

IN THE SUPREME COURT OF MISSOURI

No. SC101805

RICHARD VON GLAHN,

APPELLANT,

vs.

DENNY HOSKINS, SECRETARY OF STATE OF MISSOURI,

RESPONDENT.

On Appeal from the Circuit Court of Cole County, Missouri

The Honorable Daniel R. Green, Judge

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
INTRODUCTION	6
ARGUMENT	9
I. The Referendum Petition Is Sufficient	9
II. The Only “Remedy” Necessary in a Section 116.200 Action is a Determination that the Referendum is Sufficient and Reversal of the Secretary’s Contrary Conclusion.....	17
III. The Trial Court Erred by Deeming the Referendum Insufficient Based on Alleged Difficulties with Running the General Election	22
IV. To the Extent this Court Needs or Wishes to Discuss the Consequences for the General Election, There Are Multiple Options.....	24
V. To the Extent Equitable Principles Should Factor into the Analysis, the Equities Overwhelmingly Favor Plaintiff	30
VI. As the Briefing in this Court Illustrates, It Was Error to Permit the Republican Committees to Intervene.....	33
CONCLUSION	33

TABLE OF AUTHORITIES

Cases

<i>Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n</i> , 576 U.S. 787 (2015)	8, 17
<i>Bond v. United States</i> , 572 U.S. 844 (2014)	15
<i>Cannon v. Bingman</i> , 383 S.W.2d 169 (Mo. App. 1964)	31
<i>Coleman v. Ashcroft</i> , 696 S.W.3d 347 (Mo. banc 2024)	26
<i>Doyle v. Tidball</i> , 625 S.W.3d 459 (Mo. banc 2021)	12
<i>Facebook, Inc. v. Duguid</i> , 592 U.S. 395, (2021)	12
<i>Fulton v. City of Lockwood</i> , 269 S.W.2d 1 (Mo. 1954)	20
<i>Gray v. Sanders</i> , 372 U.S. 368 (1963)	23
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991)	15
<i>Holland v. Florida</i> , 560 U.S. 631 (2010)	31
<i>Jones v. McGonigle</i> , 37 S.W.2d 892 (Mo. 1931)	31
<i>Ketcham v. Blunt</i> , 847 S.W.2d 824 (Mo. App. 1992)	18, 26
<i>Keystone Driller Co. v. Gen. Excavator Co.</i> , 290 U.S. 240 (1933)	32
<i>Lamie v. U.S. Tr.</i> , 540 U.S. 526 (2004)	14
<i>Luther v. Hoskins</i> , 730 S.W.3d 567 (Mo. banc 2026)	11, 13
<i>Maggard v. State</i> , 733 S.W.3d 411, 414 (Mo. banc 2026)	passim
<i>Minor v. Happersett</i> , 88 U.S. 162 (1874)	17
<i>Mo. Elec Coops. v. Kander</i> , 497 S.W.3d 905 (Mo. App. 2016)	18, 26
<i>Monsanto Co. v. Rohm & Haas Co.</i> , 456 F.2d 592 (3d Cir. 1972)	32
<i>Moore v. Harper</i> , 600 U.S. 1 (2023)	7, 17
<i>Org. for Black Struggle v. Ashcroft</i> , 978 F.3d 603 (8th Cir. 2020)	23
<i>Pestka v. State</i> , 493 S.W.3d 405 (Mo. banc 2016)	13
<i>Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.</i> , 324 U.S. 806 (1945)	32
<i>Purcell v. Cape Girardeau Cnty. Comm’n</i> , 322 S.W.3d 522 (Mo. banc 2010)	31
<i>Smiley v. Holm</i> , 285 U.S. 355 (1932)	7, 16

<i>Smith v. Allwright</i> , 321 U.S. 649 (1944).....	23
<i>Sackett v. EPA</i> , 598 U.S. 651 (2023).....	15
<i>State ex rel. City of Ellisville v. St. Louis Cty. Bd. of Elections Comm’rs</i> , 877 S.W.2d 620 (Mo. banc 1994)	7, 8
<i>State ex rel. Davis v. Hildebrant</i> , 241 U.S. 565 (1916).....	16, 17
<i>State ex rel. Gordon v. Becker</i> , 49 S.W.2d 146 (Mo banc. 1932).....	6
<i>State ex rel. Heimberger v. Board of Curators of Univ. of Missouri</i> , 188 S.W. 128 (Mo. banc 1916).....	9
<i>State ex rel. Nixon v. Blunt</i> , 135 S.W.3d 416 (Mo. banc 2004).....	21
<i>State ex rel. State Highway Comm’n v. Thompson</i> , 19 S.W.2d 642 (Mo. banc 1929)	11
<i>State ex rel. Westhues v. Sullivan</i> , 224 S.W. 327 (Mo. banc 1920).....	10, 20
<i>United States v. Classic</i> , 313 U.S. 299 (1941)	23
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977)	23

Statutes

§ 115.013, RSMo.....	27, 28
§ 115.343, RSMo.....	27
§ 116.200, RSMo	12, 18, 19
§§ 128.461-469, RSMo.....	11
2 U.S.C. § 2c	28
52 U.S.C. § 20302	23

Other Authorities

Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012).....	15
https://enr.sos.mo.gov/	26
https://ovi.csg.org/wp-content/uploads/2025/05/OVI_State_Primary_V3.pdf	24
https://www.fvap.gov/eo/waivers	24

https://www.justice.gov/archives/opa/pr/fact-sheet-move-act	24
https://www.merriam-webster.com/dictionary/hereinafter	14
Mo. Const. art. III, § 29	10
Mo. Const. art. III, § 45	13
Mo. Const. art. III, § 49	14
Mo. Const. art. III, § 52(b)	19
Mo. Const. art. VIII, § 24.....	27
Rule 84.14	33

Regulations

15 CSR 30-15.030	30
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INTRODUCTION

Respondents' arguments are fundamentally flawed because they invert two concepts. First, the people have *reserved* the right to the referendum. No law needs to grant it—they've always had it. It has been that way since 1908, and this Court's jurisprudence is long and unbroken.

Over the decades, members of this Court have come and gone, but all have acknowledged the core principle of Article I, Sections 1 and 3, and Article III,

Section 49:

“The legislative authority of the State” means all of it: all of it is taken back by the people and then granted, subject to the reservations named, to the General Assembly alone. Manifestly the framers of the Amendment of 1908 intended, as did the people in adopting it, that every vestige of legislative power granted directly by the Constitution itself to agencies of the state government, the exercise of which would affect the State as a whole, should be subject to its initiative and referendum provisions.

State ex rel. Gordon v. Becker, 49 S.W.2d 146, 148 (Mo banc. 1932)

Respondents ask the Court to ignore all of that, disregard the Constitution's plain language (which their briefs do not argue is ambiguous), and apply rules of construction that, if they are actually rules, have never been applied by any court to reach Respondents' desired result. Part I discusses those arguments.

History may not repeat, but it rhymes. When faced with similar arguments in 1994, this Court unanimously put it this way: “Citing no direct authority for

their argument beyond hope, the Boundary Commission and St. Louis County reason that if the framers had intended section 8 limitations to apply to charter counties, they would have included similar limiting language in section 18.” *State ex rel. City of Ellisville v. St. Louis Cty. Bd. of Elections Comm’rs*, 877 S.W.2d 620, 622 (Mo. banc 1994). The same is true here. Respondents cite no direct authority but hope this Court will limit the people’s referendum power. The Court should decline.

Similarly, Respondents turn federalism on its head, arguing the United States Constitution limits the people’s referendum right. All the cases say the opposite, culminating with a recent U.S. Supreme Court case. “Nowhere in the Federal Constitution could we find provision of an attempt to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution of the State has provided that laws shall be enacted.” *Moore v. Harper*, 600 U.S. 1, 24 (2023) (cleaned up).

Respondents would have the Court allow the legislature to engage in congressional redistricting without regard to the reserved referendum power. *Moore* rejected that proposition. “A state legislature may not ‘create congressional districts independently of’ requirements imposed ‘by the state constitution with respect to the enactment of laws.’” *Id.* at 26 (quoting *Smiley v. Holm*, 285 U.S. 355, 373 (1932)). And “[t]he Elections Clause should not be read to single out federal elections as the one area in which States may not use citizen

initiatives as an alternative legislative process.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 816 (2015).

Next, Respondents turn to the *consequences* of following the law. They double down on the Attorney General’s reaction to *Maggard*: that “the challenged legislation never went into effect under Article III, Section 52(b) . . . would have disastrous consequences in the context of a congressional map.” Pshaw.

Parts II and III elaborate on why the Court need not address those consequences; Parts IV and V explain why, if addressed, they would not be the disaster the Attorney General envisions. Regardless, the Court should return to *Ellisville*’s wisdom: “We remain of the view expressed in [a prior case] that the constitution means what it says, despite the inconvenience it causes [the administrators of the program].” 877 S.W.2d at 623.

The Court should reverse the Circuit Court’s judgment. The people have reserved the power to conduct referenda on acts of the General Assembly. House Bill 1 is such an act, and the petition referring it to the people was sufficient when submitted in December 2025. As *Maggard* held, House Bill 1 is not now, and has never been, the law.

ARGUMENT

I. The Referendum Petition Is Sufficient

A. The Language of Sections 49 and 52(a) is Plain and Unambiguous, and No One Claims Otherwise

Neither Respondent contends Section 49 or 52(a) is ambiguous. Because they aren't. Instead, Respondents insist this Court should resort to canons of construction—specifically, a “clear statement rule”—to override clear, unambiguous language. Secretary Br. at 35; Intervenor Br. at 17. That's not how constitutional interpretation works. *See State ex rel. Heimberger v. Board of Curators of Univ. of Missouri*, 188 S.W. 128, 130 (Mo. banc 1916) (“Narrow and technical reasoning is misplaced when it is brought to bear upon an instrument framed by the people themselves, for themselves, and designed as a chart on which every man, learned and unlearned, may be able to trace the leading principles of government.” (cleaned up)).

Section 49 says “any act of the general assembly” is subject to a referendum. In a companion case, *People Not Politicians v. Hoskins*, No. SC101801, the Secretary helpfully defines “act” as “the formal product of a legislature or other deliberative body exercising its powers; esp., statute.” Secretary Br., Case No. SC101801, at 21. HB 1 is an “act of the general assembly” (it says so on top) because it went through the formal legislative process. D23:P3. No canon of construction is necessary. The word is comprehensive. *State ex rel.*

Westhues v. Sullivan, 224 S.W. 327, 334 (Mo. banc 1920). HB 1 is subject to the referendum.

Section 52(a) is similarly unambiguous. Again, the Secretary nicely sums up that this section in the other case as “except[ing] laws dealing with public emergencies and appropriations.” Secretary Br., Case No. SC101801, at 23. That’s it. And it makes sense that those are the only two exceptions, because public emergencies and appropriations are the only two types of legislation that take effect prior to 90 days after adjournment. Mo. Const. art. III, § 29; *see also Maggard v. State*, 733 S.W.3d 411, 414 (Mo. banc 2026).

While the Secretary acknowledges the plain meaning of the unambiguous text in *that* case, in *this* case he advances two new arguments untethered from the Constitution’s text and any practical understanding of lawmaking.

First, Respondents argue HB 1 was in fact an emergency, despite the General Assembly never declaring it so. Secretary Br. at 47-48; Intervenor Br. at 23-26. That can’t be. To exempt an act from the referendum, the legislature must include a *valid* emergency clause that declares an emergency within Section 52(a)’s terms. Mo. Const. art. III, § 29 (emergency “must be expressed in the preamble or in the body of the act”); *see also Westhues*, 224 S.W. at 333-38 (discussing interaction between emergency-clause and referendum provisions). There isn’t one here. *See Maggard*, 733 S.W.3d at 421 n.8. This Court may not

retroactively declare legislation an emergency. Respondents certainly cannot do so.¹

Even if Respondents could retroactively invoke the emergency exception, their attempt is nonsensical. The Secretary contends HB1 was “necessary” because “facilitating elections is impossible without redistricting legislation.” Secretary Br. at 48. But Missouri already had valid “redistricting legislation” when the General Assembly enacted HB1. *See Luther v. Hoskins*, 730 S.W.3d 567, 570 (Mo. banc 2026) (observing General Assembly enacted HB 1 to replace 2022 districts without new census data). There was no “immediate” need to preserve peace, health, or safety. *See State ex rel. State Highway Comm’n v. Thompson*, 19 S.W.2d 642, 647 (Mo. banc 1929).

The 2022 districts “facilitate[ed] elections” in 2022 and 2024 and remain readily available in 2026. The Secretary’s suggestion that elections would be “impossible” without HB 1 ignores the statutes still in effect. §§ 128.461-469, RSMo.

Second, the Secretary tries to jam HB 1 into the appropriations exception. Secretary Br. at 47. He invokes the last-antecedent canon to argue that “laws making appropriations” modifies only “current expenses,” leaving “maintenance

¹ The Secretary also contends the Court should ignore Article III’s plain language because the consequences of the plain-language reading would allow initiative petitions to draw congressional districts. Secretary Br. at 39. Like many of Respondents’ other arguments, this is rooted in policy disagreements, not legal analysis. In any event, the question of whether citizens can redistrict by initiative is simply not before this Court.

of state institutions” and “support of public schools” as independent exceptions. But that’s not how we read law. When a modifier follows a straightforward parallel series, it “normally applies to the entire series.” *Facebook, Inc. v. Duguid*, 592 U.S. 395, 402-3 (2021). Section 52(a)’s exception for “laws making appropriations *for* the current expenses of the state government, *for* the maintenance of state institutions and *for* the support of public schools” is precisely such a parallel series—“laws making appropriations” modifies all three items. And there can be no argument that HB 1 is an appropriations law. *See Doyle v. Tidball*, 625 S.W.3d 459, 466 (Mo. banc 2021).

B. HB 1 Is Not a “Redistricting Plan,” Rendering Sections 3(i) and 7(h) Irrelevant

Respondents also hope Section 7(h) and 3(i)’s prohibition on referenda on “redistricting plan[s]” encompasses congressional maps, notwithstanding the fact that these provisions expressly govern only state house and senate plans.

Intervenors Br. at 19–26; Secretary Br. at 43–45.

The Court should not entertain this argument. It noticeably *does not* appear in the Secretary’s certificate of insufficiency. *See* D27. Section 116.200 commands that the Secretary must provide *all* the reasons for his determination of insufficiency. § 116.200.1, RSMo. This makes sense. If a citizen chooses to challenge the certificate (particularly one issued at the last minute), there should be a set list of reasons to challenge in court to avoid any surprise. The Secretary

cannot cure his procedural default by relying on Intervenor's to raise arguments he was statutorily required—but failed—to include in his certificate.

And the omission of this argument from the certificate of sufficiency was no oversight. The Secretary knows it is wrong. He never raised it in *Missouri General Assembly v. von Glahn*, No. 4:25-cv-01535-ZMB (E.D. Mo.), or *Maggard v. State*, No. SC101581. And in *Luther v. Hoskins*, No. SC101578, the Secretary affirmatively told this Court Section 7(h) does *not* apply to congressional redistricting. Secretary Br., Case No. SC101578, at 45. The Secretary's about-face reveals his strained attempt to avoid the plain constitutional implications of Plaintiff's referendum petition.

In any event, this argument is wrong. Sections 7(h) and 3(i) must be read in context. *Pestka v. State*, 493 S.W.3d 405, 409 (Mo. banc 2016). Section 7 governs state-senate redistricting and Section 3 governs state-house redistricting, both led by bipartisan citizens commissions.

On their face and in context, neither governs “acts of the General Assembly.” See Mo. Const. art. III, § 45. Section 45 is the “only provision of the Missouri Constitution directly addressing congressional redistricting.” *Luther*, 730 S.W.3d at 571. Reading “redistricting plan” to reach only commission-created plans gives effect to Sections 7 and 3's subject matter, while Respondents' reading

exports a provision addressing one constitutional process into another containing no comparable restriction.²

Intervenors press a surplusage argument: if Sections 3(i) and 7(h) apply only to commission-drawn plans, they are superfluous because commission plans are not “acts of the general assembly” and could never be referred anyway.

Intervenors Br. at 19–21. Assuming Sections 3(i) and 7(h) are rendered surplusage under Appellant’s reading (they are not),³ the canon against surplusage is, at most, a general preference. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 536 (2004). If there are two ways to read the text—one rendering language surplusage (but the meaning plain) and one not (but rendering the meaning ambiguous)—the Court should prefer the plain meaning. *See id.* If there are two ways to read 7(h) and 3(i) (there are not), this Court should read the text as plain rather than inject ambiguity.

² Respondents’ argument also ignores the plain language of Section 49, which states the referendum power applies to all acts of the general assembly “except as *hereinafter* provided.” Mo. Const. art. III, § 49 (emphasis added). “Hereinafter” means “in the following part of this writing or document.” <https://www.merriam-webster.com/dictionary/hereinafter>. Sections 3 and 7, of course, do not follow Section 49.

³ These sections say redistricting plans are not subject to “the referendum.” They do *not* say such plans are exempt from Sections 49 or 52, or otherwise reference other provisions of the Constitution. One reading, which harmonizes all the provisions at issue, is that Sections 3(i) and 7(h) were meant to ensure the *General Assembly* does not try to refer such plans to the people by passing an act to do so.

Even if canons of construction were needed to understand 7(h) and 3(i), there are many that support Plaintiff's position. The "presumption of consistent usage" provides that "a word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012). Sections 7(h) and 3(i) refer to "redistricting plans"—plans for state house and senate districts put in place by the bipartisan citizens commissions—materially different than an "act of the general assembly," which is the only mechanism to implement congressional districts under Section 45.

C. Respondents Cannot Cite a Single Case Requiring State Constitutions to Use a "Clear Statement"

Respondents double down on their argument that there must be a clear statement in the Constitution allowing a referendum on redistricting. Setting aside that the Constitution is crystal clear (all "acts of the general assembly" are subject to the referendum except "as hereinafter provided"), Respondents cite not a single case that requires state constitutions have a clear statement about anything, let alone referenda on redistricting.

Indeed, Respondents' invocation of the clear-statement rule is precisely backwards. Where the United States Supreme Court *has* used a "clear statement rule," it has done so to limit federal intrusion on state authority, not the other way around. *See Bond v. United States*, 572 U.S. 844, 858 (2014); *Sackett v. EPA*, 598 U.S. 651, 680 (2023); *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). These

rules protect state sovereignty from federal overreach—they do not empower state officials to read exceptions into the People’s reserved powers. Respondents cite no case requiring a state constitution to include a “clear statement” before citizens may exercise their expressly reserved referendum power.

D. Respondents Cannot Cite a Single Case Supporting Their Elections Clause and Guarantee Clause Arguments, Which Have Been Conclusively Rejected

Unable to find support in Missouri law for their “clear statement” argument, Respondents resort to federal constitutional arguments under the Elections Clause and Guarantee Clause. *See* Secretary Br. at 26–52; Intervenor Br. at 27–44. Tellingly, Respondents cite no case supporting either their Elections Clause argument or Guarantee Clause argument. For good reason: these arguments have been repeatedly and conclusively rejected by the United States Supreme Court.⁴

Respondents argue the Elections Clause precludes a referendum on redistricting. *See* Secretary Br. at 26–42; Intervenor Br. at 27–39. That might be what they hope, but more than a century of Supreme Court jurisprudence says otherwise. *See State ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916); *Smiley v. Holm*, 285 U.S. 355 (1932); *Ariz. State Leg. v. Ariz. Indep. Redistricting*

⁴ The Secretary seems to recognize this because he has relegated his Guarantee Clause argument to a mere footnote. Secretary Br. at 52 n.13.

Comm'n, 576 U.S. 787 (2015); *Moore*, 600 U.S. 1. Respondents offer no case to the contrary—because there isn't one.

The Guarantee Clause argument is similarly impuissant. Respondents contend a referendum on redistricting is incompatible with a republican form of government. See Secretary Br. at 52 n.13; Intervenor Br. at 42–44. The Supreme Court rejected this exact argument over 100 years ago. *Hildebrant* 241 U.S. at 569-70. “[N]o particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated.” *Minor v. Happersett*, 88 U.S. 162, 175 (1874). Respondents cannot identify a single case invalidating anything under the Guarantee Clause. This is conclusive (even setting aside that this argument is nonjusticiable).⁵

II. **The Only “Remedy” Necessary in a Section 116.200 Action is a Determination that the Referendum is Sufficient and Reversal of the Secretary’s Contrary Conclusion**

The sufficiency issue is easily resolved. Article III is plain and unambiguous. HB 1 is an act of the General Assembly and is subject to the referendum. There is not, and has never been, *any* substance to Respondents’ arguments.

⁵ Respondents complain about the ability of “3.3%” of the population to suspend legislation. Secretary Br. at 50-53; Intervenor Br. at 2. That is a policy argument, not a legal argument. And it has nothing to do with a “republican form of government.” The People, acting through their representatives (*i.e.*, the Framers at the Convention) *chose* to structure the referendum power that way. There is nothing anti-democratic about that.

So, Respondents hope the Court will overlook the law by focusing on “remedy.” But the remedy for a Section 116.200 action is unequivocal: “If the court decides the petition is sufficient, the secretary of state shall certify it as sufficient and attach a copy of the judgment.” § 116.200.2, RSMo. And *Maggard* established the consequence of a sufficiency determination: “If [] the December 9 referendum petition filing is ultimately determined to be sufficient,” then “HB 1 was referred to the people as of December 9 and can only go into effect when approved by a majority of the votes cast thereon.” 733 S.W.3d at 420.

The only remedy Plaintiff seeks is an injunction to enforce Section 52(b) and this Court’s decision in *Maggard*. Respondents’ attempt to transform this action into an open forum for addressing hypothetical questions about election administration—questions only the *Secretary* raised and that Missouri law already answers—is beyond the scope of this straightforward statutory action.

A. The Only Issue in a Section 116.200 Action is the Sufficiency of a Referendum Petition

As explained in Plaintiff’s opening brief, the scope of a Section 116.200 action is limited to sufficiency. *Mo. Elec Coops. v. Kander*, 497 S.W.3d 905, 920 (Mo. App. 2016); *Ketcham v. Blunt*, 847 S.W.2d 824, 831 (Mo. App. 1992). Respondents do not seriously dispute this. Nonetheless, they focus on Plaintiff’s request for an injunction ordering the Secretary to cease using HB 1, as if this opened a Pandora’s Box authorizing speculation about implications for the general election. It does not.

Section 116.200 specifically contemplates injunctive relief to enforce the court's mandate. See § 116.200.2, RSMo. If the petition is sufficient, the court says so and the Secretary "shall certify" it as such; if it is insufficient, the court "shall enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot."⁶ True, the legislature probably did not envision state officials imprudently enforcing an act for which a facially sufficient referendum petition supported by hundreds of thousands of signatures had been submitted—or continuing to enforce it after local officials confirmed those signatures are valid and this Court confirmed a sufficient petition would suspend the bill.

But the plain language of the statute offers only two options: certification or not. Indeed, this Court made clear in *Maggard* what a sufficiency determination means for the enforcement of HB 1. Asking the trial court to recognize that does not transform this action into a speculative free-for-all. The Secretary has announced he does not intend to follow the law as explained in *Maggard* and it falls to the courts to set him straight.

B. Plaintiff's Request for an Injunction Flows Directly from Article III,

Section 52(b) and *Maggard*

"Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise." Mo. Const. art. III, § 52(b).

⁶ The Circuit Court's judgment neither deemed the referendum insufficient nor issued an injunction.

This Court explained what that means in *Maggard*: if the referendum petition is sufficient, then HB 1 was suspended “as of December 9,” before going into effect, and cannot take effect unless and until approved by voters. 733 S.W.3d at 419–20. This has been well settled for a century. *Westhues*, 224 S.W. at 334-36.

Maggard explained what a sufficiency determination would mean. Plaintiff could have omitted his request for injunctive relief because sufficiency means HB 1 is not, and never was, in legal effect. But Plaintiff *did* ask for an injunction as security, given that the Secretary’s certificate explicitly conveyed his belief that HB 1 should still be used even if it is not the law. D27:P7-10.

“[P]ublic officials [must] comply with mandatory statutory provisions, and such requirements may not be avoided by a compliance only when the official sees fit to comply.” *Fulton v. City of Lockwood*, 269 S.W.2d 1, 8 (Mo. 1954). This is no less true of constitutional requirements. The Court should reverse the decision below, conclude the referendum is sufficient, order the Secretary to place it on the ballot, and order him to stop treating HB 1 as if it is the law. He is responsible for running the election and must follow the law as interpreted by this Court.

C. Respondents Improperly Seek to Relitigate *Maggard*

While the Secretary tries to dance around it, he undoubtedly seeks to relitigate *Maggard*. He insists *Maggard* concluded referendum petitions *do not* suspend legislation. Secretary Br. at 51. He and the Attorney General began

making this claim within days of *Maggard* being decided. *See von Glahn v. Hanaway*, Case No. 26AC-CC00248, Pet., Ex. 22; Pet. Ex. 23.

More generally, Respondents insist that because the Secretary waited until the very last hour to issue his certificate—after the primary—*Maggard*’s conclusion concerning sufficiency goes out the window and we must now engage in extensive “remedy” analysis. *See* Secretary Br. at 54-55; Intervenor Br. at 41-43. But *Maggard* foreshadowed these contentions’ fate, citing *State ex rel. Nixon v. Blunt*, 135 S.W.3d 416, 420 (Mo. banc 2004), for the proposition that “the secretary cannot exercise official duties in a manner to frustrate constitutional provisions.” This proposition is basic and well established.

The Court should see Respondents’ arguments for what they are: a transparent attempt to defy this Court’s unanimous and unambiguous holding in *Maggard* as to the consequence of a sufficiency determination. The Secretary was well-aware of these consequences when he chose to delay a sufficiency determination until after the primary. He cannot escape the mandates of Article III, Section 52(b)—or this Court’s holding from four months ago—by trying to run out the clock in the hopes of checkmating the power of the people to refer a bill to the people by referendum and this Court with a host of new “remedy” questions well beyond what Section 116.200 authorizes.

III. **The Trial Court Erred by Deeming the Referendum Insufficient Based on Alleged Difficulties with Running the General Election**

A. **Alleged Issues Created by the Secretary's Delay Do Not Affect Sufficiency**

As discussed in the previous Section, the only issue in a Section 116.200 action is sufficiency. That turns on whether this referendum petition satisfies the constitutional and statutory requirements for referenda. Issues allegedly created by the Secretary's decision about *when* to make his decision on such matters have nothing to do with whether the referendum petition itself is sufficient.

Consequently, it was error for the trial court to even address whether a new primary would be needed, and what impact Article I, Section 2; the Equal Protection Clause; or UOCAVA might have on that question. Nonetheless, if the Court chooses to reach those issues, Respondents' analysis lacks *any* legal or factual support. They are simply wrong.

B. **Respondents Cannot Cite Any Caselaw or Evidence Supporting Their Theory that Using the 2022 Districts for the General Election Would Violate Article I, Section 2 or the Equal Protection Clause**

There is no case anywhere finding that using lawfully enacted congressional districts different from those used for the primary creates any problem under Article I, Section 2 or the Equal Protection Clause. Respondents cite none. *See* Secretary Br. at 56–60; Intervenor Br. at 47–52. As to Article I, Section 2, Respondents rely on two cases—*United States v. Classic*, 313 U.S. 299

(1941), and *Smith v. Allwright*, 321 U.S. 649 (1944)—neither of which had anything to do with changing district boundaries after a primary. The same is true of *Gray v. Sanders*, 372 U.S. 368 (1963), the only case cited for their equal protection argument.

There is also no evidence from which this Court could conclude any constitutional violation occurred. Evidence is required for Equal Protection Clause and voting-right claims. *See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977); *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607–09 (8th Cir. 2020) (discussing *Anderson-Burdick* framework). Respondents’ speculation about what “could” happen is not evidence. *See* Secretary Br. at 57–58; Intervenor Br. at 50–51.

For example, HB 1 made no changes to the boundaries of Congressional Districts 7 and 8, so there is no conceivable issue with using the results of the primaries in those districts. Minimal changes were made to other districts. And Respondents offered no evidence to support their assertions.

C. UOCAVA Has Nothing to Do with What Districts Are Used

Respondents claim UOCAVA prohibits use of the lawfully enacted 2022 districts in November. *See* Secretary Br. at 55–56; Intervenor Br. at 46–47.

UOCAVA says nothing of the sort. As all seem to agree, UOCAVA imposes requirements on the states for when ballots must be mailed to Americans overseas and in the military. *See* 52 U.S.C. § 20302(a)(8). No one is contending that it will be a problem for Missouri to meet these deadlines for the November

election, whether it is conducted under the 2022 districts or HB 1. Because it won't be. Respondents instead contend it would be impossible to run a new primary and meet UOCAVA's deadlines. *See* Secretary Br. at 55–56; Intervenor Br. at 46–47. Since no one is asking to re-do the primary, this is irrelevant.⁷

IV. To the Extent this Court Needs or Wishes to Discuss the Consequences for the General Election, There Are Multiple Options

A. Plaintiff's Position Has Always Been that the General Election Should be Run Using the Law that Was Enacted in 2022 and Respondents Have Offered No Authority Prohibiting Their Use Without a New Primary

As explained, the remedy in a Section 116.200 action is reversal of the Secretary's decision and a court order certifying the referendum as sufficient. *Maggard* tells us the consequences of such decision: HB 1 was suspended as of December 9 and never went into effect. Respondents cite no legal authority

⁷ Even if a new primary were required, UOCAVA has a waiver process. *See* 52 U.S.C. § 20302(g)(2)(B)(ii). Intervenor's argue a waiver would be impossible, but since the provision has been in force, the federal government has granted approximately half of all waiver requests. *See* <https://www.fvap.gov/eo/waivers>; <https://www.justice.gov/archives/opa/pr/fact-sheet-move-act>; https://ovi.csg.org/wp-content/uploads/2025/05/OVI_State_Primaries_V3.pdf. And, of course, Intervenor's offered no *evidence* as to why Ohio or any other state's request was rejected.

supporting the notion that the Secretary can, by fiat, just proceed as if HB 1 is a law.

Plaintiff's position has always been that HB 1 is not in effect and cannot be used for the general election. He requested an injunction barring its use pending a vote. D2:P5-6, 8. In the letter accompanying the Secretary's certificate of insufficiency, the Attorney General engaged in extensive, irrelevant "remedy" analysis, claiming the lawful districts could not be used without a new primary. D27:P9-10. The day before trial, the Secretary and Intervenors filed more than 100 pages of briefing addressing these theories. D60-61.

Within the time constraints the Secretary's belated decision on sufficiency imposed, Plaintiff responded by explaining that no one had asked for new primaries; *Maggard* already supplies the answer; the Attorney General's legal analysis is wrong; and the 2022 districts can, must, and should be used. D62:P31-34. As explained in Section III, the Secretary and Intervenors *still*—despite extensive briefing—have not cited a single case supporting their contentions.

B. The Remedy Supplied by Chapter 115 is Not "Plaintiff's Remedy" and Plaintiff Did Not Waive Any Argument on this Subject

Despite Respondents' failure to offer any legal or factual support for their arguments, the trial court went beyond the bounds of Section 116.200 and addressed both the alleged illegality and feasibility of using the lawfully enacted districts in November. D63:P26-37. Since the trial court erroneously went down that path, Plaintiff explained in his opening brief why the trial court's analysis

was wrong, and that Missouri law already addresses what to do about any perceived problems with use of the nominees produced by the August primaries at the general election. Pl. Br. at 81-88.

Now, the Secretary argues Plaintiff somehow “waived” his right to “seek” such a remedy.⁸ Secretary Br. at 60-63. That is wrong. Plaintiff did not ask to declare the primary elections invalid. In fact, the Board of State Canvassers did not even certify the election results until the day Plaintiff filed his opening brief.⁹ At present, *no one* has challenged those results. Such a challenge may never come to pass.

What Plaintiff’s opening brief is doing is responding to the trial court’s erroneous conclusion that it would be either unlawful or infeasible to conduct the general election under the *only* lawful districts (enacted in 2022). If anything, the trial court’s speculation on this subject only underscores why Section 116.200 actions must be confined to sufficiency, *Ketcham*, 847 S.W.2d at 831; *Mo. Elec. Coops.*, 497 S.W.3d at 920, and why state officials must heed this Court’s warning not to delay questions that can be answered early, *Coleman v. Ashcroft*, 696 S.W.3d 347, 351-55, 371-72 (Mo. banc 2024). The Secretary delayed arguments

⁸ The Secretary cites the undersigned’s statements at trial as if they are some sort of damning admission. See Secretary Br. at 61 (citing Tr. 29:1-7). They are not. Plaintiff’s position at trial was the same as it is now: Missouri can proceed to the election using the candidates produced by the August primaries, but if those results need to be aside, Missouri law supplies a process to replace the candidates.

⁹ <https://enr.sos.mo.gov/>

fully developed in October 2025 until August 4, 2026, knowing full well a September 8 deadline was looming. The Secretary's decision to delay neither transforms the scope of these proceedings nor lends new-found credibility to Respondents' poorly developed arguments.

Regardless of how to deal with the Secretary's decision to conduct a primary using congressional districts that have never been the law, the answer is not to simply throw up our hands and reward the Secretary's decision to "exercise [his] official duties in a manner to frustrate constitutional provisions." *Maggard*, 733 S.W.3d at 419. As the opening brief pointed out, one option is to declare all candidates "nominated" in the primary election as "ineligible to hold office or not entitled to be voted on for office." § 115.013(7), RSMo.

C. Missouri Law Provides a Remedy to the Secretary's Concerns about Election Administration

As Plaintiff explained, if this Court needs to deal with the primary, Missouri has a process for replacing primary nominees. Pl. Br. at 81-88. The Secretary insists the primary "nominees" *must* be the candidates at the general election. Secretary Br. at 61-63. They can be. But they do not have to be. Despite quoting it, he ignores that Chapter 115 explicitly says "such candidate shall be placed on the official ballot at the general election *unless he is removed or replaced as provided by law*." § 115.343, RSMo (emphasis added). This tracks the Constitution. Mo. Const. art. VIII, § 24. Missouri law has long recognized that sometimes primary nominees must be replaced.

Such replacement may occur if the nominee dies, is “disqualified,” or withdraws. “Disqualified” includes “a determination that a candidate is ineligible to hold office or not entitled to be voted on for office.” § 115.013(7), RSMo. At the moment, the fact is that the Secretary certified the August primary election results and therefore Missouri has nominees to run in the general election in each congressional district. The Secretary seems to *agree* that “the nominees originally selected would remain qualified to compete in the general election—even if the HB 1 map were somehow deemed unconstitutional.” Secretary Br. at 63. So, it is unclear what he believes the problem is.

Federal law says candidates must be elected from districts “established by law.” 2 U.S.C. § 2c. That will happen in November ***only if*** the lawfully enacted districts are used—Missouri cannot use the HB 1 districts because they are not established by law. Fortunately, the chapter 115 procedure could be used to avoid any conflict with federal law that would result from the Secretary’s use of invalid districts: party nominating committees can nominate new candidates.

The point is this: Respondents’ “remedy” arguments go far beyond Section 116.200’s scope. The trial court should never have reached them. Even if this Court does, they are meritless for the reasons discussed in Section III. But *if* Respondents are right that Missouri cannot use the lawfully enacted districts in November, then 2 U.S.C. § 2c poses a significant problem. Plaintiff says follow the law and use the lawful districts. Respondents say use districts that have never been law because the primary “results” pose some problem. Chapter 115 avoids

any such problem by providing a state-law process to address the Secretary's use of non-law districts for the primary.

D. MCVR is Not an Impediment to Enforcement of the Constitution and Maggard

Respondents also hope this Court will ignore the law because, they say, MCVR is “locked” and the November election cannot be held using the lawful districts. *See* Secretary Br. at 66–68; Intervenor Br. at 58–59.

The circuit court incorporated that argument into its judgment even though the only evidence on this was an affidavit from a formal election official that MCVR was “locked” in one local election authority due to a unique set of elections there. That evidence did not support the finding that, whatever the circumstances are in part of Jackson County, the law must be ignored. As amici current election officials (from two counties and one each from both major parties) explain, the 2022 districts already exist in MCVR and voters are “still assigned to both districts.” Lightfoot & Lennon Amicus Br. at 5–6.

Local election authorities “do not need to redefine or edit the information in MCVR” because “[e]very local election authority completed the process of redistricting in May 2026” and “had the choice of selecting either the 2022 or HB 1 congressional district.” *Id.* at 6. That choice “is still available for the November 3, 2026 general election.” *Id.* MCVR’s “locking” function “has no impact on local election authorities’ ability to set up their November 3, 2026 general election using whichever congressional map this Court decides.” *Id.*

Even if that is wrong, it is no reason to ignore the law. If MCVR being “locked” causes some problem complying with the law, the Secretary has the key and should *unlock* it. MCVR is within the Secretary’s control. See 15 CSR 30-15.030. If there were any genuine issue with MCVR, a decision finding the referendum petition sufficient would resolve it—the Secretary would simply direct local election authorities to select the 2022 districts that are already in the system. D43:P3–4.

The Secretary chose to offer an affidavit from a former election official rather than present live testimony from someone in his own office who actually administers MCVR. The “impossibility” finding (to which this Court owes *no* deference for the reasons previously discussed) is contradicted by current election officials with firsthand knowledge of the system. The MCVR argument is simply a distraction.

V. To the Extent Equitable Principles Should Factor into the Analysis, the Equities Overwhelmingly Favor Plaintiff

For the reasons discussed above and in Plaintiff’s opening brief, there is no need to accept the Secretary’s plea to equity—either to resolve this case or address the consequences of his delayed certification. Regardless, if resort to equity is necessary, Respondents’ analysis is tortured and wrong.

They rely on the “*Purcell* Principle” and *Hadley*. As Plaintiff has explained, *Purcell* has no application to state courts enforcing state law and *Hadley* (cited once since being decided) is factually distinct and irrelevant. More

fundamentally, though, Respondents act like *Purcell* and *Hadley* **mandate** a particular course of action. This completely misunderstands equitable analysis.

Courts acting in equity “seek to do complete justice and determine and adjust the equities of all parties.” *Jones v. McGonigle*, 37 S.W.2d 892, 895 (Mo. 1931). Equity “preserves its flexibility and expansiveness in order to meet the requirements of every case,” *Cannon v. Bingman*, 383 S.W.2d 169, 174 (Mo. App. 1964), and seeks “to relieve hardships which, from time to time, arise from a hard and fast adherence to more absolute legal rules,” *Holland v. Florida*, 560 U.S. 631, 650 (2010). Respondents turn these principles on their head.

The Secretary also ignores his unclean hands. He insists Plaintiff has “provide[d] zero evidence to support this audacious claim.” Secretary Br. at 73. Really? The Secretary and Attorney General made their scheme explicit: delay issuing a certificate because “delay works in our favor.” D38:P4. By that, they meant avoid an unfavorable ruling on their meritless constitutional arguments by invoking *Purcell*. These arguments were known and fully developed in October 2025—a federal court already concluded as much. D30:P8. The Secretary offers no good-faith basis for waiting until August 4 to issue his certificate.

The Secretary insists his hands are clean because he “simply abided by Section 116.150’s explicit statutory deadline.” Secretary Br. at 73-74. Again, he does not understand equity. Unclean hands seeks “to prevent *opportunistic* behavior,” *Purcell v. Cape Girardeau Cnty. Comm’n*, 322 S.W.3d 522, 524 (Mo. banc 2010)—not “illegal” behavior. “He who has acted in bad faith, resorted to

trickery and deception, or been guilty of fraud, injustice, or unfairness will appeal in vain to a court of conscience, even though in his wrongdoing he may have kept himself strictly ‘within the law.’” *Monsanto Co. v. Rohm & Haas Co.*, 456 F.2d 592, 599 n.11 (3d Cir. 1972); see also *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933); *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815 (1945).

Respondents do not engage with the “general equitable principles” or *Milligan* factors Plaintiff addressed in his opening brief. They fail to recognize the constitutional gravity of allowing the Secretary to implement congressional districts that have *never* been law, in open defiance of the people’s reserved referendum right. They simply insist Tammy Brown’s affidavit shows it is “impossible” to use the 2022 districts. But as discussed above, this Court owes no deference to that finding; the affidavit is irrelevant and suspect; and *even if* true, the 2022 districts are *already in* MCVR and ready to use.

Put simply, if the Secretary wants to invoke equity, he must do equity. He must demonstrate, under all the facts and circumstances, that this Court should allow him to run roughshod over the People’s constitutional rights. He does not come close. “[T]he secretary cannot exercise official duties in a manner to frustrate constitutional provisions.” *Maggard*, 733 S.W.3d at 419. The equities overwhelmingly favor Plaintiff and the rights of Missouri citizens.

VI. As the Briefing in this Court Illustrates, It Was Error to Permit the Republican Committees to Intervene

Plaintiff briefed the intervention issue extensively in his opening brief and need not say much more here. Intervenors' arguments to the contrary notwithstanding, this Court need do nothing but compare the Secretary's and Intervenors' briefs to this Court. If one were trying to draw a Venn diagram comparing their arguments, it would be a circle. *See* D60; D61. Intervenors lack a unique interest and are not adequately represented by the Secretary. *See* Intervenor Br. at 60–72.

CONCLUSION

The Court should reverse the Secretary's decision, declare the referendum petition sufficient, and enter the judgment the trial court should have entered. Rule 84.14.

Respectfully submitted

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CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document and the appendix were served on counsel of record through the Court's electronic notice system on August 25, 2026.

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 7,354. The font is Georgia 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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