

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

TERRENCE WISE, *et al.*,

Plaintiffs,

v.

Case No. 2516-CV29597

STATE OF MISSOURI, *et al.*,

Defendants.

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS OR
IN THE ALTERNATIVE FOR TRANSFER OF VENUE**

As previously established, this Court lacks jurisdiction over this case. *See* Defs. Sugg. Mot. to Dismiss at 4–5. In defense of their blatant forum-shopping, Plaintiffs hyperbolically suggest the State is trying to prevent adjudication of its constitutional claims. Pls. Sugg. Opp. at 2. That is simply not true. In a first-filed, parallel case filed in Cole County, the State has *not* moved to dismiss because it agrees jurisdiction and venue are proper in that court. Indeed, a trial is already scheduled for November 4, 2025. Order Sept. 24, 2025, *Luther v. Hoskins*, 25AC-CC06964.

Plaintiffs could have—and still can—seek speedy adjudication of their claims in Cole County. Instead, they urge this Court to engage in inefficient, duplicative proceedings. But this Court cannot do so—for several reasons.

First, the Cole County Circuit Court is the exclusive venue to bring challenges to redistricting plans. Plaintiffs concede this is the rule for state redistricting, but

the Missouri Constitution's plain text makes clear the same rule governs challenges to federal redistricting plans. *See* Mo. Const. art. III, §§ 3(j), 7(i).

Second, the abatement doctrine counsels this Court to dismiss or stay proceedings on Count I. Petitioners seek identical relief as an earlier filed suit, creating a serious risk of inconsistent judgments. Plaintiffs suggest that these issues need to percolate, but this is just a ploy to take multiple bites at the proverbial apple and potentially generate inconsistent judgments. If, as Plaintiffs claim, there is a need for immediate relief, then transferring this case to allow consolidation with the previously filed suit—one for which trial has already been scheduled for November 4, 2025—will allow for the most timely relief.

Third, the election boards of Jackson County and Kansas City are not proper defendants. They played no role in enacting the map that plaintiffs challenge. At the same time, complete relief can be awarded through a judgment against the Secretary of State. The Secretary, however, can be sued only in Cole County, and that is consequently where this case must be heard.

ARGUMENT

I. Cole County Circuit Court is the exclusive venue to challenge a redistricting plan.

As previously explained, the Missouri Constitution expressly sets venue for *all* redistricting cases in Cole County. *See* Defs. Sugg. Mot. to Dismiss at 4–5. The text could not be clearer: “Any action expressly or implicitly alleging that a redistricting plan violates this Constitution . . . shall be filed in the circuit court of Cole County.” Mo. Const. art. III, §§ 3(i), 7(j). Plaintiffs are bringing an “action expressly . . .

alleging that a redistricting plan violates the Constitution,” and so this suit must be filed in Cole County. *Id.*

In response, Plaintiffs observe that this language is found in parts of the Missouri Constitution governing state legislative districting, and that the lack of parallel language in § 45 must mean that such a restriction does not exist for challenges to congressional maps. *See* Pls. Sugg. Opp. at 3–6.

This logic fails. The *default* constitutional venue rule requires congressional redistricting challenges be brought in Cole County. “For lawsuits filed against state officials, venue is appropriate in the county where their offices are located and their main duties are performed.” *Talley v. Mo. Dept. of Corrections*, 210 S.W.3d 212, 215 (Mo. App. W.D. 2006) (citing *State ex rel. Mitchell v. Dalton*, 831 S.W.2d 942, 946 (Mo. App. E.D. 1992)) (explaining how a suit against the Missouri Department of Corrections was only proper in Cole County); *see also* Mo. Const. art. IV, § 20 (“The executive and administrative officials and departments herein provided for shall establish their principal offices and keep all necessary public records, books and papers at the City of Jefferson.”). This constitutional rule controls Article III, § 45.

Moreover, given that the Missouri Constitution *generally* vests exclusive jurisdiction in the Cole County Circuit Court over lawsuits against state officials, the inclusion of such explicit language in Article III, § 45 was unnecessary, unlike for Article III, §§ 3 and 7. Under §§ 3 and 7, different bodies may be responsible for completing state legislative redistricting plans. House and senate independent bipartisan citizens commissions, each consisting of five members representing

multiple legislative districts, are charged with redistricting the state house and senate districts. *Id.* §§ 3(c)–(f), 7(a)–(e). But if they fail to redistrict within six months, a six-member judicial commission composed of judges from the appellate courts of the State is then tasked with redistricting. *Id.* §§ 3(g), 7(f). Thus, because these commissions’ members are not necessarily statewide officials for which venue in Cole County is already mandated, the inclusion of the Cole County venue provision in the sections governing state legislative districting was truly necessary to ensure that *all* redistricting litigation would begin in Cole County.

Congressional redistricting is simpler because the only proper defendants—*i.e.*, those who could plausibly be said to cause any injury—are deemed to reside in Cole County. The General Assembly—to the exclusion of other bodies—divides the State into congressional districts. Mo. Const. art. III, § 45. The Governor then signs the redistricting bill into law, and the Secretary of State executes. The Secretary of State is a “head[] of [an] executive department[] of state government and [his] office[] [is] located in and [his] principal official duties are required to be performed at the State Capitol in Jefferson City.” *State ex rel. Toberman v. Cook*, 281 S.W.2d 777, 780 (Mo. banc 1955) (taking judicial notice); *see also* Mo. Const. art. IV, § 20 (“The executive and administrative officials and departments herein provided for shall establish their principal offices and keep all necessary public records, books and papers at the City of Jefferson.”). So the proper venue for any suit against him for his official acts lies in Cole County. *State ex rel. Toberman*, 281 S.W.2d at 780 (“[U]nless otherwise provided by statute, the 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.” (citing *State ex rel. Gardner v. Hall*, 221 S.W. 708, 711–12 (Mo. banc 1920))).

The Court should dismiss this case or, alternatively, transfer it to Cole County—to comply with the Missouri Constitution’s express choice to channel all redistricting cases to Cole County.

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

Even if this Court does not transfer venue on constitutional grounds, the abatement doctrine requires that this Court either transfer, dismiss Count I, or at least stay this litigation. Count I of Plaintiffs’ Petition argues that the Missouri Constitution prohibits mid-decade congressional redistricting. The *Luther* plaintiffs, filing first and filing in Cole County, argue the exact same point and seek analogous injunctive relief. The State agrees venue is proper there, and the *Luther* court has already scheduled trial for November 4, 2025. This is a matter of pure constitutional law, and interpretation of Article III, § 45 carries substantial consequences of Missouri law. Due to the lack of fact inquiry, the threat of incompatible opinions, and the time-sensitive nature of the relief sought, this Court should abate this case—either through dismissal of Count I without prejudice or venue transfer. Equitable factors also bolster abatement as the Plaintiffs will suffer no irreparable harm from resolution of their claims in Cole County. Furthermore, burden on the courts and the State will be lessened, and a single court can resolve this important question of Missouri constitutional law.

Despite Plaintiffs' assertions to the contrary, *Luther* was filed first. See Pet., *Luther v. Hoskins*, 25AC-CC06964 (filed electronically at 9:31 A.M. on Sept. 12, 2025); Pet., *Wise v. State*, 2516-CV29597 (filed electronically at 3:17 P.M. on Sept. 12, 2025). And in Missouri, "[t]he court in which the claim is first filed acquires *exclusive* jurisdiction." *Hampton v. Llewellyn*, 663 S.W.3d 899, 903 (Mo. App. W.D. 2023) (quoting *Planned Parenthood of Kan. v. Donnelly*, 298 S.W.3d 8, 12 (Mo. App. W.D. 2009)) (emphasis added). As a matter of comity and judicial efficiency, all factors suggest that this Court should exercise its discretion to abate. And though abatement is discretionary, courts must address abatement *sua sponte*, if not raised. *Kelly v. Kelly*, 245 S.W.3d 308, 314 (Mo. App. W.D. 2008).

Count I of Plaintiffs' Petition is identical to the previously *Luther* petition. The abatement doctrine applies, and this Court should transfer, dismiss Count I, or, at a minimum, stay this Petition pending resolution of *Luther*.

1. Plaintiffs are "sufficiently similar."

Between *Luther* and this case, the Plaintiffs are functionally indistinguishable. Their claims do not depend on the identity of the party. Plaintiffs contend that the parties are not "sufficiently similar." Pls. Sugg. Opp. at 8. However, an examination of the *Luther* plaintiffs against the Plaintiff parties in this case reveals that they are *functionally identical*:

(i) *Luther* Plaintiffs.

Luther: Plaintiff Luther (CD 3 to CD 5); Plaintiff Davis (CD 5 to CD 4); Plaintiff Amezcua (CD 5 to CD 4); and Plaintiff Chumbley (CD 7—no change).

Luther Pet. at 1–2.

(ii) *Wise Plaintiffs.*

Plaintiff Terrence Wise (CD 5—no change); Plaintiff Ashley Ball (CD 5—no change); Plaintiff Aimee Riederer Gromowsky (CD 5 to CD 4); Plaintiff Cynthia Wrehe (CD 5 to CD 4); and Plaintiff Cynthia Kay Lakin (CD 5 to CD 6).

Pls. Pet. at 4. Here, either Plaintiffs are experiencing no change (Wise, Ball, and Chumbley) in their district, or they are experiencing identical types of redistricting change. Since all parties, except for Plaintiff Chumbley (*Luther*) are either currently resident in CD 5 or will be resident in CD 5, they are identically affected by the new map. Their status as parties is *solely* determined by their status as Missouri residents whose congressional districts will be altered in some fashion.

B. The Jackson County and Kansas City Boards of Election Commissioners are “extraneous” defendants.

Several of Plaintiffs’ named Defendants—the Jackson County Board of Election Commissioners and its members, and the Kansas City Board of Election Commissioners and its members—are “extraneous parties to the action” such that they “do not preclude dismissal” under abatement. *Skaggs Chiropractic, LLC v. Ford*, 564 S.W.3d 633, 639 (Mo. App. S.D. 2018) (quoting *State ex rel. Dunger v. Mummert*, 871 S.W.2d 609, 610 (Mo. App. E.D. 1994)) (cleaned up). The Boards’ clear function is to establish a hook (albeit an unconstitutional one) for venue in Jackson County instead of the proper venue in Cole County thanks to the Missouri Constitution and the suit’s true focus on the state Defendants.

C. Petition raises identical and overlapping claims with earlier-filed suit.

Two interlinked factors militate in favor of dismissing or transferring the instant case. First, the Cole County Circuit Court has set a trial date for *Luther* on November 12, 2025. This proceeding will resolve the Count I question concerning of the propriety of mid-decade redistricting. Second, resolution of Count I naturally precedes Plaintiffs' other counts: compactness (Count II); equal population (Count III); and contiguity (Count IV). Harms are no more imminent to Plaintiffs than to the identically-situated *Luther* plaintiffs. Furthermore, if the *Luther* plaintiffs prevail and the Cole County Circuit Court enjoins the 2025 map, then Plaintiffs' remaining claims immediately become moot and "[a]s a general rule, moot cases must be dismissed." *Friends of the San Luis, Inc. v. Archdiocese of St. Louis*, 312 S.W.3d 476, 484 (Mo. App. E.D. 2010) (quoting *Warlick v. Warlick*, 294 S.W.3d 128, 130 (Mo. App. E.D. 2009)). Plaintiffs' Count II, III, and IV claims are *dependent* on the failure of their Count I claim, which is identical to the claim in *Luther*.

Plaintiffs and the *Luther* plaintiffs seek identical relief. In a vain attempt to distinguish the cases, Plaintiffs claim that the "*Luther* petition does not request the restoration of the 2022 congressional districts as a form of relief." Pls. Sugg. Opp. at 13–14. In fact, the *Luther* suit seeks to enjoin the 2025 map—and the result would be the *default* restoration of the 2022 map. This is the *exact* same relief requested by Plaintiffs in the instant case. Plaintiffs' attempts to differentiate their Count I from *Luther* thus fail.

D. There is a risk of inconsistent judgments.

The point of the venue restrictions in Article. III, §§ 3(j) and 7(i) are to ensure consistency of judgments statewide. This is also why appeals are directly to the Missouri Supreme Court. *Id.* “More importantly, because the doctrine of abatement ‘operates to forestall the possibility of inconsistent judgments on the same claim, a party has no ability to ‘waive’ this court’s authority to address its own prudential concern about the possibility of inconsistent judgments.” *Harris v. Edgar*, 583 S.W.3d 497, 502 (Mo. App. S.D. 2019) (quoting *Skaggs*, 564 S.W.3d at 641) (cleaned up).

On one hand, in their suggestions in support of their motion for a preliminary injunction on Count 1 of their Petition, Plaintiffs contend that subjection to an allegedly unconstitutional statute “for even minimal periods of time, unquestionably constitutes irreparable injury.” Pls. Sugg. Supp. of P.I. at 13 (quoting *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019)). Here, on the other hand, they argue that “appellate courts may benefit from percolation of the legal issue in the lower courts, and differing opinions could even be useful for that purpose.” Pls. Sugg. Opp. Mot. To Dismiss at 16. Plaintiffs’ consideration for “percolation” is incongruous with their demand for extraordinary preliminary injunctive relief. Instead, what is obviously driving Plaintiffs’ decision-making is the belief that this Court is more likely to agree with their merits position than the Cole County Circuit Court. But abatement doctrine exists, in substantial part, to avoid the generation of such conflicting decisions in Missouri’s courts. *Kelly*, 245 S.W.3d at 313.

Contrary to Plaintiffs' contentions, "consideration of judicial efficiency" favors transfer or dismissal without prejudice and refileing in Cole County of Plaintiffs' suit. Pls. Sugg. Opp. at 17. Judicial efficiency benefits from consolidation and concentration of claims before one tribunal. No impediment stands before Plaintiffs bringing their four counts before the Cole County Circuit Court. They are free to transfer, refile, potentially consolidate, or join the *Luther* or other pending redistricting litigation in that venue. Indeed, if Plaintiffs litigated their claims in Cole County—which the State concedes is a proper venue and where a trial date has already been set—Plaintiffs would obtain a speedier resolution of their claims. Plaintiffs are thus obviously wrong when they assert that a venue change would infringe their "right to vote" under the Missouri Constitution. Pls. Sugg. Opp. at 17 (quoting *Weinschenk v. State*, 203 S.W.3d 206, 211 (Mo. banc 2006)).

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

Plaintiffs added the local election boards to manufacture venue in Jackson County. But Plaintiffs lack standing to sue the election board defendants because (1) their injuries were not caused by these defendants and (2) Plaintiffs' alleged injuries are not redressible by court orders against these defendants. Defs. Sugg. Mot. to Dismiss at 9–10. Instead, the election board defendants are merely pretensive defendants, added to establish venue in Jackson County. The Court reject Plaintiffs' improper attempt to manufacturer venue and dismiss these pretensive defendants.

A. Plaintiffs' claims against the Election Board Defendants are "pretensive."

Plaintiffs' joinder of the Elections Board Defendants is "pretensive" and thus there is no basis for venue in Jackson County. "Venue is pretensive if (1) the petition fails to state a claim for which relief can be granted against the resident defendant, or (2) the record in support of a motion asserting pretensive joinder establishes there is no cause of action against the resident defendant and the information available at the time the petition was filed would not support a reasonable legal opinion that a case could be made against that defendant." *Hefner v. Dausmann*, 996 S.W.2d 660, 663 (Mo. App. S.D. 1999) (citing *Breckenridge v. Sweeney*, 920 S.W.2d 901, 902 (Mo. banc 1996)). This test is "disjunctive" so State Defendants need only establish either prong. *Id.*

1. Plaintiffs lack standing to bring a claim against Election Board Defendants for which relief can be granted.

As established, Plaintiffs cannot show that the board Defendants caused their injury. Defs. Sugg. Mot. to Dismiss 9–10; see *St. Louis Cnty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014). Nor can do they demonstrate that their harms are redressible by enjoining these entities. Defs. Sugg. Mot. to Dismiss 9–10; see *St. Louis Cnty.*, 424 S.W.3d at 453. Simply put, Plaintiffs lack standing to bring claims against board defendants. Without standing, Plaintiffs cannot state any claim for relief making these board defendants pretensive. See *Concerned Parents v. Caruthersville Sch. Dist. 18*, 548 S.W.2d 554, 557 (Mo. banc 1977) ("Before proceeding to consider whether the petition states a claim for relief, we consider first the contention, advanced in

defendants' brief, that the trial court did not err in dismissing the suit because plaintiffs lack standing or capacity to maintain this action.”).

2. Plaintiffs cannot support a reasonable legal opinion that the boards are proper defendants.

The venue restriction clauses in Article III, §§ 3(j) and 7(i) suggest that the joinder of local election boards as part of a state-run redistricting is improper. The role of local election boards does not differ for state or congressional contests. See § 115.023.1 (“Except as provided in subsections 2 and 3 of this section, each election authority shall conduct *all public elections* within its jurisdiction.”)(emphasis added)). Plaintiffs have provided no reason as to why local election boards can be proper defendants for congressional redistricting but not for state redistricting. Plaintiffs suggest the local election boards could provide “alternative remed[ies].” Pls. Sugg. Opp. at 12. These alternative remedies provided by local election boards would be just as much available in a state redistricting challenge. Nevertheless, local election boards cannot be sued to alter venue in state redistricting challenges. Mo. Const. art. III, §§ 3(j), 7(i). This Court should follow the logic of §§ 3(j) and 7(i). *Cf. Preisler v. Hearn*, 362 S.W.2d 552, 556 (Mo. banc 1962) (“We must hold that it was proper for the legislature to follow” constitutional policy for making senatorial districts when making congressional districts.).

More to the point, election boards are proper defendants in a redistricting challenge only when the election boards “ha[ve] a continuing duty to make a valid redistricting.” *Preisler v. Doherty*, 284 S.W.2d 427, 436 (Mo. banc 1955). The election board defendants here have no such duty. As the Missouri Supreme Court pointed

out, these local election boards implement the applicable redistricting statute and act in a ministerial capacity. *See State ex rel. Wulfing v. Mooney*, 247 S.W.2d 722, 726 (Mo. banc 1952). Therefore because these election boards lack any “duty to make a valid redistricting” map, they are not proper defendants for congressional redistricting claims. Thus, there is no reasonable claim that can be made against these local election boards, and this Court should dismiss them as “pretensive” defendants.

B. The Election Board Defendants are neither necessary nor indispensable parties and their inclusion violates the principles of Equity.

Local election board defendants are not necessary or indispensable parties for this suit. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 406 (Mo. banc 2024). In a state redistricting challenge, the Missouri Supreme Court affirmed the dismissal of the Judicial Commission—which “approved the challenged redistricting plan”—because the Secretary of State could grant “[c]omplete relief” and the Judicial Commission “d[id] not have an interest in the disposition of [the] lawsuit.” *Id.* at 405–06. Both of these reasons are met here. First, just as in *Faatz*, the Secretary of State can grant “[c]omplete relief.” *Id.* at 406. Plaintiffs concede this fact. *See* Pls. Sugg. Opp. at 12 (“[T]he Secretary alone c[an] provide relief.”). Second, if the Judicial Commission who “approved the challenged redistricting plan” did not have an interest in the lawsuit, how can Plaintiffs claim local election boards that merely implement the congressional districts do? The sole interest of these local election boards is in running local elections; they play no role in drawing districting lines. *See supra*.

Therefore, these local election boards are neither necessary nor indispensable parties and should be dismissed.

Turning to broader principles in equity, “[t]he remedy of injunction, frequently characterized as ‘the strong arm of equity,’ is a summary, transcendent, and extraordinary remedy, may not be invoked as a matter of course, and should be exercised sparingly and only in clear cases” *Prentice v. Rowe*, 324 S.W.2d 457, 463 (Mo. 1959) (citations omitted). Preliminarily enjoining the local election boards would not be a “sparing[]” use of injunctive power. The election boards only have jurisdiction over the precincts in Jackson County and Kansas City. Thus, enjoining the boards without enjoining the Secretary of State would only cause confusion as to what congressional map was in use. Worse, it could prevent Plaintiffs and other citizens’ votes from being counted either at all or in the proper district in the congressional elections. Enjoining the election board defendants without enjoining the Secretary of State would not preserve the status quo. *See Salau v. Deaton*, 433 S.W.3d 449, 453 (Mo. App. W.D. 2014). Therefore, the election boards are not proper defendants.

Plaintiffs argue that “relief against Local Election Authorities will effectively result in a statewide remedy, because the Secretary of State cannot conduct a congressional election without assigning the precincts in Jackson County and Kansas City and tallying the votes from those jurisdictions.” Pls. Sugg. Opp. at 19. Enjoining local election boards to “effectively” achieve this result clashes with the proper scope of preliminary injunctive relief in Missouri. “An injunction should be narrowly

framed to give the relief to which the parties are entitled but should not interfere with any legitimate or proper activities.” *Terre Du Lac Property Owners’ Ass’n v. Wideman*, 655 S.W.2d 803, 807 (Mo. App. E.D. 1983) (citing *Commission Row Club v. Lambert*, 161 S.W.2d 732, 736 (Mo. App. 1942); *Henson v. Payne*, 302 S.W.2d 44, 50 (Mo. App. 1956)). The narrow and proper framing of Plaintiffs’ requested relief would be to enjoin directly the Secretary of State, not to enjoin the local election boards in order for the trickledown effects to “effectively” enjoin the Secretary of State.

CONCLUSION

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

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was filed and served electronically on all counsel of record via the Court's e-filing system on October 6, 2025.

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