

SC101805

IN THE SUPREME COURT OF MISSOURI

RICHARD VON GLAHN,

Appellant,

v.

DENNY HOSKINS, in his official capacity,

Respondent,

and

MISSOURI REPUBLICAN STATE COMMITTEE, *et al.*,

Intervenors-Respondents.

INTERVENORS-RESPONDENTS' BRIEF

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INTRODUCTION

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

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

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

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

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

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

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

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

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

The Court should once again uphold HB 1 and affirm.

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POINTS RELIED ON

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

U.S. Const. art. I, § 4

Mo. Const. art. III, § 3(i)

Mo. Const. art. III, § 7(h)

Mo. Const. art. III, § 45

Mo. Const. art. III, § 49

Mo. Const. art. III, § 52

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

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

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

U.S. Const. art. I, § 4

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

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

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

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

U.S. Const. art. I, § 4

Mo. Const. art. III, § 52

U.S. Const. art. IV, § 4

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

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

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

U.S. Const. art. I, § 2

U.S. Const. amend. XIV, § 1

52 U.S.C. § 20302(a)(8)

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

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

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

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

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

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

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

Mo. R. Civ. P. 52.12

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

LEGAL STANDARD

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In fact, changing the maps at this late juncture is not just “impractical,” it is “impossible.” See D63:P36 ¶¶ 170-71. The circuit court credited the affidavit of a Missouri election official, who explained that implementing a new congressional map requires local election officials to transfer hundreds of thousands of individual voters in the MCVR system. D63:P36 ¶ 170. That is a meticulous process involving careful analysis of printed maps and multiple rounds of proofreading; it ordinarily takes more than two weeks, and at least 7-10 days even under emergency conditions. *Id.* But even that timeline is academic here, because the MCVR system locks shortly before absentee ballots are distributed and remains locked until an election is certified two weeks after election day. D63:P36 ¶ 171. The circuit court found that this year, the system will remain locked until at least mid-November because of a Jackson County special election in September 2026. *Id.* This Court must “defer to the [circuit] court’s assessment” that it would be “impossible” to change the districts at this juncture, *Pearson II*, 367 S.W.3d at 47; D63:P36 ¶ 170, and decline to order an unprecedented remedy that cannot be implemented, see *Hadley*, 460 S.W.2d at 3 (refusing to alter districts where doing so would be “wholly inequitable and impracticable”).

Appellant suggests that election officials can change the maps because the 2022 districts “remain active” in MCVR. App. Br. at 87. That misunderstands the problem. The obstacle is not drawing new district boundaries; it is reassigning hundreds of thousands of individual voters back into their former districts. That is the process the circuit court found takes a minimum of 7-10 days under emergency conditions, and which would be “impossible” before the general election because the system is already locked. D63:P36 ¶ 170.

Appellant asks this Court to disregard that fact finding in favor of a competing affidavit. *See* App. Br. at 86-87; *see also* Lightfoot & Lennon Amicus Br. at 5-6 (same argument). But the circuit court weighed both affidavits and concluded that changing the districts before the general election is “impossible.” D63:P36 ¶ 170. That is a quintessential factual determination, and this Court does not reweigh competing evidence on appeal. *See Pearson II*, 367 S.W.3d at 47.

Appellant’s own representations to Missouri courts confirm that the window for relief has long since closed. For months, PNP and von Glahn urged courts to resolve the status of HB 1 on an expedited basis, insisting that their challenges were “time-sensitive” given the approaching 2026 elections and the need to prevent “chaos in August.” D43:P1-2. Other challengers to HB 1 pressed for judicial resolution before candidate filing even opened, conceding that equity would “favor the status quo in a legal dispute during the lead-up to an election.” *See, e.g.*, D47:P16 (quotation omitted). Having told Missouri courts for months that time was running out, Appellant cannot now demand the very relief he previously admitted would come too late.

This Court should follow its own precedent and the settled approach of the U.S. Supreme Court and decline to order any changes to the General Assembly’s duly enacted map after the primary has already occurred. *See Abbott*, 146 S. Ct. at 419; *Ardoyn*, 142 S. Ct. at 2892-93; *see also Hadley*, 460 S.W.2d at 2. Such an injunction would “lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). To “protec[t] the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election,” *Democratic Nat’l Comm.*,

141 S. Ct. at 31 (Kavanaugh, J., concurring), this Court should decline to order any changes to HB 1 for the 2026 election.

VI. THE COURT SHOULD AFFIRM THE REPUBLICAN COMMITTEES' INTERVENTION. (Responds to Appellant's Points IX and X).

The circuit court also correctly granted the Republican Committees intervention in this action. Major political parties routinely intervene in cases involving election laws because they have a direct stake in the legal rules governing the elections in which their candidates compete and their resources are deployed. *See, e.g., La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (“*LUPE*”). And in Missouri, it has long been the policy of courts that intervention “should be allowed with considerable liberality.” *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012) (quotations omitted); *see also Allred v. Carnahan*, 372 S.W.3d 477, 482 (Mo. App. W.D. 2012) (explaining that Rule 52.12 “should be liberally construed to permit broad intervention”). It should thus come as no surprise that the State Committee was already granted intervention in three prior cases challenging HB 1, each of which was appealed to this Court. *See Luther v. Mo. Sec. of State*, No. 25AC-CC06964 (Cole County); *Wise v. State*, No. 2516-CV29597 (Jackson County); *Healey v. State*, No. 2516-CV31273 (Jackson County). The circuit court followed this long-settled policy and concluded that the Committees satisfy the elements to intervene as a matter of right and for permissive intervention.

A. THE REPUBLICAN COMMITTEES WERE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Substantial evidence supports the circuit court’s granting of intervention as of right. To warrant intervention as of right, the applicant must establish “(1) an interest relating to the property or transaction which is the subject of the action; (2) that the applicant’s ability to protect the interest is impaired or

impeded; and (3) that the existing parties are inadequately representing the applicant's interest.” *State ex rel. Nixon v. American Tobacco Co.*, 34 S.W.3d 122, 127 (Mo. banc 2000) (internal citations omitted). “When an applicant satisfies these elements . . . the right to intervene is absolute and the motion to intervene may not be denied.” *Id.*

The Committees satisfy all elements for intervention as of right. *First*, the Republican Committees possess substantial cognizable interests at stake in this dispute. In defining what interests count, this Court has said that movants must have “a direct claim upon the subject matter such that the intervenor will either gain or lose by direct operation of [the] judgment.” *Robinson v. Mo. Dep’t of Health & Senior Services*, 672 S.W.3d 224, 232 (Mo. banc 2023) (quotations omitted).

The Republican Committees possess several such interests, each of which suffices to support intervention. Their main interest is in getting Republican candidates in Missouri elected to office. *See* D57:P1-2 ¶¶ 4-5; D58:P1-2 ¶¶ 4-5; D59:P1-2 ¶¶ 4-5. As part of that goal, the Committees have an interest in ensuring that Republicans can seek office in a fair and competitive environment where all election laws—including HB 1—are enforced. The Committees also have an independent interest in avoiding changes to election laws and procedures that would force them to adjust their campaign strategy and divert their limited resources to supplement efforts they have already made to educate voters, train volunteers, and turn out the vote. *See* D57:P2 ¶¶ 8-9; D58:P2-3 ¶¶ 8-9; D59:P2 ¶¶ 8-9.

Courts around the country routinely recognize that these types of interests are legally cognizable and enjoy legal protection. *See, e.g., Mecinas v. Hobbs*, 30 F.4th 890, 898 & n.3 (9th Cir. 2022) (candidates and political parties have a “shared interest in fair competition” and suffer injury when

forced “to participate in an illegally structured competitive environment” (cleaned up)); *LUPE*, 29 F.4th at 306 (political committees have a “direct” and “substantial” interest in proceedings that could change the “legal landscape” under which the committees “expend resources regarding . . . recruitment [and] training”); *Nelson v. Warner*, 12 F.4th 376, 384 (4th Cir. 2021) (candidate suffers concrete harm when a law “injur[es] his chances of being elected”); *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020) (per curiam) (political committees are injured when a law “unequally favors supporters of other political parties” (emphasis omitted)); *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014) (political parties who were “subject to” a law and whose candidates “were affected” by it suffered injury); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (political party suffers organizational injury when it diverts resources in response to a law); *Shays v. FEC*, 414 F.3d 76, 86–87 (D.C. Cir. 2005) (candidates suffer injury when changes to election laws and procedures “alter the competitive environment’s overall rules” and force them to “adjust their campaign strategy”). What is more, several of these cases concerned Article III standing, which is “more stringent” than the lower standard for intervention. *See Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1252 n.4 (10th Cir. 2001).

Even more to the point, courts ordinarily grant intervention to political parties on a showing of an altered competitive environment or disrupted campaign strategy and resource allocation indistinguishable from the showings the Republican Committees have made here. As the Fifth Circuit explained, Republican Party entities had an interest in defending state election laws because the case’s outcome “could affect [their] ability to participate in and maintain the integrity of the election process in Texas.” *LUPE*, 29 F.4th at 306. Another court likewise held that Republican Party entities have “an

interest in the subject matter of [a] case” when “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the . . . Republican Party.” *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005). Still another court granted intervention as of right to Republican committees seeking to defend a mail voting law because “[t]he claims brought by Plaintiffs could affect the Committees’ ability to participate in the election process within the state.” *Pa. State Conf. of the NAACP v. Chapman*, 2023 WL 121867, at *5 (W.D. Pa. Jan. 6, 2023). Courts have allowed entities affiliated with the Democratic Party to intervene in similar circumstances. *See, e.g., Paher v. Cegavske*, 2020 WL 2042365, at *2–3 (D. Nev. Apr. 28, 2020) (granting intervention to Democratic Party entities when a lawsuit would disrupt their organizational efforts); *Issa v. Newsom*, 2020 WL 3074351, at *1–4 (E.D. Cal. June 10, 2020) (same).

This case fits squarely within the mold set by this line of precedent. Appellant challenged HB 1, the very statute that defines the districts in which Intervenor’s candidates are campaigning right now. D20:P5-7. If Appellant prevails, the congressional plan would be enjoined weeks before the general election, hundreds of thousands of voters would be reassigned to different districts than the ones in which they voted in the primary, and the Republican Committees would be forced to scrap months of campaign planning and redirect resources to entirely different districts on an impossible timeline. *See* D57:P3 ¶¶ 12-14; D58:P3-4 ¶¶ 12-15; D59:P3 ¶¶ 12-14. These are not speculative harms; they are the direct and inevitable consequence of the relief Appellant seeks. The Committees’ interests in this litigation are thus immediate, concrete, and indistinguishable from the interests that courts across the country have found sufficient to support intervention as of right.

Second, the Republican Committees’ interests will be impaired if this Court reverses the circuit court’s merits holding.

This Court has found impairment where the disposition of the action may leave intervenors “in an uncertain position as to how to proceed in discharging [their] duties.” *Dunivan v. State*, 466 S.W.3d 514, 520 (Mo. banc 2015). Further, in assessing the risk of impairment in the election context, courts “should not second-guess a candidate’s—or political party’s—“reasonable assessment of his own campaign by assuming the guises of campaign consultants or political pundits in assessing the candidate’s assertion of how a challenged governmental action affects their capacity to compete politically.” *Castro v. Scanlan*, 86 F.4th 947, 958 (1st Cir. 2023) (cleaned up).

The inquiry is especially straightforward here. If Appellant succeeds in enjoining HB 1 for the 2026 general election, the Republican Committees’ interests will necessarily be impaired because the Republican Committees will “be[] forced to participate in an ‘illegally structure[d] competitive environment’”—i.e., one in which the Legislature’s duly enacted plan is disregarded. *Mecinas*, 30 F.4th at 898 (alteration in original) (quoting *Shays*, 414 F.3d at 87). As a result, Intervenor would have to “deploy substantial financial and organizational resources to supporting and seeking election of Republican candidates, educating and turning out voters, and otherwise exercising their constitutional rights other than those the General Assembly enacted in HB 1.” D20:P6; *see also* D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18. Indeed, if ordered, “that relief also could affect the likelihood of whether Republican candidates are elected to Congress from Missouri.” D20:P6. Since Appellant’s requested relief would “alter” the “overall rules” to which the Republican Committees and their members are

subjected and force the Committees to deploy their resources to attempt to mitigate any late-breaking alteration to HB 1, the Republican Committees “may challenge [Appellant’s] subversion of [the Legislature]’s guarantees” through intervention. *Shays*, 414 F.3d at 86, 91.

Third, the Secretary cannot (and should not) adequately represent and protect the Republican Committees’ uniquely *partisan* interests.

Missouri courts have held that “once a proposed intervenor establishes an interest in the underlying litigation and that such an interest may be impaired or impeded if intervention is not permitted, the third element is satisfied upon a ‘minimal showing’ that there is a divergence of interest between the proposed intervenor and the party.” *Allred*, 372 S.W.3d at 487. Indeed, Rule 52.12—like its federal analogue—provides that a movant is entitled to intervene when the other factors are met, “*unless* the applicant’s interest is adequately represented by existing parties.” Mo. R. Civ. P. 52.12(a) (emphasis added). This language implies that there is a strong presumption in favor of intervention when the other factors are satisfied and that the court should deny intervention only when it is “persuaded that the representation is in fact adequate.” 7C Charles A. Wright et al., *Federal Practice & Procedure* § 1909 (3d ed. 2024) (observing that the language of the federal rule may even shift the burden of persuasion to the existing parties to prove adequate representation).

Intervenors certainly made a minimal showing that the Secretary’s interests diverge from the Committees’ interests. *See* D20:P7-8. To begin, the Secretary simply does not (and should not) share the Committees’ objectives. The Committees’ ultimate interest in this action is “winning [e]lection[s]” for the Republican Party. *Shays*, 414 F.3d at 86; *see also* D57:P1-2 ¶¶ 4-5; D58:P1-2 ¶¶ 4-5; D59:P1-2 ¶¶ 4-5. The Secretary, by contrast, must serve the public

at large. *Screws v. United States*, 325 U.S. 91, 130 (1945) (Rutledge, J., concurring in the result) (explaining that a State official’s “sworn oath” and “first duty are to uphold the Constitution, then only the law of the state which too is bound by the charter”). He therefore *could not* “vindicate such an interest while acting,” as he must, “in good faith.” *LUPE*, 29 F.4th at 309. Because the Secretary’s responsibilities transcend the “narrower interest” of the Republican Committees, his representation is necessarily inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 539 (1972) (cleaned up).

Furthermore, this case proceeded at a breakneck pace from its inception. This action was filed on August 4, 2026, and by law it must be resolved no later than September 8. It will be argued September 2, before the Secretary’s answer would normally have been due. This compressed timeline necessarily creates uncertainty about the issues: claims or defenses might arise or be abandoned on a literal moment’s notice. It was not possible for Intervenors to know what approach the Secretary might take to defending this case, let alone account for any possible course changes mid-suit or even mid-trial. In *Robinson*, county health departments were permitted to intervene post-judgment after the State announced it would not appeal the trial court’s decision. *Robinson*, 672 S.W.3d at 234. That practice would be impracticable, if not impossible, given the timeline of this case: the first brief in this Court was due six days after judgment and this brief two days after that. Had Intervenors waited even momentarily to intervene, they risked missing important deadlines or being excluded from the case altogether. These circumstances further counsel in favor of intervention, especially in light of the policy that Rule 52.12 “should be liberally construed to permit broad intervention.” *Allred*, 372 S.W.3d at 482.

As the circuit court found, the Secretary's institutional obligations also pull him in multiple—and sometimes conflicting—directions that may dictate litigation positions that diverge from the Committees' preferred course. The Committees, for example, "have a direct and practical interest in ensuring the referendum does not advance for any reason, including the political reason of preserving HB 1's district lines under which Intervenors support election of Republican candidates to Congress." D20:P8. The Secretary's objective, by contrast, "is to demonstrate that the Secretary's review of the referendum petition complied with statutory requirements and administrative rules." *Id.* For that reason, the State may not raise arguments "concerning the substantive harm of the referendum, the costs of reversal to interested parties, or the broader electoral implications—all of which are *central* to Intervenor's mission and interests." *Id.* (emphasis added); see also D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18.

Appellant fails to rebut this analysis. He first mischaracterizes the Republican Committees' interests as generic "ideological" preferences. App. Br. at 101-02. But the Committees are not concerned bystanders with a rooting interest. They are the organizations whose institutional purpose is to elect Republican candidates to Congress from Missouri. In pursuit of that mission, they have spent substantial funds on candidate recruitment, advertising, field operations, and voter-contact programs specifically in reliance on HB 1's district lines. D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18.

Appellant next insists that the Committees' harm is merely "downstream." App. Br. at 100. Whatever that means, everything in Appellant's brief belies that characterization. Appellant asks for an immediate injunction changing the map for an election that is already underway. App. Br. 106. And he concedes what follows: every nominee chosen in the August 4

primary would be disqualified, and the Republican Committees' own nominating bodies would be required to convene and select replacements—if it is even authorized under Chapter 115 for replacement candidates to be selected at this date. *Id.* at 83-86. An intervenor who must execute the remedy plaintiff seeks has the most immediate interest in the litigation imaginable.

Appellant relies principally on three cases, none of which supports his position.

First, Appellant cites *Committee for Educational Equality v. State*, 294 S.W.3d 477 (Mo. banc 2009). That case is doubly inapposite. As a threshold matter, this Court reviewed the trial court's grant of *permissive* intervention under Rule 52.12(b), not intervention as of right under Rule 52.12(a). *Id.* at 487. The legal standards are different, and the case does not even *mention* Rule 52.12(a). Even setting that aside, the facts bear no resemblance to this dispute. Three individual taxpayers sought to join the State's defense of a school-funding formula, but they asserted "no interest apart from that of general taxpayers." *Id.* The Republican Committees, by contrast, are the party organizations whose candidates appear on the ballot, whose financial resources have been deployed in reliance on HB 1, and whose statutory nominating authority under Section 115.363 would be triggered if the map changes. D57:P3-4 ¶¶ 12-17; D58:P3-4 ¶¶ 12-18; D59:P3-4 ¶¶ 12-18.

Second and third, Appellant cites *Toder v. Hoskins*, 730 S.W.3d 129 (Mo. App. W.D. 2026), and *Prentzler v. Carnahan*, 366 S.W.3d 557 (Mo. App. W.D. 2012). Both are nonbinding Court of Appeals decisions, and both involved challenges to the fairness and sufficiency of ballot *titles* under Section 116.190. In *Toder*, a parent sought to intervene in a dispute over whether the Secretary's summary description of a proposed education amendment was "fair." 730 S.W.3d at 132-33. Her asserted interest—that her daughter might

lose a scholarship if the amendment were eventually certified, placed on the ballot, adopted by voters, and then interpreted to eliminate an existing program—depended on a chain of contingencies the court found “speculative.” *Id.* at 137. In *Prentzler*, petition signatories sought to intervene in ballot-title litigation based merely on an alleged interest in having their signatures counted and qualifying an initiative for the ballot. 366 S.W.3d at 562-63. The court held that interest was “too remote and conjectural” to support intervention. *Id.* Notably, the court reasoned that neither intervenor could show the litigation’s outcome would “directly and immediately affect[]” their “legal interests.” *Id.* at 563-64.

This case has nothing in common with either *Toder* or *Prentzler*. Appellant asks this Court to change the congressional plan governing an ongoing election, which would subject the Republican Committees to immediate, concrete harms including substantial financial ones. In fact, *Toder* contrasted the “speculative” harms the plaintiff raised, with the immediate harms faced by the intervenors in *Johnson v. State*. See 366 S.W.3d 11. In *Johnson*, three sitting legislators sought to intervene in a constitutional challenge to a House reapportionment plan. *Id.* at 21. This Court deemed intervention proper because the legislators had “unique interests at stake” including “personal and economic interests related to their planned reelection efforts” and “interests in preventing delay and uncertainty in avoiding unnecessary expenditures or time and resources.” *Id.* This case is a near facsimile. Like the legislators in *Johnson*, the Republican Committees have direct financial and organizational interests tied to a specific redistricting plan—interests that would be immediately undercut by the relief Appellant seeks.

Undeterred, Appellant suggests that because the Committees' trial brief pressed some of the same arguments as the Secretary, the Secretary must adequately represent their interests. App. Br. 103. But Appellant cites only *Committee for Educational Equality*, which concerned permissive intervention, and never held that similar briefing equals adequate representation. To the contrary, the standard is whether the existing party adequately represents the intervenor's *interest*, not whether their legal arguments happen to overlap. See Rule 52.12(a). For the reasons discussed, the Secretary cannot adequately represent the Committees' interests.

In sum, the Secretary's divergent obligations and objectives establish at least the possibility—if not the certainty—that he will not safeguard the Committees' distinct and legally cognizable interests. Substantial evidence supports the circuit court's decision to grant the Republican Committees intervention as of right. The Court should affirm.

B. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING PERMISSIVE INTERVENTION.

Finally, the circuit court did not abuse its discretion in granting the Republican Committees permissive intervention. Rule 52.12(b)(2) allows intervention where an applicant's "claim or defense and the main action have a question of law or fact in common." Permissive intervention is appropriate when intervenors "can show [an] interest unique to themselves." *Johnson*, 366 S.W.3d at 21 (emphasis omitted). This Court has explained that one such cognizable interest is "an economic interest in the outcome of the suit." *Id.* To reverse the grant of permissive intervention, this Court must find that the circuit court's ruling was "clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Id.* (quotations omitted).

The circuit court's decision easily clears that bar. The Republican Committees' defenses plainly share questions of law and fact with this action: they seek to defend HB 1's validity on multiple grounds, the very issues at the heart of Appellant's Petition. *See supra* at 1-3. And the Committees bring interests "unique to themselves," *Johnson*, 366 S.W.3d at 21, that go beyond anything the Secretary is positioned to advance—specifically, their direct financial and organizational stake in which congressional map governs the elections in which their candidates are competing and their resources are deployed, *see* D20:P9-10; *see also* D57:P2 ¶¶ 8-9; D58:P2-3 ¶¶ 8-9; D59:P2 ¶¶ 8-9. In *Johnson*, this Court upheld permissive intervention where sitting legislators had "personal and economic interests related to their planned reelection efforts, including interests in preventing delay and uncertainty and in avoiding unnecessary expenditures of time and resources." 366 S.W.3d at 21. The Republican Committees' interests track *Johnson* closely because they will be required to deploy—or refrain from deploying—substantial financial and organizational resources depending on which congressional map governs the 2026 election cycle. *See* D57:P3-4 ¶¶ 13-17; D58:P3-4 ¶¶ 13-15; D59:P3 ¶¶ 13-16.

Appellant hardly resists the circuit court's grant of permissive intervention. For the most part, he continues to cite *Toder*, which bears no resemblance to this case for the reasons already discussed. *See supra* at 68-69. Appellant also gestures at the "tight timeline" for this lawsuit and argues that intervention could "complicate that process." App. Br. at 105. But the record refutes any suggestion that the Committees' participation complicated or delayed these proceedings. The Committees moved to intervene before any hearings were held or responsive pleadings were due, filed their proposed Answer concurrently with their Motion to Intervene as required by Rule

52.12(c), and adhered to every deadline the circuit court and this Court set on an expedited schedule. Whatever concern might exist about intervenors complicating or delaying litigation has no foothold in this record.

CONCLUSION

The Court should affirm the circuit court's judgment and the Republican Committees' intervention.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a copy of Intervenor-Respondents' brief was filed by the Court's electronic filing system on August 27, 2026, for service electronically on all counsel of record. This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 20,684, excluding the cover, table of contents, table of authorities, signature block, appendix, and this certificate. The font is Century Schoolbook 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

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