IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

TERRENCE WISE, et al.	)	
	)	
Plaintiffs,	)	
	)	Case No. 2516-CV29597
v.	)	
	)	
STATE OF MISSOURI, et al.	)	
	)	
Defendants.	)	

SUGGESTIONS IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Pursuant to Rules 55.27(a)(1) and (a)(9), Defendants—the State and Secretary of State Denny Hoskins (State Defendants)—respectfully move for this Court to dismiss each claim in Plaintiffs' Petition. In the alternative, pursuant to Rule 51.045(a), State Defendants respectfully moves for this Court to transfer each claim in Plaintiffs' Petition to Cole County.

In further support of the motion, Defendants state as follows.

INTRODUCTION

Plaintiffs disagree with the Missouri General Assembly's decision to implement a new congressional map. Regardless of the merits of Plaintiffs' concerns, there are three independent problems with their Petition which require this Petition either be dismissed or transferred to Cole County. *First*, Plaintiffs lack standing because their alleged injuries are not yet ripe. They challenge the redistricting bill, which has not been enacted into law because the Governor has not signed it. *Second*, Plaintiffs have filed their suit in the wrong venue and this Court lacks jurisdiction over this Petition. Instead, the Missouri

Constitution vests exclusive jurisdiction over redistricting cases in Cole County. *Third*, Plaintiffs' Count I duplicates a previously-filed suit in Cole County. In order to avoid inconsistent judgments and to use judicial resources efficiently, the twin aims of abatement, the Court should dismiss Count I or stay proceedings on Count I. *Fourth*, named defendants, the Board of Election Commissioners for Jackson County and Kansas City, have no ability to grant Plaintiffs' requested relief and must be dismissed. Without these defendants, the proper venue by statute is Cole County to where this Petition should be transferred.

FACTUAL BACKGROUND

Plaintiffs are all residents of Kansas City who all resided in Congressional District 5 under Missouri's 2022 Congressional Map. Pet. ¶¶ 10–14.

On August 29, 2025, Governor Kehoe announced a Proclamation convening an extraordinary session of the legislature under Article IV, Section 9 of the Missouri Constitution to "establish new congressional districts" and amend the "petition process." Proclamation (Aug. 29, 2025). The General Assembly convened on September 3.

Also on September 3, the National Association for the Advancement of Colored People Missouri State Conference filed a petition against the State of Missouri, Governor Kehoe, Attorney General Bailey, State Senator and President Pro Tem of the Senate O'Laughlin, and State Representative and Speaker of the House Patterson in Cole County. That lawsuit seeks declaratory and injunctive relief against the extraordinary session, and against any redistricting plan coming out of it. *See NAACP v. Kehoe*, Case No. 25AC-CC06724.

On September 12, the General Assembly passed a bill drawing new congressional districts. The bill has not been signed by the Governor, and thus is not yet the law.

At 9:31 A.M. that same day, another set of plaintiffs filed a suit against the redistricting plan, naming the Secretary of State as a defendant. *See Luther v. Hoskins*, Case No. 25AC-CC06964. Those plaintiffs argue that the General Assembly lacked the power to conduct mid-decade redistricting. Pet. at ¶¶ 34, 38–41, *Luther v. Hoskins*, Case No. 25AC-CC06964.

Plaintiffs filed this present action at 3:17 P.M. that same day. Plaintiffs seek to enjoin the implementation of the new federal congressional map based on various state constitutional claims. Plaintiffs also move for a preliminary injunction—but relied solely on their Count I merits theory that the Missouri Constitution prohibits mid-decade redistricting.

ARGUMENT

I. This case is not ripe as the bill has not been enacted into law.

The redistricting bill has not enacted into law, so this controversy is not ripe. A bill does not become law until it is either "approved by the governor" or passes into law if it is not "returned by the governor within the time limits prescribed." Mo. const. Art. III, § 31. Neither of those things has happened here, so there is no live controversy before this Court. *See Brown v. Morris*, 290 S.W.2d 160, 167 (Mo. banc 1956) ("Section 31 is a complete formula and its provision that a bill shall become a law when its terms are satisfied is positive and mandatory."). Therefore, "the proper course is to wait and see if the [bill] is

enacted before considering challenges to [the] [bill's] substance or effect." *City of Kansas City v. Kansas City Bd. of Election Comm'rs*, 505 S.W.3d 795, 799 (Mo. banc 2017).

II. Article III, Section 3(j) makes the Cole County Circuit Court the exclusive venue to challenge a redistricting plan.

Article III, Section 3(j) of the Missouri Constitution states that "[a]ny action expressly or implicitly alleging that a redistricting plan violates this Constitution . . . shall be filed in the circuit court of Cole County." The plain language of this constitutional provision strips this Court of jurisdiction. *See K.D.W. v. Missouri State Highway Patrol Records Repository*, --- S.W.3d ---, 2025 WL 2598705, at *3 (Mo. App. W.D. Sept. 9, 2025) ("When construing a constitutional provision . . . words are to be taken in accord with their fair intendment and their natural and ordinary meaning . . . ." (quoting *St. Louis Univ. v. Masonic Temple Ass'n of St. Louis*, 220 S.W.3d 721, 726 (Mo. banc 2007))).

Plaintiffs will likely observe that this provision is included in a section of the constitution discussing state legislative redistricting, and that a separate constitutional provision governs federal redistricting. But Article III, Section 3(j)'s plain language unambiguously reaches *all* redistricting cases, state or federal. Two textual clues bolster that point.

First, Section 3(j) requires "*any* action expressly or implicitly alleging that a redistricting plan violates the Constitution" be filed in Cole County. The word "any" is significant because it connotes a broad reach. As the U.S. Supreme Court has explained, "read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219

(2008) (quoting Webster's Third New International Dictionary 97 (1976)). For example, in *Ali*, the U.S. Supreme Court relied on the word "any" in refusing to give broad language a narrower reading in light of surrounding statutory language. *See id.* ("Notwithstanding the subsection's initial reference to federal drug trafficking crimes, we held that the expansive word 'any' and the absence of restrictive language left 'no basis in the text for limiting'" the operative phrase." (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997))). So too here. The Court should give "any action" its natural, broad meaning and hold that it refers to all redistricting plans.

Second, Section 3(j) refers to "a redistricting plan" to be filed in Cole County. The use of the indefinite article is significant. "A" indicates the noun in question is "undetermined, unidentified, or unspecified" while the definite article, "the," "refers to someone or something previously mentioned or clearly understood from the context." *Claspill v. State Div. of Econ. Dev.*, 809 S.W.2d 87, 89 (Mo. App. W.D. 1991) (quoting *Webster's Third New Int'l Dictionary* 1, 2368 (1971)). If the General Assembly had intended to limit this constitutional provision to challenges to a state legislative redistricting plan, it could easily referred to state-legislative redistricting plans. *See Hopkins v. State*, 802 S.W.2d 956, 957 (Mo. App. W.D. 1991) ("The use of the definite article 'the' . . . denotes the particular judgment or the particular sentence . . . .").

Therefore, Article III, Section 3(j) deprives this Court of jurisdiction over this Petition, and it must be dismissed.

III. Abatement also mandates that this Court dismiss or stay proceedings on Count I.

Count I of Plaintiffs' petition argues that the Missouri Constitution prohibits mid-decade redistricting. But they were not the first litigants to challenge the redistricting plan on that basis. Another set of plaintiffs filed the same claim in Cole County, but that lawsuit was filed first. Therefore, to promote judicial efficiency and to prevent the real danger of inconsistent judgments, the Court should dismiss Count I or, alternatively, stay proceedings on Count I.

Abatement, or the pending action doctrine, requires "that where a claim involves the same subject matter and parties as a previously filed action so that the same facts and issues are presented, resolution should occur through the prior action and the second suit should be dismissed." *Hampton v. Llewellyn*, 663 S.W.3d 899, 902–03 (Mo. App. W.D. 2023) (quoting *Planned Parenthood of Kansas v. Donnelly*, 298 S.W.3d 8, 12 (Mo. App. W.D. 2009)). "The court in which the claim is first filed acquires *exclusive* jurisdiction over the matter." *Id.* at 903 (quoting *Donnelly*, 298 S.W.3d at 12) (emphasis added).

Formally, the abatement doctrine requires two actions to "involve[] the same subject matter and parties." *Skaggs Chiropractic, LLC v. Ford*, 564 S.W.3d 633, 639 (Mo. App. S.D. 2018) (quoting *Golden Valley Disposal, LLC v. Jenkins Diesel Power, Inc.*, 183 S.W.3d 635, 641 (Mo. App. S.D. 2006)). But in practice, the two actions must only be "sufficiently similar" with the identity of the issues being more important than the identity of the parties. *State ex rel. Dunger v. Mummert*, 871 S.W.2d 609, 610 (Mo. App. E.D. 1994).

Count I of Plaintiffs' Petition is identical to the previously filed *Luther* petition. Therefore, the abatement doctrine applies, and this Court should dismiss this Petition.

A. The parties are "sufficiently similar."

Beginning with the identity of the parties, this requirement is "not inflexible." *State ex rel. City of Springfield, Through Bd. of Public Utilities v. Conley*, 760 S.W.2d 948, 950 (Mo. App. W.D. 1988). In all three petitions, Plaintiffs' claims do not depend on the identity of the party but instead press general claims shared by all petitioners. And any additional defendants in this petition are extraneous such that they are not truly different parties.

i. As Plaintiffs are nominal, they are "sufficiently similar."

Although this petition is facially brought by different plaintiffs than the previously filed petitions, plaintiffs in all three cases are merely nominal. Their claims are not specific to them but shared equally. In other words, plaintiffs bring the same claims and seek the same relief such that "[i]n either suit the interest of the beneficiaries is identically affected." *Mummert*, 871 S.W.2d at 610.

The plaintiffs' "sufficient[] similar[ity]" is confirmed through examining the purposes of abatement: (1) "to avoid confusion, inefficiency and unseemly turf battles between courts" and (2) "to avoid inherently conflicting judgments." *Kelly v. Kelly*, 245 S.W.3d 308, 313 (Mo. App. W.D. 2008) (internal quotation marks omitted). It is "axiomatic that inconsistent judgments cannot ordinarily exist together," *id.* at 315, and allowing this suit—the third filed—to proceed creates a "real danger" of such, *Harris v. Edgar*, 583 S.W.3d 497, 504 (Mo. App. S.D. 2019).

ii. Jackson County and Kansas City Boards of Election Commissioners are "extraneous" defendants.

In this Petition, Plaintiffs bring suit against the State, the Secretary of State, the Jackson County Board of Election Commissioners and its members, and the Kansas City Board of Election Commissioners and its members. Like with plaintiffs, the defendants in this Petition are not identical to either of the previously two filed petitions. Specifically, this Petition includes the Jackson County and Kansas City Boards of Election Commissioners. However, these defendants are "extraneous parties to the action" such that they "do not preclude dismissal" under abatement. *Skaggs Chiropractic*, 564 S.W.3d at 639 (quoting *Dunger*, 871 S.W.2d at 610) (cleaned up).

These election boards played no role in adopting the challenged map. They merely implement the districts enacted by the State and put in place by the Secretary of State. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 406 (Mo. banc 2024) (holding that "[c]omplete relief can be granted by the Secretary [of State]" in state redistricting challenge). So the inclusion of the Jackson County and Kansas City Boards "do not preclude dismissal": These parties are merely "extraneous." *Skaggs Chiropractic*, 564 S.W.3d at 639.

Excluding the "extraneous" election commissions, the defendants are the same in this petition as the previously filed petitions. The State, to the extent the State is a proper defendant, is also a named defendant in *Wise v. State*, Case No. 25AC-CC06724, and the Secretary of State is a named defendant in *Luther v. Hoskins*, Case No. 25AC-CC06964. Therefore, the parties are "sufficiently similar."

B. Petition raises identical and overlapping claims with a previously filed petition.

Turning to the claims, Count I is identical to the first-filed claim brought by the *Luther* litigants in Cole County. Both claims challenge the General Assembly's power to conduct mid-decade redistricting under Article III, Section 45 of the Missouri Constitution. The two cases thus raise the same "principles of law." *Hampton*, 663 S.W.3d at 904 (quoting *Donnelly*, 298 S.W.3d at 12). Dismissal of Count I is therefore warranted.

Alternatively, the Court should stay proceedings on Count I. If the Court proceeds to adjudicate Count I, two separate circuit courts will be simultaneously considering the exact same claim, thus wasting judicial resources. There is also a real risk that the two courts reach conflicting judgments—which is exactly what abatement doctrine is designed to prevent. *See Kelly*, 245 S.W.3d at 313. Staying proceedings on Count I would prevent that risk.

IV. This Court should dismiss the Election Commissions as improper defendants and transfer the Petition to Cole County.

Named as nominal defendants, the Board of Election Commissioners of Jackson County and Kansas City cannot offer any of Plaintiffs' requested relief, so the Court should dismiss them as defendants. With these improper defendants dismissed, venue does not exist in this Court. The appropriate course is thus to transfer this case to Cole County, where venue lies. Rule 51.045.

Plaintiffs must prove standing to sue each particular named defendant. *See, e.g.*, *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) ("[P]laintiffs must demonstrate standing for each claim that they press against each defendant, and for each form of relief they seek." (cleaned up)). Particularly relevant here, Plaintiffs must prove each named defendant

caused their injury and that each named defendant can *redress* their injury if the Court so orders. *St. Louis Cnty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014).

Here, Plaintiffs cannot prove causation or redressability with respect to the Jackson County and Kansas City election boards. To start, those boards played no role in *causing* Plaintiffs' alleged injuries. Those boards did not draw the challenged maps—the General Assembly did. And it is the Secretary of State who implements the districts enacted by the General Assembly. *See* Mo. Rev. Stat. §§ 115.387, 115.401; *Faatz*, 685 S.W.3d at 406 (holding that "[c]omplete relief can be granted by the Secretary [of State]" in state redistricting challenge). As Plaintiffs acknowledge, the commissions' only involvement \ in redistricting is that they will be required to "assign[]" a precinct to different congressional districts and "to reconfigure their precincts." Pet. ¶¶ 121, 165. These are ministerial acts which the election board are required to "perform[] 'upon a given state of facts, in a prescribed manner, in obedience to the mandate of the legal authority.'" *Bethman v. Faith*, 462 S.W.3d 895, 905 (Mo. App. E.D. 2015) (quoting *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278, 284 (Mo. banc 2000)); *see also State ex rel. Wulfing v. Mooney*, 247 S.W.2d 722, 726 (Mo. banc 1952) ("[T]he board of election commissioners were complying with the applicable statutes and were therefore acting in a ministerial capacity.").

Likewise, Plaintiffs' claimed injuries cannot be redressed by court orders against the board defendants. As Plaintiffs acknowledge, those boards only have duties within their respective jurisdictions. Pet. ¶¶ 20, 27. Yet Plaintiffs ask only for statewide remedies. Pet. ¶ 45. The election boards, however, cannot be bound statewide because they only have

power within their local jurisdictions. § 115.021. Therefore, Plaintiffs' injuries are not redressible by the election boards, and Plaintiffs thus lack standing to sue them.

Because Plaintiffs lack standing to sue the Jackson County and Kansas City election boards, the Court must dismiss them as defendants. With those litigants removed from the case, there is no basis for venue in Jackson County. § 508.010; *see also State ex rel. Bank of Am. N.A. v. Kanatzasr*, 413 S.W.3d 22, 26–27 (Mo. App. W.D. 2013) ("Venue in Missouri is determined solely by statute." (quoting *State ex rel. McDonald's Corp. v. Midkiff*, 226 S.W.3d 119, 122 (Mo. banc 2007))). Under these circumstances, pursuant to Rule 51.045(a) this Court should transfer this Petition to Cole County. *See State ex rel. Toberman v. Cook*, 281 S.W.2d 777, 780 (Mo. banc 1955) ("[T]he venue of actions against executive heads of departments of state government lies generally in the county in which their offices are located and their principal official duties are performed.").

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss, or in the alternative, transfer the Petition to the circuit court in Cole County.

September 19, 2025

Respectfully submitted,

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Counsel for Defendants State of Missouri and Denny Hoskins, in his official capacity as Secretary of State for the State of Missouri.

CERTIFICATE OF SERVICE

I hereby certify that on the September 19, 2025 the foregoing Motion was filed electronically through the Court's electronic filing system and thereby served electronically on counsel for all parties.

//s/ Louis J. Capozzi