding the cover, signature block, and this certificate of service and compliance), as determined using the word-count feature of Microsoft Office Word. Finally, the undersigned certifies that the electronically filed brief was scanned and found to be virus-free.

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