

1 IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI Not an Official Court Document
2 16th JUDICIAL CIRCUIT, DIVISION 15
3 HONORABLE JALILAH OTTO Not an Official Court Document

4 TERRENCE WISE,)
5 Plaintiff, et al) Not an Official Court Document Not an Official
6 vs.) Case No 2516-CV-29597
7 STATE OF MISSOURI, et al)
8 Defendant.) Not an Official Court Document Not an Official Court Document

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10 TRANSCRIPT OF MOTION HEARING
11 NOVEMBER 24, 2025 Not an Official Court Document Not an Official Court Document

12 The above entitled action came on for hearing
13 before the Honorable Jalilah Otto, Judge of Division
14 15 of the 16th Judicial Circuit at Jackson County,
15 Missouri. Not an Official Court Document Not an Official Court Document Not an Official Court Document

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24 Kimberly A. Jones, Certified Court Reporter #1354
25 16th Judicial Circuit, Division 15
Jackson County, Missouri

Kimberly A. Jones, Division 15 Reporter

1 **APPEARANCES:**

2 For the Plaintiff Wise:

3 Gillian Wilcox
A.C.L.U. of Missouri @ Kansas City

4 Aseem Mulji
5 Campaign Legal Center
Washington, D.C.

7 Ming Cheung
American Civil Liberties Union
8 New York, New York

9 For the Plaintiff Healey:

10 Harleen Gambhir
Washington, D.C.

11 Andrew Hirth
TGH Litigation LLC
12 Columbia MO

14 For the Defendants:

15 Kathleen Hunker
Office of the Attorney General
16 St. Louis, Missouri

17 Graham Miller
Office of the Attorney General
18 St. Louis, Missouri

19 For the Intervenor:

20 Marc Ellinger
Missouri State Republican Committee
21 Jefferson City, Missouri

22 Board of Elections:

23 David Raymond
Kansas City Board of Elections

24 Brent Thomas
Jackson County Board of Elections

25

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1 THE COURT: Good afternoon,
2 everybody. Please be seated. All right, the Court
3 takes up the matter of 2516-CV-29597, Terrence Wise,
4 et al vs. the State of Missouri, et al. I'll take
5 entries of appearance right now.

6 MS. WILCOX: Gillian Wilcox for the
7 Plaintiff --

8 THE COURT: I'll have you guys stand.
9 Something about the wood in here, it just absorbs
10 all the sound. So if you'll stand, please. Thank
11 you.

12 MS. WILCOX: No problem, Your Honor,
13 Gillian Wilcox with A.C.L.U. of Missouri for
14 Plaintiff.

15 MR. MULJI: Aseem Mulji, Your Honor,
16 for Plaintiff from Campaign Legal Center.

17 THE COURT: Spell your last name,
18 please.

19 MR. MULJI: M- as in Mary, U-L-J-I.

20 MR. CHEUNG: Good afternoon, Your
21 Honor. Ming Cheung from the American Civil
22 Liberties Union, also for the Plaintiff, Terrence
23 Wise.

24 THE COURT: Spell your last name,
25 please.

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1 MR. CHEUNG: C-H-E-U-N-G.

2 THE COURT: Thanks.

3 MS. WILCOX: Your Honor, we also have
4 counsel in the *Healey* case here. Andrew Hirt and
5 Haleena Ghambir. I wasn't sure how you wanted to
6 address everything.

7 THE COURT: I want to address
8 everything. We have been really busy in this
9 division so I wanted to get kind of up to speed on
10 everything. I think I have read everything, but I
11 need to kind of see where you guys are at. We'll
12 talk about all of those different variations, all
13 right?

14 MS. HUNKER: Kathleen Hunker for the
15 Missouri Attorney General's Office. I'm with my
16 colleague, Graham Miller.

17 THE COURT: Okay.

18 MR. ELLINGER: And Marc Ellinger on
19 behalf of the Movant Intervenor in the case.

20 MR. RAYMOND: Your Honor, David
21 Raymond on behalf of the Kansas City Board of
22 Elections Commissioners.

23 MR. THOMAS: And Brent Thomas on
24 behalf of Jackson County Board of Elections
25 Commission.

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1 THE COURT: Okay. So I set this
2 matter for hearing on the Motion for a Scheduling
3 Order as well as for the Motion to Dismiss to kind
4 of preliminarily get those out of the way. And if
5 the case stays here, we can talk about a scheduling
6 order, to possibly get this tried before the end of
7 the year. I think I do have time in my schedule to
8 try to get this done. And we're about a month away
9 from the end of year, so we can probably get that
10 done. So I kind of wanted to take up those issues
11 first.

12 And then I think kind of percolating
13 in the back of these proceedings was the case up in
14 Division 8, and I think there was a Motion to
15 Transfer that one by agreement. Is that right?

16 MS. HUNKER: That is correct, Your
17 Honor, assuming venue in your jurisdiction is
18 proper.

19 THE COURT: So it's going to hinge on
20 whether or not the Motion to Dismiss is ruled upon.
21 But if I do deny the Motion to Dismiss and I find
22 the venue is proper here, then there's no objection
23 to moving that case down to this division, correct?

24 MS. HUNKER: That's correct, Your
25 Honor.

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1 THE COURT: All right. And then most
2 recently I think there was a Motion to Intervene,
3 which I had to take a cursory look at that because
4 again, we were in trial last week so I have not
5 delved into that one, but I don't know if there is
6 an objection to that.

7 MR. ELLINGER: There is an objection
8 to us intervening. The parties have agreed to take
9 it up today.

10 THE COURT: Okay.

11 MR. ELLINGER: We would propose to
12 take it up first just simply, if you're granting
13 intervention, we can participate, but we would defer
14 to you entirely, Judge.

15 MS. WILCOX: Yes, Your Honor.
16 Plaintiffs filed an opposition and we actually would
17 like it to be taken up at the end of discussing
18 what's currently going on between the parties in the
19 Healey case.

20 THE COURT: So you want to take that
21 up after I hear the Motion to Dismiss?

22 MS. WILCOX: Yes, which has been
23 fully briefed. It is briefed and there's a similar
24 motion pending in the Healey case as well, but the
25 argument would be similar.

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1 THE COURT: Okay. But you believe
2 that you're ready to take up the Motion to Dismiss
3 today as well?

4 MR. ELLINGER: Yes, Judge. We are
5 prepared to be heard on that motion also.

6 THE COURT: Okay, and would your
7 argument be any different than the arguments that
8 have already been briefed to the Court?

9 MR. ELLINGER: We would not be
10 opposing the suggestion. We would just make oral
11 argument on that, Judge, seeking on that motion.

12 THE COURT: Okay. It doesn't sound
13 like they're going to advance any new arguments that
14 I'm aware of that have not already been briefed.
15 Unless there's something that I don't know and you
16 want to alert me to?

17 MR. MULJI: Your Honor, I would just
18 note I don't think I've seen anything proposing on
19 the docket suggesting that intervenors, proposing
20 intervenors -- they haven't filed a Motion to
21 Dismiss. That's the State's motion. I don't think
22 they've filed anything suggesting that they're
23 filing on through that motion. So I would just note
24 that for the Court.

25 THE COURT: I think he just said

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1 that. I don't think he intends to file anything new
2 or different. He just wanted to, I guess, orally
3 join in the motion.

4 MR. ELLINGER: Orally join in the
5 motion, and if that's to be heard, only to the
6 extent there's anything to add on the motion, Judge.

7 MS. WILCOX: Your Honor, I was
8 wondering if you wanted to hear the Motion to
9 Intervene first?

10 THE COURT: I think so. Well, that's
11 just what I'm trying to say. If you're going to
12 create some new argument that hasn't already been
13 briefed, then that's maybe a little untimely for
14 what we need to do today. But if you're going to
15 join in what's already been briefed, then I am going
16 to probably allow you to do that, okay?

17 MR. ELLINGER: That's my plan, Judge,
18 we filed -- as a response to the pleading, we filed
19 a full answer as opposed to a Motion to Dismiss.

20 THE COURT: All right, so I am going
21 to grant their Motion to Intervene and then we'll
22 hear from them as well. Okay?

23 MR. ELLINGER: Thank you, Judge.

24 THE COURT: All right.

25 MR. MULJI: Your Honor, we do have an

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1 objection to the Motion to Intervene. Is that
2 subject to our objection?

3 THE COURT: It is subject to the
4 objection.

5 MR. MULJI: Okay. Could we take up
6 the Motion to Dismiss first?

7 THE COURT: Let's just take it
8 altogether because I want to hear what the arguments
9 are, and if it's -- I'm likely to allow them to
10 intervene. They don't want to file a new written
11 Motion to Dismiss. They are simply going to make an
12 oral argument in addition to what the State is going
13 to argue, is my understanding. So if that is the
14 case, I am likely to allow them to intervene.
15 Whether we technically do that before or after I
16 rule on the Motion to Dismiss is kind of a
17 non-sequitur to me because I do want to hear their
18 argument on the motion. I don't want it to come
19 back in a week and take up their separate Motion to
20 Dismiss if they're here and we can take that up
21 today.

22 MR. MULJI: Understood, Judge.

23 THE COURT: Whether we take that up
24 first or second today, or mix it altogether, it's a
25 little indifferent to me. I just need the arguments

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1 in front of me so I can rule on. Make sense?

2 MR. MULJI: That does make sense. I

3 would just note that we have separate counsel cued

4 up too, wherever you're ready for it.

5 THE COURT: I don't know who was

6 attached to who, so you guys kind of guide me

7 through that. I've got my notepad and my pen here

8 so I'll be taking notes.

9 MR. RAYMOND: Your Honor?

10 THE COURT: You guys have something

11 too?

12 MR. RAYMOND: Let me make it easy.

13 I'm not going to say anything. I am not going to

14 play a position on the issues on behalf of the

15 Kansas City Election Board. So I'll make that easy.

16 MR. THOMAS: And ditto.

17 THE COURT: There we go. I can put a

18 mark by your name. You have been heard.

19 Let's talk about the Motion to

20 Dismiss. I'll take up the State first, and on their

21 Motion to Dismiss. So I don't know who is going to

22 respond for the State, and then I can then go to the

23 intervenor, and then you guys can respond to the

24 intervenor's argument. That make sense?

25 MS. HUNKER: Just a quick question

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1 before I begin, Your Honor, did you want me to go to
2 the podium?

3 THE COURT: You can go wherever you
4 want to go. Some people like the podium. Some
5 people like to wander and meander around. As long
6 as I can hear you and more importantly she can hear
7 you, we're good.

8 MS. HUNKER: Loud enough?

9 THE COURT: I can hear you.

10 MS. HUNKER: Kathleen Hunker from the
11 State's Attorney General Office, representing the
12 State Defendant.

13 To give a quick overview, on
14 September 12, 2025, the General Assembly passed
15 House Bill 1, which established a new set of
16 congressional districts for the State. That same
17 day, before the governor had even filed H.B.1 into
18 law, two separate lawsuits were filed against the
19 map. The first, Luther v. Hoskins, is in Cole
20 County, and the present action, Wise v. Missouri, is
21 of course in Jackson County.

22 In both the lawsuits the plaintiffs
23 take the position that Article 3 Section 45 of the
24 Missouri Constitution precludes the State's
25 mid-decade restricting bid.

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1 Moreover, even though the Wise
2 plaintiffs raise additional claims, both cases limit
3 their plea for emergency relief to the assertion
4 that the General Assembly lacked the authority to
5 engage in mid-decade redistricting.

6 This hearing is not about the merits
7 of the Wise plaintiff's claims. That's for a later
8 date. Rather it's to address the procedural and
9 jurisdictional defect in their petition. The State
10 defendants have identified three, as explained in
11 our Motion to Dismiss.

12 First, the Wise plaintiffs ignore the
13 default constitutional rule that requires
14 confessional redistricting challenges be brought in
15 Cole County.

16 Second, and relatedly, the Jackson
17 County and Kansas City Board of Election
18 Commissioners are not capable of redressing
19 Plaintiff's injuries even in part. This Court
20 therefore lacks subject matter jurisdiction and
21 should dismiss them from the case. Because neither
22 is a proper defendant, they cannot anchor the
23 vehicle of this case to Jackson County.

24 Third, the abatement doctrine counsels
25 this Court to either transfer the case, dismiss

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1 Plaintiff's Court 1, or at least stay the litigation
2 until the first case proceeds.

3 The Cole County Circuit Court is the
4 exclusive venue in which to bring a challenge to a
5 statewide redistricting plan. The default rule in
6 Missouri is that for lawsuits filed against a state
7 officer, venue is appropriate in the county where
8 their offices and headquarters are located,
9 essentially where their main duties are performed.
10 For executive and legislative officials named in
11 Article 4 of the Missouri Constitution, such as the
12 Secretary of State, that county is Cole County and
13 the location is Jefferson City.

14 Why is this important? Well, it's because
15 in a redistricting action challenging a
16 mid-decade -- redistricting action challenging a
17 statewide map, the Secretary and only the Secretary
18 acts as the proper defendant once the maps are
19 enacted into law. The Secretary, after all, is the
20 one who implements the districts. And it is the
21 Secretary who can provide relief once the maps are
22 signed into law. Missouri, therefore, anticipates
23 that the redistricting actions belong in Cole County
24 as opposed to one of the other counties in the
25 State.

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1 Article 3 of the Missouri Constitution
2 reinforces that set-up. Pursuant to Sections 3 and
3 7, different bodies may be responsible for drawing
4 and concluding the state legislative districts
5 depending on the circumstances.

6 In the first instance it goes to an
7 independent bipartisan citizen commission. But if
8 they fail to redistrict after six months, the
9 six-member judicial commission takes over. That
10 commission is comprised of judges from appellate
11 courts all over the state.

12 Because the members of these commissions
13 are not necessarily statewide officers for which
14 venue in Cole County is already mandated, Sections 3
15 and 7, including an express instruction that any
16 actions against state redistricting plans must be
17 filed in Cole County.

18 Congressional redistricts, however, are
19 drawn by the General Assembly. They're signed into
20 law by the governor, and they're executed by the
21 Secretary. The default venue always applies. There
22 is no need for additional instruction.

23 In their brief, Plaintiff's responded that
24 the conclusion of an express venue requirement in
25 Sections 3 and 7 indicates that there is no such

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1 requirement for the congressional maps. But this
2 assertion ignores the fact that Sections 3 and 7 are
3 closing a loophole. It clarifies the long-standing
4 rule of bringing redistricting actions in Cole
5 County, even if the initial defendants are not state
6 officers, but rather commissioners. That is not an
7 issue in congressional redistricting.

8 Indeed it's worth noting that in the
9 course of briefing this MTD, my office dug pretty
10 deep into the question of venue. We cannot find a
11 single challenge to a statewide plan in State court
12 that has been filed outside of Cole County until the
13 *Wise* petition. To my knowledge Plaintiff has not
14 identified a predicate case either, and we believe
15 that action speaks volumes.

16 Next is that they named Kansas City and
17 Jackson County Board of Election Commissioners as
18 defendants, both of whom are based in this venue.

19 However, there's a big fatal flaw with this
20 assertion, namely that the Court does not have
21 subject matter jurisdiction over the claims against
22 either party.

23 And this leads to my second point. The
24 election commissioners are not proper defendants.
25 And this Court should dismiss them and transfer the

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1 matter back to Cole County.

2 For a Court to have subject matter
3 jurisdiction and enter a judgment against the
4 defendants, the plaintiff must be able to establish
5 a standing, that is, they must be able to establish
6 the injuring fact that is traceable to the

7 defendant's conduct. And important here, is
8 redressable by a favorable decision against this
9 specific defendant.

10 The Wise plaintiffs cannot satisfy the
11 last two elements, and particularly the third.

12 Local election commissions do not have the authority
13 to establish or alter congressional districts.

14 Their only involvement, as plaintiffs identify in
15 their petition, is to assign precinct boundaries and
16 to administer elections within their jurisdiction.

17 Not only are these tasks ministerial, but
18 enjoining the commission from performing them would

19 not stop a congressional election from being held on
20 the new maps. At most the injunction will simply
21 make it difficult for voters in Kansas City and

22 Jackson County to cast a ballot and have it counted.

23 But every other election authority will proceed with
24 the elections as scheduled. What plaintiffs propose
25 is disenfranchisement to voters in Kansas City and

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1 Jackson County, not relief.

2 What's more, none of the districts in the
3 map are fully contained within Jackson County or
4 Kansas City. So even if this Court enjoined local
5 defendants, the districts would still be implemented
6 elsewhere. And that problem is compounded by the
7 nature of congressional redistricting.

8 The Supreme Court has held that
9 congressional districts have a strict one-person,
10 one-vote requirement that allows for almost no
11 deviation of population. This means that any change
12 to one district necessarily requires changes to
13 adjacent districts until the populations are equal
14 between the two.

15 The named election boards cannot provide
16 that relief. Only the secretary can. He is the
17 defendant that can effectively remedy plaintiff's
18 alleged injury should the Court rule in Plaintiff's
19 favor. That is why Missouri law presumes that
20 redistricting litigation will occur in Cole County
21 where the Secretary is headquartered.

22 It's apparent when you consider the
23 commission's powers that their inclusions in the
24 lawsuit is pretensive. They are only named because
25 plaintiffs are seeking a hook for jurisdiction

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1 within Jackson County as opposed to Cole County, as
2 is proper, and not because of their actual
3 connection to redistricting or to the Plaintiff's
4 alleged injuries.

5 However, could the Commission not redress
6 the plaintiff's injuries, the claims against them
7 are nonstarters from the start due to lack of
8 standing. Neither can be a hook for alternative
9 venue.

10 And this brings me to my third and final
11 point, which is abatement, only confirms that this
12 lawsuit should be dismissed or at the very least
13 stayed.

14 Abatement requires that suits present the
15 same issues and alignment of parties. The present
16 action does satisfy this requirement, albeit in an
17 unorthodox manner. The rolling redistricting
18 lawsuits all center around the same claim, that the
19 General Assembly lacked authority to conduct a
20 mid-decade redistricting. And both Wise and Healey
21 plaintiffs acknowledge that this claim should be
22 decided before any other claim is heard.

23 Addressing the party's requirement, I've
24 already explained that Kansas City and Jackson
25 County boards are pretensive. Extraneous defendants

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1 do not preclude dismissal under abatement nor a
2 stay. Plaintiff's only serious objections to
3 abatement is that they are not the same individuals
4 from the *Luther* plaintiffs. But they cannot dispute
5 their claims are not unique to them. Rather each
6 possesses -- or presses -- the same alleged injury
7 shared equally by them all. Their injury only
8 requires them to be Missourians, qualified voters,
9 and to be in a district that's affected by the
10 alleged claim, which in this case is the entire
11 State because the argument is that the redistricting
12 map was not legal in the first place.

13 As a consequence, any remedy in one case
14 will be automatically redressed to the plaintiff's
15 injury in the next. And the nonuniqueness of their
16 injuries is demonstrated here by the Wise and Healey
17 plaintiffs agreeing to consolidate. When you're
18 pursuing the same claim, you can get the same
19 relief.

20 Judicial economy, which is the aim of
21 abatement, illustrates also why it's proper in this
22 case. Plaintiff's arguments taken to a logical
23 conclusion would mean that plaintiffs could bring
24 their challenge in any of the State's Congressional,
25 sorry, circuit courts spanning 114 counties and the

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1 City of St. Louis. But there must be some limit on
2 duplication, triplication or further multiplication
3 (SIC) of suits. But plaintiff's theory supplies
4 none.

5 The State on the other hand agreed that
6 plaintiff had the ability to challenge redistricting
7 decisions, and in fact litigated a case to trial on
8 identical claims in Cole County where venue is
9 proper.

10 It is not a case where the State is trying
11 to hide whose the proper defendant. We have
12 indicated with a flaming green arrow. It is the
13 Secretary. The Secretary can provide universal
14 relief to their claims to the extent they're
15 meritorious.

16 I'll only close by saying it bares
17 repeating that the plaintiffs failed in their
18 briefing to identify a single case where a challenge
19 to a statewide map, including congressional maps,
20 were brought in a case in court outside of Cole
21 County. And that's because the Secretary is the
22 proper defendant and Cole County is the proper venue
23 as a result.

24 We therefore think the Court should
25 dismiss, or in the alternative, transfer the case to

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1 Cole County.

2 THE COURT: Okay.

3 MS. HUNKER: Do you have any
4 questions, Your Honor?

5 THE COURT: I might, but after they
6 get finished. I'll hear from them.

7 MS. HUNKER: Thank you, Your Honor.

8 THE COURT: I will have some
9 questions about the case law that you said they're
10 devoid of the case law outside of Cole County on

11 these types of cases.

12 MS. HUNKER: Okay.

13 THE COURT: But I want to hear from
14 them first.

15 MS. HUNKER: I will note, Your Honor
16 on that point, it's difficult to prove a negative.

17 We have done as much research as we can on this

18 issue. We haven't identified one. We've looked at

19 the cases they cited and didn't identify one either.

20 They may have found one in the meantime. And I'll

21 let them of course argue that point. I'm just

22 simply saying based on our research we didn't
23 identify any.

24 THE COURT: Okay, I appreciate that.

25 MR. CHEUNG: Good afternoon, Your

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1 Honor. May I approach?

2 THE COURT: So who's going to respond
3 to -- or do you want to hear his argument before we
4 hear intervenor's argument? I don't know.

5 MR. CHEUNG: I'm happy to defer to
6 him.

7 THE COURT: Yeah, I think maybe if
8 there's something additional, you'll want to respond
9 to that, okay?

10 MR. ELLINGER: And Judge, I'll be
11 very brief. That doesn't happen often.

12 THE COURT: Can you spell your name,
13 please, for the court reporter?

14 MR. ELLINGER: Marc Ellinger,
15 E-L-L-I-N-G-E-R.

16 Judge, I think it's clear based upon
17 the status of where this case is and other cases
18 that are similar are, this case ought to either be
19 dismissed or sent to Cole County and held in
20 abeyance. There's a good reason beyond the pure
21 legal side for sending the case to Cole County. And
22 frankly, for the reasons that these cases are
23 brought in Cole County.

24 Every time there's a redistricting
25 plan, whether it's been House or Senate or

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1 congressional, there have been lawsuits filed over
2 them. At least in my lifetime that seems to be the
3 case.

4 And those are always brought in Cole
5 County, unless they're brought in federal court,
6 because under the Voting Rights Act, if you allege
7 certain issues with the map, the exclusive
8 jurisdiction is federal court.

9 So for example, if there's an
10 allegation of a race-based drawn map, that must be
11 brought in federal court. It can't be brought in
12 State court because of the Voting Rights Act.

13 The other cases are brought in Cole
14 County Circuit Court because there's not eight
15 redistricting plans. There are eight congressional
16 districts. There are not eight redistricting plans.
17 There's one. And it's statewide.

18 And if you take what the plaintiffs
19 in this case advocated for to the unfortunate
20 logical extreme, there are 114 counties in the State
21 of Missouri and the City of St. Louis.

22 If you can bring a case in any
23 county, except for Cole County, which is the site of
24 the state government and the Secretary of State is
25 headquartered. And in fact, where every issue

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1 that's in dispute in this case occurs, because every
2 issue in this case occurs where the General Assembly
3 met after, pursuant to a call from the governor in
4 Jefferson City, where they voted, in Jefferson City;
5 where the redistricting plan was put into a bill
6 form and passed by the General Assembly, in
7 Jefferson City; where it was signed by the President
8 Pro Tem of the Senate and Speaker of House, in
9 Jefferson City; where it was sent to the governor,
10 in Jefferson City; where it was signed by the
11 governor, in Jefferson City; and where it was then
12 sent to the Secretary of State in Jefferson City.

13 In fact, there's other litigation
14 going on in Cole County. There's a number of
15 cases -- we were all laughing about it before you
16 came in the courtroom -- because there's so many
17 cases pending in Jeff City because everything is
18 being filed in Jefferson City because that is the
19 venue where you go after the Secretary of State if
20 you think he's done something wrong or needs to be
21 stopped, or if the General Assembly has done
22 something wrong and needs to be stopped.

23 If you take it to the logical
24 extreme, you can file a lawsuit in Jackson County.
25 You can file one in Johnson County. You can file

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1 one in Jasper County. You can file one in Jefferson
2 County. And every one would make the same argument,
3 well, this affects our county and our voters. But
4 as I think the State so aptly pointed out, if you
5 move one line, you if move one person -- although it
6 is that precise -- if you move one person, you have
7 to find a person somewhere else. And that's not
8 easily done.

9 So the reason the case should be in
10 Cole County is not just because of the law. It's
11 also because there's a rational basis for it. It's
12 why the cases have always been brought there. It's
13 why the Supreme Court has had a number of
14 redistricting cases over the years, and they have
15 never been transferred out of Cole County. They
16 have always been in Cole County, except, as I said,
17 for the federal cases. So I think you want to have
18 certainty in judgment and I think you want to have
19 one answer to these cases.

20 There is a case pending in Cole
21 County Circuit Court. It's Luther vs. Hoskins. It
22 was filed -- I think it's the first action that was
23 filed on the map in time order. That case has
24 already been submitted and is awaiting judgment in
25 front of Judge Limbaugh in Jefferson City. The

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1 parties have submitted proposed orders and the judge
2 can rule any minute. In fact, for all we know he
3 could rule today. I mean, literally.

4 The issue that's in that case is the
5 primary issue that has been raised in this case.

6 Again, another reason for either it to be
7 transferred or dismissed, or at least any action in
8 this case be held in abeyance until that case
9 reaches its conclusion for fear of inconsistent
10 judgments and waste of varied judicial resources.

11 The answer in that case is, if it's affirmative for
12 the State and for the intervenors that are in that
13 case, if it's an affirmative, then the mid-decade
14 redistricting is legal and authorized, which is
15 their primary count in this case.

16 If the answer is in the negative,
17 then it's not authorized and there's no reason to
18 have a trial at all in this case because that would
19 even negate the second count in addition to the
20 first count.

21 So there's a reason for at least this
22 case to be held in abeyance. I would agree with the
23 Attorney General's other arguments that she so aptly
24 made. And I would be happy to answer any questions,
25 Judge.

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1 THE COURT: All right, thank you.

2 All right, Mr. Cheung, are you up
3 first?

4 MR. CHEUNG: Thank you, Your Honor.
5 I am trying to move this out of your way.

6 THE COURT: You can move that back or
7 wherever you want it that you're comfortable. You
8 can put it wherever you want to. You can put it by
9 the jury box or the witness stand, just wherever you
10 want to put it.

11 MR. CHEUNG: It doesn't matter to me.
12 Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. CHEUNG: With the Court's
15 indulgence I would like to begin by briefly
16 explaining why this case belongs in Kansas City
17 before turning to the issues of the defendants chief
18 arguments.

19 At its core this case is about the
20 government unlawfully taking away political power
21 from the people of Kansas City. For over a hundred
22 years there has been at least one congressional
23 district, typically Congressional District 5, that
24 primarily consists of the Kansas City metropolitan
25 area. That's according to the historical maps

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1 compiled by the Missouri Supreme Court in Pearson
2 vs. Koster, that's at 367 SW 3d, 357, MO 2012.

3 Having a Kansas City-based district
4 allows the people of this city to decide who
5 represents them in Congress. And that ensures that
6 whoever is representing this district in Congress
7 has to respond to the needs of constituents of the
8 city.

9 The new map passed by the State
10 legislature is unprecedented, both in terms of the
11 mid-decade process leading up to it, and in the
12 changes that are made.

13 The most significant change made in
14 the map is that there's no longer a Kansas
15 City-based district anywhere in the map. The City
16 is now split between three districts, and each of
17 those three pieces are combined with rural counties
18 from different parts of the state.

19 What the new map does is take a
20 divide and conquer approach to the people of Kansas
21 City so that the political preferences of the voters
22 here are drowned out by the preferences of the rural
23 counties with very different interests from far
24 corners of the state.

25 That's not consistent with Missouri's

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1 constitutional requirement that districts be drawn
2 in a compact manner, which is Count 2 of our
3 petition and is now a part of litigation in Cole
4 County. That harm I just described is going to
5 occur once the defendants implement the new district
6 lines and it is enacted by the state legislature.

7 As the State defendants have conceded
8 in their briefing, the Jackson County and Kansas
9 City defendants are the ones who are responsible for
10 the implementation of these district lines in this
11 area. For example, the local election boards are
12 the ones responsible for assigning voters and
13 precincts to the new district. The local election
14 authorities are the ones responsible for printing
15 out the ballots with the names of the candidates who
16 will be running for office in this area, and
17 providing those ballots to the voters to be cast.

18 The local election officials are also
19 the ones reporting the votes cast for the candidates
20 in these new districts, and then the Secretary of
21 State has to receive those results to declare the
22 winners of the congressional district.

23 The harm that plaintiffs experience
24 as a result of each of these defendants carrying out
25 their respective portion of the election

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1 administrative process, that is what is needed to
2 effectuate the new districts and put the legislation
3 into reality.

4 This Court can redress or prevent
5 that harm by declaring the new districts unlawful
6 and prohibiting each of the defendants from

7 implementing their respective duties to carry out
8 Missouri's new Congressional map.

9 This case should be litigated in
10 Kansas City. All five of the plaintiffs in the *Wise*
11 case live in the Kansas City area. Thirteen of the
12 15 defendants are local election officials who are
13 in Kansas City or Jackson County. We plan to have
14 fact witnesses from Kansas City testifying about the
15 impact of the new district in Kansas City.

16 Several members of the plaintiff's
17 counsel team are based here in Kansas City, and this
18 is where the consequences of the new districts will
19 be most acutely felt.

20 Unlike the litigation in Cole County,
21 our petition contains over 80 paragraphs of factual
22 allegations about the way the new districts harm
23 Kansas City voters by carving up the city in ways
24 that have no legitimate explanation.

25 We have detailed allegations about

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1 the harmful features of the new map, including how
2 the new districts divide communities in Kansas City
3 along racial lines, going down Troost Avenue to put
4 White residents on one side in District 4, and Black
5 residents on the other in District 5.

6 As opposing counsel has noted,
7 redistricting cases are frequently brought in
8 federal court. The United States Supreme Court has
9 said that these cases require the trial court to
10 conduct, quote, "an intensely local appraisal of the
11 facts on the ground." That's from Allen vs.
12 Milligan, 599 United States 1, 19 from 2023. And
13 this Court is the one that is best positioned to
14 conduct that local appraisal.

15 The litigation in Cole County raises
16 only one of the four claims that plaintiffs assert
17 here. And it's important for this case to proceed
18 expeditiously to ensure that all of the claims can
19 be heard and appealed in time before next year's
20 elections.

21 Plaintiffs would also disagree with
22 opposing counsel's characterization that Count 1 is
23 the primary count in plaintiff's petition. We
24 sought the PI only on Count 1 because Count 1 does
25 not require factual development.

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1 Count 2 is a fact-intensive claim
2 that will require expert and fact testimony about
3 the way the maps are drawn. The fact that plaintiff
4 is not seeking a PI on Count 2 does not relegate
5 Count 2 compared to the status to Count 1.

6 Turning to the State's specificity
7 arguments based on the briefing I would place them
8 in four buckets. First ripeness, which is no longer
9 contested now that the governor has signed H.B.1.

10 Second, abatement, which does not
11 apply to this case because this case has different
12 plaintiffs, different defendants, and different
13 claims compared to the earlier *Luther* case.

14 Third, venue provisions in the
15 Missouri Constitution, which do not apply to the
16 congressional district as I believe I heard opposing
17 counsel mention earlier.

18 Fourth, whether the local election
19 authorities are proper defendants for purposes of
20 venue, which they are because plaintiffs have pled a
21 claim for relief against each of them.

22 Within those buckets the State has
23 raised multiple new arguments in their reply,
24 including pretensive joinder and necessary
25 indispensable parties, which this Court should

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1 reject as improperly raised because Plaintiff has
2 not had the opportunity to brief those questions.

3 Unless Your Honor would like to hear
4 arguments on ripeness, I am going to skip that issue
5 and move to abatement.

6 THE COURT: Yes, that would be
7 proper.

8 MR. CHEUNG: The abatement doctrine
9 doesn't apply here for several reasons. Abatement
10 is codified in Missouri Court Rule 55.27, Subsection
11 89, which only applies if quote, "there's another
12 action pending between the same parties for the same
13 cause in the state."

14 What that means is that the parties
15 in the two cases generally must be identical in
16 order for abatement to apply. That's according to a
17 case cited in the State's own motion on page 6,
18 Hampton vs. Llewellyn, requiring identical parties.

19 In fact, the State has recently taken
20 a position in a different case that abatement,
21 quote, "only applies when parties are identical."

22 That case is Missouri vs. Comprehensive Health of
23 Planned Parenthood Great Plains, Case Number
24 24AC-CC09811, and that can be found in the State's
25 Suggestion in Opposition to a Motion to Dismiss or

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1 Transfer, dated March 10th, 2025.

2 Here the plaintiffs are completely
3 different. The majority of the defendants are also
4 different, and a majority of the claims are
5 different from *Luther*. Each one of those is
6 sufficient grounds to reject the State's abatement
7 argument.

8 The State only cites two abatement cases
9 for their argument as to why abatement should apply.

10 Neither of their cases remotely resemble the facts
11 in this case. First, the State cites Skaggs

12 Chiropractic LLC vs. Ford. That's on page 7 of
13 their reply. That case involved a chiropractor

14 suing his patient to collect payment. That case was
15 abated because there was an earlier case involving

16 the same chiropractor and the same patient. The
17 earlier case also had additional parties who I

18 believed was a tortfeasor who originally injured the
19 plaintiff in the first place. The tortfeasor was

20 determined to be extraneous in the dispute between
21 the chiropractor and the patient.

22 So in *Skaggs* you have identical plaintiff
23 and identical defendant. That's not present here.

24 The plaintiff chiropractor did not have a claim
25 against the tortfeasor, which made him the

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1 extraneous party. We here have a claim of relief
2 against the local election officials.

3 Second, the State cites Dunger vs. Mummert
4 also at page 705, which is a case involving
5 plaintiff suing the State for damages for breach of
6 contract. That case was abated because the

7 plaintiff had already filed the same claim for
8 damages against the estate in probate court. The
9 beneficiaries of the estate were considered to be
10 extraneous because they already had identical

11 plaintiffs and defendants, and the plaintiff did not
12 have because of beneficiary. So, again, like the
13 chiropractor in *Dunger* involved an identical
14 plaintiff and identical defendant and that cannot
15 provide any relief to a plaintiff.

16 Here not a single plaintiff in this case
17 is involved in any way with Cole County litigation.

18 And plaintiffs are seeking relief from the local
19 election officials who are implementing the unlawful
20 district.

21 The abatement case has made clear that the
22 Court does not look at two completely unrelated
23 litigants and say that they are identical simply
24 because they have the same claims.

25 Rule 55.27, Subsection 89 requires a case

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1 to have the same parties and the same cause. If the
2 State's argument is accepted that would eliminate
3 the distinction between identical party and
4 identical cause.

5 Requiring identical parties is especially
6 important in a case like this one because denying
7 constitutional rights is an injury that's inflicted
8 on the individual's rights. Constitutional rights
9 by their nature are individual rights. And denying
10 people the ability to litigate their own cases
11 violate due process and the open court's provision
12 of the Missouri Constitution.

13 I heard opposing counsel argue earlier
14 that the State could be forced to defend numerous
15 lawsuits across the State. Your Honor, if the State
16 violates the rights of a lot of the people, I think
17 a core accountability mechanism is that the State
18 should be obligated to defend lawsuits from the
19 people whose rights have been violated. That's a
20 natural and foreseeable consequence of the State's
21 own actions. I'm not aware of any court case
22 creating a special abatement Rule that gives the
23 State special treatment, preferential treatment, as
24 a litigant.

25 I would also note that the actual risk of

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1 overburdening the State with litigation in every
2 county in Missouri is likely to be overblown. As
3 opposing counsel mentioned, there are 114 counties.
4 The State is only defending the redistricting plan
5 in two counties. That reflects how difficult and
6 expensive it is to bring this type of challenge
7 against redistricting, and few people have the
8 resources to do so.

9 The State also argues that the Court
10 should disregard the Jackson County and Kansas City
11 defendants for purposes of abatement because they're
12 quote, "extraneous." But they have conceded that
13 those defendants are the ones responsible for
14 implementing the districts that the State
15 legislature have enacted. That concession is on
16 page 8 of the motion and page 13 of the reply.

17 The defendant's implementation of those
18 district lines is the immediate cause of harm that
19 plaintiffs are alleging, which is sufficient to
20 establish causation. And an injunction from this
21 Court forbidding the local officials from
22 implementing the unlawful maps would redress that
23 implementing.

24 The State attempts to argue that
25 plaintiffs should be required to sue only the

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1 Secretary of State. But that is wrong for at least
2 three reasons. First, the State does not identify
3 any meaningful distinction between the Secretary of
4 State and the local election officials to explain
5 why we can sue the Secretary, but not the local
6 officials.

7 The State argues that the local election
8 officials did not create the maps. But neither did
9 the Secretary of State. Those districts were chosen
10 by the Missouri legislature, so that cannot be a
11 reason why plaintiffs should sue the Secretary, but
12 not the Jackson County and Kansas City officials.

13 In their briefing the State also claims
14 that local election officials are merely performing
15 a ministerial duty and do not have discretion to
16 enact a different map. That's also true of the
17 Secretary of State, who also has no discretion to
18 change the map.

19 Government officials are not immune from
20 being sued just because they were following orders
21 when they violate a constitutional right. Courts
22 have never that held that and the State doesn't have
23 any authority to support that. In fact, officials
24 performing ministerial duties, nondiscretionary
25 duties, are often named as defendants in a lawsuit.

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1 The State's own legal authority showed
2 that. On page 3 of the State's reply they cite
3 Talley vs. Missouri Department of Corrections, 210
4 SW 3d, 215 from the Missouri Court of Appeals, 2006.
5 In that case the Court held that a ministerial
6 official is a proper defendant when they allegedly
7 violate law. Specifically the Court of Appeals held
8 that the Department of Corrections was a proper
9 defendant even though they only played a ministerial
10 role in calculating when a petitioner should be
11 released from prison.
12 Local election officials and other
13 officials performing ministerial duties are
14 routinely sued for their role in implementing
15 unconstitutional law. For example, State ex rel
16 Matthewson vs. Board of Election Commissioners of
17 St. Louis County. That's 841 SW 2d 633, 636,
18 Missouri Supreme Court, 1992. There the Missouri
19 Supreme Court ordered the St. Louis Board of
20 Election Commissioners not to implement a new senate
21 district that was not lawfully in effect.
22 In the City of St. Louis vs. Crowe, 376 SW
23 2d 185, Missouri Supreme Court, 1964, local election
24 officials were sued in connection with their
25 ministerial duties to arrange candidates on a ballot

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1 in a particular order. Those ministerial duties in
2 carrying out the election laws are exactly why we
3 also sued the local election officials in this case.
4 Third, the State argues that the Secretary
5 can provide for relief. But that does not mean that
6 plaintiffs cannot also sue the local election
7 officials to provide additional or alternative
8 relief. In practice, plaintiffs should sue every
9 defendant who can provide any form of relief rather
10 than putting all of their eggs in one defendant.
11 Some defendants may have unique defenses.
12 Some defendants may choose to settle. Some may
13 choose to comply with an injunction, while others
14 may choose to resist or choose to appeal.
15 Plaintiffs should be allowed to pursue the
16 litigation strategy that covers all of their bases.
17 In addition to this case having different
18 parties from *Luther* in Cole County, the subject
19 matter between this case and the Cole County
20 litigation is also different and precludes
21 abatement. Abatement only applies if the principles
22 of law that are raised in the cases are the same.
23 That's according to HTH Companies Inc. vs Missouri
24 Department of Laboratories and Industrial Relations,
25 154 SW 3d, 358, Missouri Court of Appeals, 2004.

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1 The Cole County case raises only a single
 2 claim and we've pled a total of four claims. And
 3 one of our unique claims, Count 2, specifically
 4 focuses on the new map's dismantling of the Kansas
 5 City based Congressional District 5. That speaks to
 6 different plaintiffs having different strategies and
 7 interests in bringing this case.

8 Abatement is a narrow doctrine and none of
 9 the requirements for triggering its application have
 10 been met here. The Court should reject the State's
 11 abatement argument.

12 Turning to the State's constitutional
 13 venue argument, the State began their motion by
 14 arguing that Section 3J of Article 3 of the Missouri
 15 Constitution requires plaintiffs to file this case
 16 in Cole County. As we point out in our opposition,
 17 Section 3 is exclusively about redistricting for the
 18 State House of Representatives. It does not apply
 19 to districts impacting Congress.

20 There's a similar venue clause for states
 21 in the district in Section 7 of Article 3, but
 22 there's no venue provision anywhere in the
 23 Constitution for congressional districts. The fact
 24 that the framers knew how to channel venue in state
 25 redistricting cases, but chose not to for

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1 congressional districts, is a strong indication of a
2 deliberate choice not to replace the normal venue
3 statute, which allows the officials to be sued in
4 any county where a codefendant resides.

5 In both their reply and their presentation
6 today I believe I heard the State concede that

7 Sections 3 and 7 don't apply to congressional
8 redistricting. They now say that State agencies
9 must be sued in Cole County under Section 20 Article
10 4 of the Constitution, which is a brand new argument
11 not in the original motion and has been raised for
12 the first time in the reply brief.

13 Even if that argument has not been raised,
14 which plaintiffs believe it has, the State's
15 interpretation of Section 20 is clearly wrong.

16 Under Missouri Supreme Court precedent, Section 20
17 means that State agencies reside in Jefferson City.

18 So if there are no other codefendants, then State
19 agencies must be sued in Cole County under the
20 normal venue statute. That's according to Missouri
21 Department of Natural Resources vs. Roper, 824 SW
22 2d, 901, 903, Missouri Supreme Court en banc, 1992.

23 When there are multiple defendants the
24 normal venue statute still applies under Section
25 508.010. And the State can be sued in any county

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1 where a codefendant resides. In *Roper* the Court
2 specifically held, quote, "if venue is proper to a
3 codefendant, it is also proper to a State agency."

4 The Court in *Roper* also specifically
5 rejected the idea of a special rule that applies to
6 a State agency. It held, quote, "there is no basis
7 in law for a special rule protecting the State from
8 being joined with another party in a suit outside of
9 Cole County," end quote. That's at pen cite 904.

10 Here today the State is continuing to ask for that
11 special treatment that was rejected by the Supreme
12 Court in *Roper*. This Court should follow that
13 binding precedent and reject that argument.

14 Earlier opposing counsel made much of the
15 fact that plaintiffs have not found a case, a
16 congressional redistricting case, filed outside of
17 Cole County. There are several responses to that.

18 First, as opposing counsel mentioned, redistricting
19 cases are typically brought in federal court. So
20 the lack of examples in state court is not
21 especially probative on this point.

22 Second, there are multiple examples of
23 local election boards being sued in their home
24 counties, including in redistricting cases in
25 non-congressional districts. The roles of state

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1 election boards do not vary depending on the type of
2 district that they're implementing.

3 For example, in the *Mathewson* case I
4 mentioned earlier, the Missouri Supreme Court
5 ordered the Saint Louis Board not to implement a new
6 senate district that was not lawfully in effect.

7 That's 841 SW 2d, 633, 636, Missouri, 1992.

8 In *Preisler vs. Doherty*, 284, SW 2d 427,
9 436, Mo banc, 1955, there was a compactness
10 challenge to districts in St. Louis. That case was
11 also brought in St. Louis.

12 Outside of the redistricting context,
13 there are a variety of cases of local election
14 officials being sued in connection with their
15 implementation of election laws that are alleged to
16 be non-constitutional. There's no distinction
17 between the board's implementation of congressional
18 districts versus state legislative districts, or
19 their role in implementing districts versus other
20 parts of election law.

21 Despite the possibility, the demonstrated
22 possibility, of local election officials being sued
23 in connection with redistricting, the framers of the
24 Missouri Constitution still chose not to create a
25 venue provision for congressional districts.

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1 Finally, the State makes two arguments for
2 why Jackson County and Kansas City defendants should
3 be dismissed as improper parties, but neither
4 argument has any merit.

5 As an initial matter, the State bares the
6 burden here of proving pretensive joinder and the
7 petition must be liberally construed in plaintiff's
8 favor. That's according to State ex rel vs. Neill,
9 122, SW 3d, 502, 504 to 505, Missouri Supreme Court
10 en banc, 2004.

11 First as to pretensive joinder, that
12 argument is incorrect because plaintiffs have
13 established causation and redressability as to the
14 Jackson County and Kansas City defendants. Again,
15 there's no dispute that these officials are the ones
16 implementing the new congressional map and assigning
17 voters to the unlawful districts. That's causation.

18 If the Court orders the county and city
19 officials not to implement the unlawful districts,
20 that ensures that the voters are not affected in all
21 four districts, and it prevents the new district
22 from being used in future elections. That's
23 redressability.

24 And again, given the precedent in
25 *Mathewson and Preisler*, plaintiffs are not making

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1 argument here. In both of those cases plaintiffs
2 have been successful in blocking the use of the new
3 district by suing the local election boards,
4 including outside of Cole County.
5 Under the Missouri Supreme Court
6 precedents, the Kansas City and Jackson County
7 defendants are entirely proper and not pretensive,
8 and they should not be dismissed from the case.
9 As to the State's second argument, they
10 argued that the local election officials should be
11 dismissed because they're not necessarily
12 indispensable to the case. That argument is wrong
13 for multiple reasons. First, the necessary and
14 indispensable standard comes from the required
15 joinder rule. That's Rule 52.04. That rule
16 determines when a party must be added to a case in
17 order for the case to proceed. It not used to
18 determine whether existing parties should be
19 dismissed on the case.
20 And under Rule 51.01, the Missouri Rules
21 of Civil Procedure cannot be used to limit or expand
22 the venue statute. So it is not appropriate to rely
23 on the required joinder rule to disregard the
24 presence of the Kansas City and Jackson County
25 defendants.

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1 The State is also wrong to argue that the
2 local election officials cannot provide relief
3 because their role is subsumed within the Secretary
4 of State's election administration. The local
5 election officials and the Secretary of State play
6 distinct and different roles under state law.

7 For example, in State ex-rel Bates versus
8 Remmers, 30 SW 2d, 609, 612, Missouri court en banc,
9 1930. The Board of Elections was sued and enjoined
10 from printing ballots containing the name of a
11 candidate that the Secretary of State unlawfully
12 authorized to be placed on the ballot. The
13 Secretary of State's role was determining which
14 candidate is authorized to be on the ballots and
15 then the Board of Election officials is responsible
16 for actually implementing the ballot themselves.

17 In that case the plaintiffs did not need
18 to sue the Secretary, even though the Secretary was
19 the one that initially authorized the placement of
20 the candidate's name on the ballots. The local
21 election official was able to provide the unique and
22 separate relief of not printing the candidate name
23 because he was not authorized to be on there.

24 Secondly, even if we ignore Rule 51.01 and
25 do look to joinder rules to determine whether

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1 defendant is a proper party, the permissive joinder
2 rule logically should tell us when a defendant
3 should be added to a case, even if they're not
4 required to be present. That's Rule 52.05, also
5 repeated at Section 507.040 of the revised statute.

6 Under the permissive joinder standard,
7 plaintiffs do not have to show that every defendant
8 is necessary or indispensable to the case. All that
9 is necessary is that the plaintiff states a
10 nonverbal list claim for at least some form of
11 relief, including relief in the alternative from the
12 defendant. And the claim must have some common
13 questions of law and fact with the claim against the
14 other defendant.

15 The rule specifically says, quote, "a
16 plaintiff or defendant need not be interested in
17 obtaining or defending against all relief demanded."
18 Here we have easily met the standard for permissive
19 joinder. The local election officials for the
20 reasons discussed earlier can provide a unique form
21 of relief that the Secretary cannot. And because
22 the claim against Jackson County and Kansas City is
23 the same one as against the State, there are common
24 questions of law and fact.

25 Even if the Court disagrees with all of

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1 that and believes that each defendant needs to
2 provide complete relief and be necessary and
3 indispensable to the case, the Kansas City Board in
4 particular is the one best positioned to provide
5 complete relief on Counts 3 and 4 of plaintiff's
6 petition. Those claims relate to an issue specific
7 to one voting precinct within Kansas City that was
8 improperly assigned by the legislature to two
9 congressional districts.

10 As a result of that mis-assignment, the
11 voters in Kansas City 811 are now part of both
12 Congressional District 4 and Congressional District
13 5. As a result those voters technically will have
14 two votes for Congress next election, whereas
15 everyone else gets one. That's detailed in our
16 petition at paragraphs 118 to 124. That
17 mis-assignment also causes Congressional Districts 4
18 and 5 to violate the requirement that districts have
19 equal population and be contiguous.

20 Those are the violations for Counts 3 and
21 4 and they can and should be remedied by the Kansas
22 City board when they assigned precincts to implement
23 the new district.

24 And even if the Court disagrees with that,
25 the Jackson County and Kansas City defendants have

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1 to be the ones raising the defense that they were
2 improperly joined in this case. That's according to
3 Beck vs. Hughes, 116 SW 2nd, 210, 212. Missouri
4 Appellate Court, Kansas City, 1938.
5 The Kansas City and Jackson County
6 defendants have not moved to be dismissed from the
7 case and the State cannot invoke another party's
8 defense on the U.A. of proper joinder.
9 The State earlier raised the possibility
10 that other local election officials may be impacted
11 by plaintiff's challenge because lines are redrawn
12 all across the State. As plaintiffs note in our
13 opposition, we can quickly amend our petition to add
14 additional local election officials maybe impacted
15 by the changes of the redistricting map. For
16 purposes of moving quickly to file this lawsuit in
17 time to get relief, and to address the specific
18 harms to our plaintiffs, we've only added Jackson
19 County and Kansas City defendants to the case. But
20 we can either add additional county election
21 officials or seek to certify a defendant class,
22 which has been done in numerous circumstances. And
23 that's the Court's determination on the need to
24 provide relief in that case.

25 And finally, I will note again the State

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1 weighs pretentive joinder and the necessary
2 indispensable standard for the first time in our
3 reply brief, which means that they voided these
4 argument and Court need not reach them.

5 The State also raises what appears to be
6 equitable arguments about the fairness of suing the
7 State outside of Jefferson City and Cole County.
8 Plaintiffs will submit that there's nothing
9 inequitable about suing the officials responsible
10 for placing plaintiffs and other voters in unlawful
11 districts.

12 In State ex rel Missouri Department of
13 Natural Resources vs. Roper, the Missouri Supreme
14 Court specifically held that it is equitable to sue
15 State defendants outside of Cole County if there's a
16 physically closer venue for plaintiffs and other
17 individuals involved." That's 824, SW 2d, 904. In
18 that the Court specifically said, quote, "the
19 interests that led the people to require state
20 agencies and their papers be kept in Jefferson City
21 are not seriously infringed by allowing the State to
22 be joined in a suit outside of Cole County."

23 Here in Kansas City is where the voters
24 are being harmed. It's where plaintiffs and fact
25 witnesses will be. It's where members of the

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1 plaintiff's counsel team is based. And it's where
2 the majority of defendants responsible for the
3 implementation of the challenge statute are located.
4 Your Honor, the last thing I would like to
5 raise is why it's important for this case to proceed
6 regardless of the Cole County litigation. If the
7 plaintiffs in Cole County lose on a single claim,
8 either in trial court or on appeal to the Missouri
9 Supreme Court, then the remaining claims in this
10 case have to be litigated and resolved in time for
11 next year's election. Or the election will occur
12 using an unlawful district that will result in
13 irreparable harm to the voters of Kansas City and
14 Jackson County.
15 If this case is stayed or delayed,
16 depending upon the ruling in Cole County, there will
17 be the serious risk that by the time there is a
18 final decision in *Luther* on the first claim, there
19 won't be enough time to litigate the other claims
20 before next year's elections. That's in part
21 because the election is not just what happens on
22 election day in November 2026. There should be
23 sufficient time for candidates to declare if they're
24 running and to campaign and political parties may
25 want to hold primary elections as well.

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1 Count 2 of plaintiff's petition in
2 particular is a fact-intensive claim. We will have
3 expert witnesses who will analyze the districts as
4 well as fact witnesses who will testify about the
5 communities impacted by these maps. And we will
6 need the Court to conduct a trial and issue findings
7 of fact and conclusions of law for purposes of
8 appellate review.

9 All of that will have to be done within
10 the next couple months before to avoid disrupting or
11 changing the election calendar. That's why it's
12 important for this Court to set a schedule and order
13 the parties to complete fact and expert discovery
14 and proceed to trial expeditiously.

15 Even as to Count 1, which is the claim
16 that is being litigated in Cole County. It is based
17 on constitutional language that has never needed to
18 be litigated, ever since it took effect in 1950.
19 That's because Missouri has never redrawn
20 congressional districts in the middle of a decade
21 before, except to comply with federal court order.
22 So there has never been any occasion to invoke that
23 provision of the State constitution.

24 Given the lack of judicial interpretation
25 of that relevant language from Section 45, Article

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1 3, the Missouri Supreme Court's opinion about having
2 multiple courts weigh in on that decision before
3 issuing a final ruling. For that reason plaintiffs
4 believe that this Court should continue to exercise
5 its power to interpret the law and decide Count 1
6 down on an expedited basis, regardless of what will
7 happen in Cole County.

8 In short, none of the State's argument
9 have any merit here, and the Court should reject the
10 State's Motion to Dismiss or Stay, or Transfer.

11 Unless Your Honor has further questions,
12 the Wise plaintiffs will rest on the brief.

13 THE COURT: I do have a just a couple
14 of quick questions and then see what else you have.

15 So plaintiff's petition here has four separate
16 counts, correct?

17 MR. CHEUNG: Yes, Your Honor.

18 THE COURT: And if I hear you
19 correctly, there's at least two cases that are
20 proceeding in Cole County, the N.A.A.C.P. case and
21 the *Luther* case, correct?

22 MR. CHEUNG: Correct.

23 THE COURT: And the N.A.A.C.P. case
24 brings a completely separate claim, and it kind of
25 even predated the passage of House Bill 1, correct?

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1 MR. CHEUNG: That's right.

2 THE COURT: But the *Luther* case came
3 about post the passage of House Bill 1. And Count 1
4 in the *Luther* case is the same as Count 1 in this
5 case; is that correct?

6 MR. CHEUNG: Yes. The *Luther* case
7 and this case were filed on the same day after the
8 passage of the legislation, a few hours apart. The
9 *Luther* case is only one claim, and that claim is
10 Count 1 of this petition.

11 THE COURT: All right, so this case
12 is the only one -- and maybe the one in Division
13 8 -- but this case is the only one that has Counts
14 2, 3 and 4; is that correct?

15 MR. CHEUNG: Yes, and I believe
16 Division 8 did not have Counts 3 and 4. So there is
17 the one that has the most complete set of claims but
18 however, we have not raised what is raised in the
19 N.A.A.C.P. legislative challenge.

20 THE COURT: And that's kind of a
21 separate issue. So just again for clarity, I think
22 there's also a motion to kind of expedite a
23 preliminary injunction and consolidation of trial on
24 Count 1 only. Not even Counts 2, 3 and 4?

25 MR. CHEUNG: Yes.

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1 THE COURT: So is that something that
2 when you talk about timing, you're still asking for
3 a ruling on Count 1, which is the same count that
4 *Luther* is taking up, correct?

5 MR. CHEUNG: Yes, and the reason why
6 we ask for consolidation is because Count 1 doesn't
7 depend on any factual development.

8 THE COURT: Okay, but you would
9 ideally want Count 1 to be tried before the February
10 filing date as well as Count 2, 3 and 4?

11 MR. CHEUNG: Yes, Your Honor. I
12 think our position would be that Count 1 can be
13 decided at the Court's convenience while the parties
14 are conducting the factual and expert discovery for
15 the remaining counts.

16 THE COURT: Okay.

17 MS. HUNKER: Your Honor, if I can
18 just raise a point since it was regarding
19 scheduling?

20 THE COURT: I am going to turn to you
21 in just a minute and ask the same question. I
22 wanted to make sure I understood the position of the
23 plaintiff. And so you would be essentially arguing
24 against any of the counts or anything moving to Cole
25 County? You believe all four need to stay here in

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1 tact in Kansas City, correct?

2 MR. CHEUNG: Yes. Count 1 is
3 situated slightly different than the other counts
4 because of the *Luther* case, but we believe all four,
5 but definitely Counts 2, 3 and 4 should stay here.

6 THE COURT: So it was a decision to
7 sever or something like that. Well, like I said, I
8 have the Court's discretion to figure out what to
9 do. All right. I know you have some other points.
10 I wanted to give the State and the Intervenor an
11 opportunity to respond to that one question I asked.

12 MR. CHEUNG: I know the Healey
13 plaintiffs would also like to be heard on the Motion
14 to Dismiss, but in whatever order you want.

15 THE COURT: She wanted to say
16 something about scheduling. Was it about the
17 questions I just asked?

18 MS. HUNKER: Yes, Your Honor. You
19 had talked a little bit about the scheduling
20 regarding Counts 2, 3 and 4 and then 1.

21 THE COURT: Yes.

22 MS. HUNKER: I just wanted to say in
23 terms of consolidating trial on your injunction, we
24 think that would make sense for Count 1. But we had
25 done so in the *Luther* case where they were both

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1 together.

2 THE COURT: And I think I have that
3 clarification. But ideally, still, the plaintiff
4 would want rulings on Count 1, be it through
5 preliminary injunction or consolidation; and you
6 want a ruling on Counts 2, 3 and 4 before I think,
7 or, well in advance of the February filing date; is
8 that correct?

9 MR. CHEUNG: Yes, Your Honor.

10 MS. HUNKER: We would specifically
11 say, Your Honor, that we would be entitled to
12 whatever discovery is necessary reading into that,
13 except we haven't yet proceeded with those counts.

14 THE COURT: Yeah, I think scheduling
15 is going to be a whole other issue we can take up.
16 I just wanted to make sure I was clear as to what
17 their position was. I didn't want anybody to have
18 to abandon claims. Like if there's some kind of
19 severance. I was trying to just think through that
20 in my own head, okay? No one is talking about not
21 allowing discovery for Counts 2, 3 and 4. I think
22 they're a little more expert-intensive than Count 1,
23 so that would bring some challenges for timing, but
24 that is a challenge I think you guys are up to
25 meeting.

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1 So I am going to hear from the other
2 plaintiff with regard to the case that is still set
3 in Division 8, but should I deny the Motion to
4 Dismiss, it will be transferred here by agreement of
5 the parties, all right?

6 Okay. So for judicial economy we
7 will go ahead and hear from you today.

8 MS. GAMBHIR: Thank you, Your Honor.
9 THE COURT: And tell me and spell
10 your name.

11 MS. GAMBHIR: Yes, Your Honor. First
12 name is Harleen, H-A-R-L-E-E-N. Last name Gambhir,
13 G-A-M-B-H-I-R, counsel for the plaintiff in Healey
14 vs. State of Missouri. Your Honor, this was
15 mentioned in briefs before, but all of the parties
16 in both cases have consented for Healey vs. Missouri
17 to be transferred to this division, and I believe
18 have also consented to our participating in the oral
19 argument about the Motion to Dismiss, given that the
20 Motion to Dismiss is substantially similar and has
21 been filed and fully briefed in our case as well.

22 THE COURT: And the Healey case, for
23 the record, is 2516-CV-31273; is that correct?

24 MS. GAMBHIR: Yes, Your Honor.

25 THE COURT: You may proceed.

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1 MS. GAMBHIR: Thank you, Your Honor.
2 Your Honor, these cases should
3 proceed in Kansas City. The Missouri Supreme Court
4 has affirmed again and again that venue is
5 determined solely by statute. And the venue statute
6 is clear. When a suit is brought against several
7 defendants residing in different counties, the suit
8 may be brought in any such county. And I'll address
9 at the outset what both the State defendants and the
10 proposed intervenors have mentioned about the
11 possibility, the unlikely possibility, of suits in
12 all of the counties in Missouri challenging
13 redistricting maps.
14 Your Honor, I would just say that the
15 venue statute reflects the General Assembly's
16 determination as to the policy question of where
17 suits may be brought. And if the General Assembly
18 wishes to at some point amend the venue statute to
19 limit these types of suits or create some sort of
20 exception for the State, it could, but it has not
21 done so here. And the State defendants at face are
22 trying to get around the statutory mandate as to
23 venue.
24 They do so in two ways. First, they ask
25 the Court to write new law by inserting a venue

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1 requirement into the Missouri Constitution Article
2 3, Section 45, that is simply not there; to apply to
3 abatement doctrine to a scenario to which it has
4 never before been applied; or to effectively hold
5 that venues are pretensive whenever a plaintiff
6 seeks relief against multiple defendants that could
7 provide relief.

8 Second, State defendants ask the Court to
9 ignore the law by putting forth a range of policy
10 argument about convenience. But the intrastate
11 transfer of venue on the basis that one forum is
12 more convenient than another has no application in
13 this case. That's the Western Division in State ex
14 rel Nevel vs. Graves, 443 SW 3d, 688, 692.

15 And in fact, each of the State defendant's
16 policy arguments weigh in favor of maintaining this
17 case in this Court.

18 I'll address each of defendant's argument
19 in turn. First, the Missouri Constitution has no
20 impact on the venue analysis here. Congressional
21 redistricting is governed by Article 3, Section 45,
22 and that section is completely silent as to venue.

23 The State defendant defends a quote "default
24 constitutional venue rule" that they say requires
25 Congressional redistricting lawsuits to always be

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1 brought in Cole County. But in support they have
2 relied on cases in which a State agency was the only
3 defendant.

4 But the Supreme Court has made clear, as
5 counsel for the Wise plaintiffs has mentioned, that
6 there's no case in there for a special rule
7 protecting the State from being joined with another
8 party in a suit outside of Cole County. And that's
9 exactly what's occurred here. The State has been
10 joined with four defendants that reside outside of
11 Cole County, and therefore venue can lie outside
12 Cole County.

13 The venue provisions in Sections 3 and 7
14 of Article 3 do not change the outcome, and in fact,
15 they reinforce it. Sections 3 and 7 contain a long
16 list of procedural and substantive requirements that
17 are specific to state legislation redistricting,
18 including the use of bipartisan commissions and a
19 partisan fairness requirement. None of the parties
20 here argue that those requirements should apply to
21 congressional redistricting, for which the
22 constitution provides much more flexibility.

23 The State defendant asks the Court to
24 assume that redistricting lawsuits have always been
25 brought in Cole County, and to assume that the

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1 framers of Sections 3 and 7 were acting with that
2 requirement in mind. But as counsel for Wise
3 plaintiff's explains, redistricting suits have been
4 brought outside of Cole County. And State
5 defendants haven't pointed to anything in the
6 history or the language of the 2020 amendment to
7 suggest that the framers of Sections 3 and 7 meant
8 to address congressional redistricting. The Court
9 should decline the State defendant's invitation to
10 read into Section 45 a requirement that is simply
11 not there.

12 Second, the abatement doctrine does not
13 apply here. The State defendant admits that this
14 case is brought by different plaintiffs than those
15 in Luther vs. Hoskins. The abatement inquiry ends
16 there because that doctrine requires that another
17 case be pending between the same party.

18 To our knowledge no Missouri court has
19 ever abated a plaintiff's case because of an earlier
20 filed suit in which that plaintiff was not involved.
21 State defendants effectively concede this point in
22 their reply to being instead the policy argument
23 that, as I'll explain shortly, cannot alter venue,
24 and in fact weigh against transfer.

25 Third, State defendants cannot and have

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1 not carried the burden of establishing pretensive
2 venue. I've noted that State defendants cannot
3 assert misjoinder defenses on behalf of other
4 defendants. The board defendants have not joined
5 the State Defendant's Motion to Dismiss, and so
6 there's no reason for the Court to consider them as
7 joinder arguments.

8 Regardless, there is no case for
9 pretensive venue here. Venue is pretensive only if
10 a petition fails on its face to state a cause of
11 action against the resident defendant, or if there's
12 no reasonable legal case that could be made against
13 the resident defendant.

14 But plaintiff's petition clearly states a
15 claim for relief against the board defendants. And
16 there is a reasonable legal basis for that claim.
17 Voting under the unlawful map created by H.B.1 will
18 be caused by both the State and the board
19 defendant's implementation of H.B.1. And it is
20 beyond dispute that H.B.1 does particular damage to
21 Kansas City and Jackson County by splitting Kansas
22 City's neighborhoods across three different
23 congressional districts.

24 State defendant admits that the board
25 defendants are statutorily required to implement

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1 congressional maps. An injunction against the board
2 defendants will therefore redress the plaintiff's
3 injuries.

4 And I will note that though State
5 defendants have tried to dismiss the board
6 defendants as performing a ministerial function,
7 this is a red herring. The State defendants admit
8 that the Secretary's role in implementing
9 congressional maps is also ministerial. That's in
10 their reply brief in our case at page 8.

11 And the cases that State defendants cite
12 on the question of ministerial duties bare on an
13 entirely different topic, namely whether an official
14 is acting in a judicial versus a ministerial
15 capacity in performing a certain function. The
16 board defendants are proper defendants to this
17 lawsuit.

18 Finally, I'll note that the policy
19 arguments cannot affect the venue analysis. And if
20 they did, they would weigh in favor of swiftly
21 resolving these cases in Jackson County. State
22 defendants return again and again to the argument
23 that adjudication of these cases in Cole County
24 would be more efficient, but within the State,
25 transfer from one proper venue to another proper

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1 venue for inconvenient forum is not required.

2 Credential concerns weigh in favor of

3 keeping these cases in this Court. The Wise and

4 Healey plaintiffs have brought compactness claims

5 that are unique to these cases, and not in any way

6 raised in the *Luther* case. Those claims relate

7 specifically to H.B.1's impact on Kansas City and

8 Jackson County, and the Wise and Healey plaintiffs

9 have the right to develop those claims against the

10 board defendants through discovery, including on

11 questions of how the board defendants will implement

12 H.B.1.

13 Transferring these cases to Cole County

14 will only cause additional delay because a bench

15 trial has already occurred in Luther vs. Hoskins,

16 and so these cases would have to be tried

17 separately. As noted, swift resolution is critical

18 because election related deadlines are quickly

19 approaching, including candidate filing deadlines in

20 February of next year.

21 And I'll finally note that this Court's

22 consideration of claims will if anything contribute

23 to the percolation of diverse opinions from lower

24 courts to the benefit of the likely appellate

25 consideration of these cases.

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1 We therefore ask that the Court deny the
2 Motion to Dismiss and set a schedule for the
3 remaining briefing and trial on the merits of
4 plaintiff's Count 1 as soon as possible to be
5 followed by trial on the remaining counts.

6 THE COURT: Okay.

7 MS. GAMBHIR: Thank you.

8 THE COURT: You're welcome. Did you
9 want to add anything to the question I asked -- I
10 think you kind of answered it in your statements you
11 already made about Count 1 versus 2, 3 and 4.

12 They're not being raised anywhere else, just in this
13 case, correct?

14 MS. GHAMBIR: Your Honor, we have
15 Count 2 in our case in Healey vs. Missouri, so we
16 have both Count 1, which we agree does not require
17 any factual development, and so can be tried as soon
18 as the Court would like to try it. And then on
19 Count 2, we also would intend to seek discovery, but
20 are able to have it agreed to a schedule as soon as
21 the Court is able to with the understanding that the
22 election deadlines are approaching in the early
23 months of next year.

24 THE COURT: And the compactness is
25 Count 2 in yours as well, correct?

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1 MS. GAMBHIR: Yes, Your Honor.

2 THE COURT: All right, thank you.

3 MS. GAMBHIR: Thank you, Your Honor.

4 THE COURT: Anyone else on this side
5 of the table?

6 MS. WILCOX: No.

7 THE COURT: All right, did you guys
8 have any response?

9 MS. HUNKER: Yes, Your Honor.

10 Just a few quick points. First is, I
11 think there's a lot of tripping over the terms of
12 like misjoinder. Arguing it is effectively subject
13 matter jurisdiction and standing with the statement
14 that there is none because of the lack of causation,
15 in particular redressability. And with respect to
16 subject matter jurisdiction, that may not be
17 conferred by consent and can be raised at any time
18 by any party or court even on the collateral or
19 subsequent proceedings. That's Hightower v. Meyers,
20 304, SW 3d 727, 733.

21 In terms of looking at the subject
22 matter question itself and standing, redressability
23 turns not just on the ability to give relief, but
24 effective relief. It is that effectiveness that
25 carries a lot of weight in this case.

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1 In most election cases, the Court is
2 seeking to enjoin a specific practice that's being
3 done within the jurisdiction. So for example,
4 ballot i.d. If you were to enjoin a local election
5 official from performing certain tasks related to
6 confirming someone's photo identification, that
7 would be complete and effective relief because the
8 voter is only going to be exposed in that one case,
9 and there's no implications that occur kind of
10 outside that jurisdiction.

11 But in those cases you don't have it
12 where it's challenging the statewide map and the
13 statewide election itself. In that case, you're
14 talking about a practice that's occurring in a
15 specific jurisdiction. Here you're talking about
16 the actual overall election, which the local
17 officials do not control. They may take steps
18 towards its implementation, but it doesn't actually
19 stop the election. And this is a distinction
20 between a statewide challenge versus a local
21 district challenge.

22 You can pursue relief more
23 effectively in a, let's say, city or county
24 challenge. Because in that case it's a smaller
25 jurisdiction and there isn't going to be a question

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1 of other counties, other jurisdictions, proceeding
2 with an election on the map. Here that election
3 will continue regardless, because again, Kansas City
4 and Jackson County do not control.
5 There's no such thing in
6 congressional maps as single district relief. And
7 this is because of that complexity with respect to
8 the one person, one vote principal. The change in
9 one requires a change in another basically without
10 exception.
11 The analogy that comes to mind is
12 being concerned about a candidate being certified to
13 be on the ballot and only going after the Kansas
14 City or Jackson County local election. So if a
15 gubernatorial candidate was being challenged on
16 certification and you only enjoined the Jackson
17 County local elections for putting him on the
18 ballot, well, that really wouldn't have an effect
19 because everyone else in the State is casting a
20 ballot for the gubernatorial candidate.
21 The same as here. The election gears
22 are proceeding and they will continue to proceed
23 without respect to the Kansas City or Jackson County
24 boards. That's why I expressed earlier as
25 effectively arguing for the disenfranchisement as

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1 opposed to relief. You would be disenfranchising
2 voters as opposed to actually securing the
3 individuals who believe they have been abridged by
4 the new map.

5 I will say I can understand the
6 frustration and shock that comes from traumatic
7 changes in two maps. I think all of us when we see
8 something we have a feeling, a need, to have it
9 changed, and to have that relief quickly to the
10 extent it's meritorious. But procedural rules do
11 matter and subject jurisdiction does matter as well.

12 And so those cases, those procedures
13 really should be looked at closely because this is a
14 case that doesn't just affect Kansas City. It
15 doesn't affect just Jackson County. It's affecting
16 the entire state. Six of the eight congressional
17 districts were changed by the map, and any relief
18 would require adjustments across the board.

19 So unless Your Honor has any
20 questions, I think those are just really the points
21 I wanted to tackle.

22 THE COURT: I don't think I have any
23 questions. You would agree that Article 3,
24 Subsection 45 and Subsection 10, they don't have a
25 limit with regard to venue or where they can be

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1 brought?

2 MS. HUNKER: There's no express limit
3 in either of those sections.

4 THE COURT: I know.

5 MS. HUNKER: Our argument is simply
6 that because of properness of the Secretary as a

7 defendant, that that's the individual who should be
8 sued, and therefore Cole County would apply. And so
9 there is a structure that's in the constitution that
10 is understood that it would be Cole County. But

11 there hasn't been a need for the express provision
12 for the loopholes that were closed were the more
13 obvious ones which were Sections 3 and 7.

14 THE COURT: Right. I was going to
15 say Subsection 45 and Subsection 10 don't refer back
16 to 3 or 7, and 3 and 7 don't refer back to 10 or 45,
17 do they?

18 MS. HUNKER: No, Your Honor. We
19 would view them as closing a loophole.

20 THE COURT: Okay, that's your view,
21 but they don't in any way on paper do that, right?

22 MS. HUNKER: That's correct. On
23 paper they do not do a cross-reference.

24 THE COURT: Fair enough. And let me
25 just ask a hypothetical question. If the Court did

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1 hypothetically agree that venue was proper in Cole
2 County, do you believe that it would be proper to
3 transfer both of these cases in their entirety, or
4 do you believe that the Court would need to dismiss
5 the election boards out before the transfer
6 occurred?

7 MS. HUNKER: I think it is proper for
8 them to be dismissed because of the jurisdictional
9 argument I gave before, and because they are not
10 necessary parties. Complete relief can be provided.

11 There is a case -- let me get the citation for you.
12 It's Faatz v. Ashcroft, 685 SW 3d, 388, 406. And
13 that talks about how a Secretary can provide
14 complete relief in a redistricting matter and that
15 is also a statewide map.

16 THE COURT: Okay. I think I saw that
17 one. But do you believe that this Court would need
18 to dismiss them out before transfer?

19 MS. HUNKER: That's correct, Your
20 Honor.

21 THE COURT: Because if I transferred
22 them with them still in the case, that would create
23 issues.

24 MS. HUNKER: I think it would carry
25 issues. To the extent though I do take the position

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1 that there is no standing to those.

2 THE COURT: So still no standing,

3 okay. I'm sorry. Go ahead.

4 MR. ELLINGER: That's okay. Just
5 hiding back here in the back, Judge.

6 THE COURT: That's okay.

7 MR. ELLINGER: I'm happy to approach
8 if it makes it easier. I have never been accused of
9 being quiet.

10 THE COURT: No, I can hear you just
11 fine. Whatever you want. If your notes are there
12 and you want to be there, that's fine.

13 MR. ELLINGER: I am going to be very
14 brief again, Judge.

15 First of all, I kind of like to
16 elaborate a little bit on the reason that the Kansas
17 City and Jackson County election boards are not
18 proper parties and shouldn't be here. And I think
19 it's more of a practical perspective than purely
20 legal perspective I have, but it ties into the legal
21 side of it.

22 So if the election boards are
23 necessary, if they're necessary parties, if they are
24 real parties in standing then so is the County Clerk
25 of Lafayette County, certainly Clay County is

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1 because Clay County is currently in what we call old
2 5th Congressional District and would not be in the
3 new 5th Congressional District, not to mention all
4 of the other counties that would be affected by
5 changing lines.

6 So if there was a judgment entered
7 here against Jackson County and the Kansas City
8 Board of Elections, it would only apply in Jackson
9 County. It couldn't apply to the others. They're
10 not a party here.

11 But I think the answer you would
12 normally hear is, well, that's okay because the
13 Secretary of State implements the plan that's passed
14 by the legislature, and the Secretary of State would
15 be enjoined, assuming that a decision was made by
16 this Court to implement the plan statewide.

17 Well, if he can tell others to do it
18 because they're not necessarily being the case, then
19 he can tell Jackson County and Kansas City to do it.
20 I think that's where their argument breaks down.

21 There's only one person that can deal
22 with a statewide issue dealing with the
23 redistricting plan, and that's the Secretary of
24 State. Anyone else could only deal with it within
25 their own jurisdiction. And their assignment by

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1 jurisdiction comes from the Secretary of State
2 through the legislation.

3 So the fact that they named the
4 Secretary of State is indicative of the fact the
5 Secretary of State controls the whole statewide
6 plan. If they truly believed it was a Kansas City
7 and Jackson County matter, why name a Secretary of
8 State? They're not a necessary party. If only
9 looking for relief in Jackson County, you would only
10 name the Jackson County districts. Obviously the
11 reason is you can't do that because it has to be
12 done on a statewide basis.

13 And that brings us to the cases that
14 we're discussing, and I think the opposing counsel
15 mentioned a number of cases. I think they're a
16 little bit instructive actually. And they support
17 the Motion to Dismiss. They don't support the
18 opposition.

19 So let's start with the *Mathewson*
20 case. Jim Mathewson was the Majority Leader of the
21 House of -- excuse me, of the Senate. This occurred
22 in 1992. 1992 is that period of time with an old
23 map and new map after redistricting. So there's
24 some analogy to it.

25 The question in that case was, in a

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1 special election to fill an open seat that had been
2 vacated under the old map, do you use the old map?
3 Or do you use the new map? It didn't have anything
4 to do with the validity of the entirety of the map.
5 It's a question of one district and one election.

6 And we concede that was what that case was and
7 that's what they ruled on. Very narrow issue. Not
8 a question of a whole statewide plan. A question of
9 one district. It didn't change lines. It didn't
10 affect anything that happened in that election
11 except for being in a special election and who voted
12 in that special election.

13 Similarly I think they mentioned a
14 case called City of St. Louis vs. Crowe. That had
15 to do with ballot order in an election, in an
16 election for a local jurisdiction, what position did
17 you put the candidate. Not a statewide plan for
18 redistricting.

19 The *Preisler* cases are actually
20 really interesting. There's three of them, Judge.
21 In 1955, 1962, 1975. You might catch a pattern
22 here. Every 10 years back in court.

23 The first case which was the one that
24 was referenced by opposing counsel, which is 284 SW
25 2nd, 427. It's a Supreme Court case from '55. They

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1 did bring an action against the St. Louis Board of
2 Election Commissioners to do with Senate
3 redistricting.
4 Senate redistricting was very unique
5 back then. It was really odd. Instead of drawing a
6 map statewide, what was done was for large
7 jurisdictions, such as in this case of St. Louis
8 County, they said how many senators you're going to
9 get. They told St. Louis County, you're going to
10 get eight senators. And St. Louis County, you
11 figure out how to district those eight, because
12 that's how the constitution used to elaborate. Not
13 how you would do the whole state, but how you would
14 do yours they gave you.
15 Ultimately they failed in that case. Then
16 eight years later they came back. This time they
17 only brought the action in Cole County, and they
18 only brought it against the State. That's Preisler
19 vs. Hearns, 362 SW 2nd, 552. And that challenged
20 more than just St. Louis County districts. It
21 challenged other districts. Then they came back
22 again 13 years later in Preisler vs. Kirkpatrick.
23 Kirkpatrick was the longtime Secretary of State,
24 that's 528 SW 2d, 422, and again that was brought in
25 Cole County.

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1 The reality is when it affects the
2 statewide map, you go to Cole County, because
3 getting any kind of relief in any other jurisdiction
4 simply doesn't address the statewide implications.
5 That is why this case ought to be transferred to
6 Cole County.

7 And I would join in the rest of the
8 arguments for that. And I would be happy to answer
9 any questions, Judge.

10 THE COURT: Okay. Thank you. I
11 don't think I have any questions.

12 Anything else you want to say,
13 Mr. Cheung?

14 MR. CHEUNG: Yes, Your Honor. Really
15 quickly. I'll leave the binder behind this time.

16 THE COURT: Oh, that's fine.

17 MR. CHEUNG: Your Honor, first, to
18 respond to the State's argument on standing, I
19 addressed earlier why the local election officials,
20 why as to them we've established causation and
21 redressability while going through all of the
22 individual roles that both the election officials
23 play in assigning precincts, voters, printing out
24 ballots, counting votes, et cetera, and how all of
25 those procedures would be impacted by an order from

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1 this Court. We would disagree that relief against
2 those local election officials would now provide us
3 with complete relief statewide.

4 In our petition we asked for, one,
5 declaratory relief that the new districts are
6 unlawful. If this Court issues declaratory relief
7 that the new map is unlawful, and then enforces that
8 by prohibiting the Election Board from going forward
9 with the implementation of that map in Kansas City
10 and Jackson County, that provides us complete
11 relief.

12 We would take the position that this
13 election cannot go forward without Kansas City and
14 Jackson County precincts being assigned to some
15 other district. Otherwise that would violate
16 federal law. That would violate constitutional law.
17 That would violate federal statutes that say that
18 every qualified voter in the jurisdiction must be
19 allowed to vote.

20 Even as to -- even if Your Honor
21 disagrees with that and says that the local election
22 officials cannot provide complete relief on Counts 1
23 and 2, there should be no dispute that the Kansas
24 City Board is the entity responsible for providing
25 complete relief on Counts 3 and 4. As I discussed

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1 earlier, that involves the proper assignment of
2 Kansas City Precinct 811 resolving the harm of the
3 violation of equal population as the
4 constitutionality requirement. That involves the
5 assignment of a single district in Kansas City of
6 only a couple of blocks in size.

7 Even if we obtain relief from the
8 Secretary of State as to Counts 3 and 4, the
9 Secretary of State would have to come to the Kansas
10 City board and say fix Kansas City Precinct 811.

11 And I did not hear any statutory requirement from
12 the other side saying that the local election board
13 has to do whatever the Secretary says.

14 They have said that the Secretary of
15 State puts in place the map. I don't know what that
16 means. There's no statute that says the Secretary
17 of State is the one solely responsible for
18 implementing these districts.

19 And as I mentioned earlier, the
20 plaintiffs here are happy to add additional election
21 officials as needed in the Court's view to provide
22 relief. I did not hear any opposition from the
23 other side about creating a defendant class of local
24 election officials.

25 Opposing counsel for the intervenors

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1 attempted to distinguish the Matheson case as an
2 election occurring within St. Louis. As I
3 understand the Secretary of State, his role is being
4 Chief Election Officer in the State. He has
5 responsibility for all elections, regardless of
6 whether or not they're statewide or local. And in
7 *Mathewson* and other cases, there is no discussion or
8 requirement of the Secretary of State having to be
9 in the case or not being able to provide relief as
10 to local elections. The Secretary's role has not
11 changed -- I believe has not changed -- depending on
12 the nature of the elections. But those cases do
13 illustrate that election officials are and have been
14 sued in connection with their implementation of a
15 redistricting map.

16 Opposing counsel also mentioned
17 whether or not these issues are jurisdictional. I
18 would just provide for the Court that abatement is
19 not a jurisdictional question. That's Kelly vs.
20 Kelly, 245 SW 2d, 308, and 313, Missouri Appellate
21 Court, 2008.

22 Counsel for the State also mentioned
23 the State Faatz vs. Ashcroft decision. In Faatz the
24 defendants that were dismissed from the case was a
25 committee of judges responsible for redrawing and

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1 approving Senate districts. That judicial committee
2 played no role in the implementation of the
3 districts once the map is approved. As a result,
4 the plaintiffs did not seek any relief even on the
5 face of the complaint against the judicial
6 commission. And the Missouri Supreme Court found
7 that the commission could be dismissed from the case
8 on that basis.

9 That is not the case here. The
10 Kansas City and Jackson County defendants have an
11 ongoing role in implementing a challenged map, and
12 plaintiffs do seek for relief on all of them.
13 That's on page 44 of our petition.

14 Unless the Court has any further
15 questions, I rest.

16 THE COURT: I think I'm good. Thank
17 you.

18 MR. CHEUNG: Thank you, Your Honor.

19 MS. GAMBHIR: If I may, Your Honor, I
20 have two quick points.

21 THE COURT: Sure.

22 MS. GAMBHIR: Thank you.

23 Thank you, Your Honor. I'll just add
24 on this discussion about whether the boards are
25 necessary or can provide complete relief. As

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1 discussed before, that analysis is from Missouri
2 Supreme Court Rule 52.04. That rule asks which
3 parties must be joined to a case and outlines how a
4 court should proceed if those parties could not be
5 joined.

6 In contrast, Rule 52.05 addresses
7 which parties may be joined and that provides a much
8 broader standard that simply looks to whether
9 there's any right to relief in respect of or arising
10 out of the same transactions, occurrences or series
11 of transactions and if any question of law or fact
12 common to all of them will arise in the action. The
13 joinder of board defendants and state defendants
14 easily meets this standard.

15 And on *Faatz* I'll say, that case says
16 that the Secretary can provide complete relief for
17 redistricting challenge. It does not say that the
18 Secretary is the only possible defendant for
19 redistricting challenge. And in fact, State
20 supports the inclusion of the board defendants in
21 this case. The discussion in that case about why
22 the Secretary is a proper defendant notes that the
23 plaintiff's petition requested injunctive relief
24 against the Secretary supporting the idea that a
25 party that can provide relief that is implementing

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1 the map is a proper defendant. Here the plaintiffs
2 are seeking injunctive relief against the board
3 defendants which supports their inclusion as
4 defendants. Thank you.

5 THE COURT: All right, thank you.
6 Mr. Cheung, I said I didn't have any
7 questions, but just so I'm clear, even if whether
8 this Court or the court in Cole County rules on
9 Count 1 in your favor, or even if not in your
10 favor -- let's say they rule in the State's favor as
11 to Count 1, and they say it was valid to do the
12 redistricting mid--

13 MR. CHEUNG: Mid-decade. Yes.

14 THE COURT: Mid-decade. You would
15 still have Count 3 with regard to this Section 811
16 that you would have to address; is that correct?

17 MR. CHEUNG: We would have still
18 Counts 2, 3 and 4.

19 THE COURT: Yeah, 2, 3 and 4, but
20 definitely Count 3 because that's the count where
21 they have apportioned the same group of people to
22 two different for lack of a better word sub-county
23 groups. I think it was 4 and 5 was the term.

24 MR. CHEUNG: Yes.

25 THE COURT: So you would still have

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1 to rectify that at some point, correct?

2 MR. CHEUNG: Yes. And we would take
3 the position that Count 2 is also completely
4 distinct from the redistricting authority.

5 THE COURT: Okay, that's my only
6 other question.

7 MR. CHEUNG: Yes.

8 THE COURT: All right, so here's what
9 I need you guys to do and this is something -- I'm
10 sorry, I know it's Thanksgiving time. I know you

11 guys have families, but the State mentioned

12 something that I'm curious about is a number of

13 cases that you have done research on where they have

14 all gone through Cole County. You're not finding

15 anywhere in a state redistricting map is going

16 outside to any other county than to Cole County.

17 And can I get a list of those cases that you have in

18 the course of your research? Can we get a list of

19 those cases filed in this case? It can just be a

20 file and name and key cite. I don't know that I

21 need a description unless there's something unique

22 about them that would need a description, but I want

23 a list of those cases and I would ask if I can get

24 those by Wednesday?

25 MS. HUNKER: Your Honor, that

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1 shouldn't be a problem. We should be able to get that
2 for you.

3 THE COURT: And I'll allow the
4 plaintiffs to respond and I'll give you guys until
5 Tuesday, December 2nd. So you can look at their
6 cases, but you may find some additional cases that
7 weren't all in Cole County. And to the *Healey* case,
8 I would ask you to do the same even though it's not
9 technically here yet.

10 MS. GAMBHIR: Yes, Your Honor.

11 THE COURT: Go ahead and file it and
12 I'll just kind of monitor that case as well. And if
13 you can send us courtesy copies. Casenet is great,
14 but there's a great delay sometimes. So if we could
15 have those. I would like to get this issue decided
16 next week, but I want to look at those cases just so
17 I make sure I'm not missing anything in my analysis,
18 okay?

19 MS. HUNKER: Yes, Your Honor.

20 THE COURT: All right, so there's
21 that. Now let's talk about scheduling. Yes?

22 MR. MULJI: Your Honor, if I may,
23 before we turn to scheduling, we had a few points at
24 least on behalf of the Wise plaintiffs we would like
25 to be heard about. I think the Court said you're

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1 inclined to grant intervention.

2 THE COURT: Yes, go ahead.

3 MR. MULJI: We do have a few
4 objections here, but I want to provide counsel an
5 opportunity for intervenors, if they want to argue
6 that I can go ahead and the Court can hear my
7 objection and then speak to their motion.

8 THE COURT: Okay.

9 MR. ELLINGER: Judge, I am happy to
10 respond on anything that the Movant intervenors are
11 involved in.

12 THE COURT: That's fine. And I'm
13 also curious. I know there's two cases in Cole
14 County and I don't know if intervention was granted
15 in both of those.

16 MR. ELLINGER: They were.

17 THE COURT: I believe it was in the
18 *Luther* case. I'm not sure about the other one.

19 MR. ELLINGER: So the two cases that
20 is deal with the current map as opposed to
21 the special session. That's the N.A.A.C.P. case,
22 actually another case there in Cole County that
23 doesn't deal with the validity of the map. So you
24 know, it has to do with the election, how you do
25 signatures, et cetera.

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1 THE COURT: All right.

2 MR. ELLINGER: But in both of those
3 cases intervention was granted.

4 THE COURT: All right, thank you.

5 MR. MULJI: Thank you, Your Honor.

6 I would just note if plaintiff -- if
7 you're inclined to grant intervention, if that is
8 the case and remains the case after this argument,
9 we would ask that Your Honor grant intervention
10 permissibly rather than because the intervenors have
11 not satisfied the three elements for intervention as
12 ripe under Missouri law.

13 I'll start with -- well, the
14 intervenors include in their reply which they filed
15 yesterday, some 24-odd pages following a five page
16 motion. I'll just note that, you know, the burden
17 is on intervenors to prove that they meet all three
18 elements of the intervention as to ripeness, it had
19 to be contained in their opening motion, arguments
20 contained in their reply motion, that virtually the
21 entirety of their arguments are forfeited.

22 THE COURT: Hold on. So just so I'm
23 clear, I have a Motion to Intervene filed November
24 the 8th, and then I have suggestions in opposition
25 filed November 18th.

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1 MR. MULJI: I believe that's correct,
2 Your Honor.

3 THE COURT: Was there more? Was
4 there a response?

5 MR. ELLINGER: There was reply. So
6 technically the reply was due today, but we agreed
7 with counsel that we will file it and get it to them
8 in advance. So it was filed yesterday, and a copy
9 was provided to opposing counsel as per our
10 agreement.

11 THE COURT: I don't have a copy. So
12 at some point can you email us a copy?

13 MR. ELLINGER: I will send you a
14 copy.

15 THE COURT: All right, perfect.
16 Thank you. Sorry about that. You may continue.

17 MR. MULJI: Thank you, Your Honor.

18 So there's three elements of
19 intervention on those rights. To protect the legal
20 and protectable interests that will be or would be
21 impaired by intervenor's nonparticipation in the
22 suit. And most importantly, the intervenors have to
23 show that their interest might be adequately
24 defended by a single existing defendant in this
25 case. We submit that they haven't met any of those

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1 requirements.

2 With respect to the first two, courts have

3 gone both ways on whether these interests are

4 sufficient. I'll concede that. But here in their

5 motion, their opening motion, they contend that the

6 only interest that the intervenors noted is a sort

7 of a bare bones, all-insertion of an interest in

8 supporting the election of a Republican candidate to

9 office, including to the U.S. House.

10 Their repeated assertion thereafter is

11 that it goes to Missouri law and the Constitution.

12 That's not true. Missouri redistricting law does

13 not provide any party -- it provides for a

14 Republican State committee's creation, of course,

15 but it doesn't provide a guarantee to any party on

16 the election outcomes.

17 In reply the intervenors, proposed

18 intervenors, says that what they really want here is

19 certainty of what the congressional lines are going

20 to be so they can get ready for elections and so

21 forth.

22 Our response to that is, I think, who

23 doesn't want that? That's a general idea. If you

24 talk to anyone in Missouri, any voter or any entity,

25 they're going to say yes, of course we want

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1 certainty of the lines, which that is what is
2 asserted by plaintiff, which is why we encouraged
3 all parties to move expeditiously here. That's
4 exactly the kind of generalized interests that
5 courts around the country have said it is not
6 sufficiently unique to the intervenors, but to merit
7 the intervention as a right, and the intervenor
8 hasn't shown how that interest would at all be
9 impaired by their nonparticipation in a suit.
10 Most importantly, though, Your Honor, is I
11 think the key thing to note here is that they have
12 failed to satisfy the element of inadequate
13 representation of their interests. You know, they
14 deny that there's a presumption. There is a
15 presumption in Missouri law and in federal law which
16 the rules for intervention as a right is the same in
17 federal and in state law. But it says that if the
18 government is a defendant in a case, and it's
19 defending the law that the intervenor seeks to
20 defend as well, there's a presumption that it's
21 going to do so adequately. And that's because the
22 State is the defendant here. The State has an
23 inherent interest in defending its interest.
24 And the Defendant intervenor questions
25 whether that presumption exists in Missouri law. I

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1 would point the Court to the *Underwood* case. It
2 states it quite clearly. Yes, it's true that
3 intervention was generally granted under Missouri
4 law, but that's true in federal law as well as in
5 courts that regularly apply this presumption.

6 No matter whether the presumption is weak
7 or strong, they need to overcome it. I think we've
8 seen today that none of the arguments that the
9 intervenor's raised have been particularly adequate
10 on the legal parts. Every distinction, every time
11 they presented an argument at least today, well,
12 we're presenting some practical concerns here, not
13 legal argument. They essentially sign on to the
14 arguments of the Attorney Generals's Office. They
15 have made no indication that the attorney general is
16 unwilling or unable to defend H.B.1.

17 And federal courts have said that these
18 are cases where if an intervenor is seeking to come
19 in as a defendant, and the State is defending the
20 constitutionality of its own laws, they need to show
21 that there's a real problem with the Attorney
22 General's ability to defend the case. That is
23 simply not the case here.

24 And so for those reasons, Your Honor, we
25 would ask the Court to -- if the Court's inclined to

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1 grant intervention, to do so permissibly only on
2 intervention as a right. But even intervention here
3 has some really tremendous perils for this case.

4 I'm glad counsel mentioned the case in
5 Cole County regarding the referendum being entered.

6 So there's a case called People Not Politicians vs.
7 Hoskins. That's a referendum effort to, by
8 referendum, to overturn the legislature's enactment
9 of H.B.1 because there's a litigation hanging around
10 on collecting signatures and which signatures would
11 count and so forth.

12 I will note that there's an intervenor in
13 that case that was granted intervention and
14 represented by counsel for intervenors here. I'll
15 note that they sought intervention the day before
16 trial was set to occur. My understanding is that
17 they showed up at trial; intervention was granted,
18 and then they immediately sought a continuance to
19 seek discovery on a claim that's purely legal.
20 Similar to the claim that we have in Count 1.

21 The judge denied that request given that
22 it is a purely legal question, and then the
23 intervenor in that case then applied to strike the
24 judge, effectively moving the trial date back.

25 Resulting in a change of judge. The Secretary of

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1 State has done the same and now at this point that
2 case, the trial has been delayed by weeks. It's not
3 happening until December 8th. The deadline to
4 collect signatures is December 11th, something like
5 that. So they're not going to have the decision in
6 time or by the end of the signature-gathering
7 period.

8 I will note this, Your Honor, just for a
9 precautionary tale more than anything else. I take
10 intervenors at their word, but they have an interest
11 here like we do in resolving this case
12 expeditiously. But I thought it would be important
13 for Your Honor to know of that recent development in
14 the case, to know that there are a series of sort of
15 delay risks in permitting a party to intervene when
16 of course they don't have the right to do so under
17 those articles.

18 THE COURT: All right. Your
19 response?

20 MR. ELLINGER: Well, I have more to
21 respond to than I thought. I think opposing counsel
22 has noted that in Missouri, we're a literal
23 intervention state; you have three standards. You
24 have to have an interest in the action. It has to
25 be impaired or impeded, and that there's not

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1 adequate representation. And candidly the general
2 standard in most of the cases is if you cross the
3 first two bars, the third bar is a pretty low bar,
4 how you need adequate representation.
5 So Missouri Republican State
6 Committee is a statutory creation. It's required by
7 law. It governs and oversees the Republican party
8 at all times including the every four-year
9 convention. There's now a Democrat State Committee.
10 Any other state political party has to have that
11 same committee. There are also subcommittees that
12 are governed by the State parties, one of which is
13 the Congressional District Committee, and they have
14 to be organized and they have to be organized at the
15 time of elections to be one of those that are within
16 the congressional district. So if a map changes,
17 the committee has to be completely reorganized under
18 Missouri law.

19 So the interest of the Missouri
20 Republican Party is very different than anybody
21 else's interests in the room. Its role is to elect
22 candidates. It's to run campaigns. It's to recruit
23 those candidates. It's to support those candidates
24 and it spends money in support of that.

25 If you look at the cases, some of

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1 which have been cited in their opposition and the
2 rest are cited -- one of the other ones is cited in
3 our reply, which I'll email you as soon as we're
4 done here, Judge.

5 There are three cases that are
6 discussed. There's the *Preisler* case, which the
7 other side relies on for saying we don't have an
8 interest. That was a case where somebody had signed
9 an initiative petition. That's it. And you won't
10 hear anything in the case dealing with signatures,
11 validity of signatures based on the initiative claim
12 that we signed the petition. We should be able to
13 be in the case.

14 The Court in that case found that they
15 didn't spend any money. They didn't have a specific
16 interest. They were just a casual observer on the
17 street. I don't think that's the exact words, but
18 that's the general term that was used.

19 But then we look at more recent, more
20 on-point cases. The primary one is *Allred*. *Allred*
21 is a case that basically boasted that proponents and
22 opponents of measures have a vested interest in
23 being in litigation. Now this is not a
24 opponent/proponent case here, per se, but it does
25 indicate that if you have a vested interest, or a

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1 significantly identifiable interest in the outcome
2 of litigation, and spending money that would impair
3 that interest, that you would establish that
4 interest.

5 Perhaps even more on point is *Johnson*,
6 which was ironically a redistricting case. And in
7 that case the Supreme Court said that a state
8 senator had the right to intervene because he was
9 going to run for office under the map. He was going
10 to spend money. I think that was the single issue
11 that the Court really hinges its point on is that he
12 was going to spend money on the redistricting,
13 excuse me, on the campaign, and that the uncertainty
14 of the district impaired that interest. The Supreme
15 Court said he had a right to intervene in that case.

16 I don't think there's much question that
17 resolution in this case would impair the interests
18 of the intervenor. Its goal is to elect candidates.
19 It has to reorganize committees. It has to know
20 where to recruit candidates for congressional seats.
21 I think that everybody has noted here, we're near
22 the filing deadlines. The filing opens late
23 February and closes late March, so it's very
24 important that there's an expeditious decision. The
25 party would like an expeditious decision because it

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1 has to get to the business of figuring out who the
2 candidates are and raising money for the campaign
3 and they've already spent money on the campaign.

4 I think the final point, and I think this
5 is really where they focused their primary argument
6 on is on the adequacy of representation. Now first
7 of all, as I mentioned, that's kind of a low hurdle.
8 That's the shorter bar to get over.

9 But I think if you take a look at what the
10 interests of the Republican Party are versus the
11 interests of the State, you will find that the
12 representation can't be the same. So the State
13 cannot have a political party interest in the
14 representation of a political party. It can only
15 represent the law. It represents all laws. Any
16 action that involves the validity of the statute
17 that the State does is involved. And there are a
18 lot of those. Every year. Not just this year.

19 And the State has to make determinations
20 on what issues to present, not because of whose
21 going to win in this case, but what issues to
22 present that may affect other cases that they're
23 involved in. It has to make decisions on allocation
24 of resources. It has to make determinations on the
25 litigation risk. Do you continue to go forward on

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1 this? Do you not continue to go forward on that? Not an O

2 Official Court Document The State party does not have that issue.

3 We have an issue in protecting our interest. And we

4 want to go forward. And we want to go forward on

5 all of the claims. Not an Official Court Document

6 And you know, I think that in this

7 circumstance, while the State may do a great job of

8 representing the State's interests, they do not

9 represent the interest of the Republican Party. And

10 I think that's why as under the rule and under the

11 case law as interpreted in the rule, intervention as

12 a matter of right should be granted. Not an Official Court Document

13 And I'll address very briefly the

14 permissive intervention data. I think dealing with

15 a signature-gathering case is a very different thing

16 than a statewide redistricting plan. I'll defer

17 those arguments to the people that are in that case.

18 I'm one of those, but my client is not in that case.

19 Just by reference. Not an Official Court Document

20 We have no interest in delaying the case.

21 We want an answer because we want to know who we can

22 recruit for candidates; where we are going to spend

23 money; what the boundaries are, and whether or not

24 we're going to have to reorganize the new district.

25 The new law goes into effect in early

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1 December. At that point everybody has to start
2 making decisions, unless for some reason the law
3 doesn't go into effect. And those decisions, while
4 not un-reversible -- because it's still viable that
5 you have no actual candidates -- those laws do have
6 a significant impact. So the sooner we get a
7 resolution, the better for everybody. And that's
8 what the Republican State Committee would like. One
9 of the reasons we would like an answer. And we are
10 happy to work with the other side and make sure we
11 get there and work with you, and adjust calendars to
12 get this done.

13 For that reason I think intervention
14 should be granted.

15 THE COURT: Okay. Anything further?

16 MR. MULJI: A few points, Your Honor,
17 if I may?

18 THE COURT: Sure.

19 MR. MULJI: Counsel mentioned that
20 the *Johnson* case as a redistricting case. I'll note
21 that that case only addressed permission.

22 Permission, not intervention, as a right.

23 The *Allred* case, yes, it's most
24 recently provided the standard, but what the Court
25 also said was that the intervenors have the burden

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1 to satisfy every single element. If they don't
2 satisfy one, that is not sufficient to intervene as
3 a right.

4 Here I'm not sure that I heard any
5 argument to suggest that the current Attorney
6 General representing the State of Missouri cannot or
7 does not have the ability or the will to defend its
8 enactment as vigorously as the intervenor would like
9 to see.

10 As far as I understand the
11 intervenor's argument about adequacy of
12 representation is that essentially they're the only
13 party that cares about Republican interests. And so
14 they might make arguments that the State won't
15 because the State has to represent all interests.
16 Namely the interests in defending its enactments.

17 But what the courts have said, and I
18 would point the Court to a case we cited on page 6
19 of our opposition brief. It's a federal case. It's
20 called One Wisconsin vs. Nichol. And in that case,
21 you know, the intervenors in that case, I think,
22 were a set of legislators and voters and partisans
23 and they were seeking to defend, I think, the voter
24 i.d. laws against the intervenors as the defendant.
25 And the interest that they raised essentially was in

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1 fraud-free elections. Election integrity. Not
2 unlike in generality, the interests in certainty, or
3 the interest in supporting the election of folks on
4 your side of the political spectrum.

5 And the Court said, you know -- and
6 the Court said that what that means essentially what
7 it really is, is just an agreement with policy
8 underlining the enacted law that they want to
9 defend, right? That's what you're going for. The
10 aligned interest here is that both State and the
11 intervenor would like to see H.B.1 stand. They are
12 going to present all of the arguments they can in
13 this litigation to do so.

14 So I would submit that the adequacy
15 of representation here is an easy question,
16 regardless of whether it's a strong presumption, a
17 weak presumption, however you put it. They haven't
18 satisfied even the weakest version of that
19 presumption that the State is here to defend it on.
20 So for that reason alone intervention as a right
21 should not be granted.

22 THE COURT: All right, thank you for
23 that. Did you want to respond?

24 MS. GAMBHIR: Is it all right, Your
25 Honor?

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1 THE COURT: Do you want to speak on
2 the Motion to Intervene in the *Healey* one as well?

3 MS. GAMBHIR: There's also a motion
4 that's being filed, and we have filed our opposition
5 on that as well.

6 THE COURT: Did you have any
7 additional argument that you want to make?

8 MS. GAMBHIR: Yes, Your Honor, I'll
9 just add two points if that's all right.

10 First, just to underscore on the
11 adequate presumption, presumption of adequate
12 representation. That is in particular when the
13 State is defending the constitutionality of a state
14 statute. And so in the State's Committee for
15 Educational Equality, it sort of lays out those
16 circumstances that I think apply with equal force
17 here.

18 And I'll say just to distinguish the
19 *Allred* case that was mentioned. In that case the
20 proposed intervenors identified specific ways in
21 which the State's litigation strategy diverged from
22 the proposed intervenor. First is that -- I'm
23 sorry, Your Honor. I left my notes in this binder.
24 Is it okay if I grab them?

25 THE COURT: Sure.

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1 MS. GAMBHIR: Thank you. The first
2 is that the proposed intervenors, the State, had no
3 interest in resolving the case on a certain timeline
4 and admitted that to the Court, whereas the proposed
5 intervenors sought to have that case resolved as
6 expeditiously as possible.

7 And the second is that the State in
8 that case disavowed any intent to conduct discovery
9 and the proposed intervenors informed the Court that
10 they did. I would submit that in this case, we
11 haven't heard anything from the proposed intervenors
12 in this case, in particular about why they don't
13 think that State defendant's litigation strategy
14 will advance their -- will adequately represent
15 their interests in terms of litigation strategy.

16 And I will say that in terms of the
17 data points that we do have, the bench trial that
18 occurred earlier this month of Luther vs. Hoskins,
19 there were essentially no substantive points raised
20 by the proposed intervenors that were not already
21 raised by the State. And I think the same can be
22 said of them here today.

23 So I agree with counsel for the Wise
24 plaintiffs that there is not a basis for
25 intervention as of right. And if the Court is

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1 inclined to grant permissive intervention for the
2 same timing concerns that were raised earlier, I
3 would suggest and submit that the Court consider
4 first setting a scheduling order so that there is
5 minimal possibility of disruption by any intervening
6 parties. Thank you.

7 THE COURT: All right. Thank you.

8 All right, I think I have everything
9 I need to take everything under advisement. You are
10 going to email me your response as well?

11 MR. ELLINGER: I will email that as
12 soon as we're finished here, Judge.

13 THE COURT: Perfect. And then you
14 guys are going to file and send a courtesy copy of a
15 list of cases that I asked you to do as well.

16 I want to be a little ambitious here
17 because end of the year gets really busy for all of
18 us. Everybody wants to get in to see me. They

19 don't want to see me all year and then they want to
20 see me in December. I'm thinking if a trial needs
21 to be had, Monday -- is one day enough? One day?

22 MS. HUNKER: D I can't hear you, Your
23 Honor.

24 THE COURT: If a trial needs to be
25 had on these four counts, if I kept them in tact

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1 here in this jurisdiction, how long would that case
2 take?

3 MS. HUNKER: So it would depend on
4 the particular claim, Your Honor. I think we all
5 agree that Claim 1, which is a legal matter, can
6 proceed at a much faster pace, because it would not
7 require discovery. So that one I think we can do
8 sometime in late December or early January.

9 THE COURT: All right.

10 MS. HUNKER: I have a lot of concerns
11 with the idea of accelerating Counts 2, 3 and 4,
12 given the amount of expert and fact discovery that
13 will be conducted. I had kind of taken the fact
14 that plaintiff's pursued a PI as an acknowledgment
15 that the other claims would occur after, and
16 possibly after the filing deadline. But that they
17 would be pushing forward for the immediate relief on
18 Claim 1.

19 With respect to the exact timing of
20 Claims 2, 3 and 4, I honestly would have to consult
21 with my office because we had not come with the
22 expectation that it would be set in that timeline in
23 place just today. I would also like to confer with
24 both counsel because usually you can kind of
25 negotiate some things in advance as well.

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1 THE COURT: Well, I don't feel
2 like -- I mean, you guys seem to have a productive,
3 professional relationship with one another, which I
4 greatly appreciate. I don't think I need to put
5 together a tight scheduling. If you guys could work
6 among yourselves and can do that. I was going to
7 give you dates certain for trial, and then you guys
8 could work amongst yourselves and figure out your
9 scheduling and how you do that, because it appears
10 as though you are working pretty well together.

11 MS. HUNKER: Your Honor, I have done
12 a couple of redistricting trials before. They can
13 get incredibly fact-intensive. And trying to get
14 the three claims done before February I think would
15 not be -- not impossible but it would be incredibly
16 tight.

17 MR. MULJI: Your Honor, I think we're
18 largely actually in agreement with a few points here
19 and there. We agree that the reason we filed a PI,
20 we sought to consolidate the trial on merit,
21 separate from Counts 2, 3, 4, we think like
22 mid-December would be ideal to hear a timed trial on
23 that claim.

24 With respect to Counts 2, 3 and 4
25 redistricting cases, I think we've maybe perhaps

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1 done together, some time coming up short. I'm not
2 sure. They do operate on quite tight schedules, and
3 can be done in the time that we have, before at
4 least the end of January. And so our -- as
5 Mr. Cheung noted, I think we anticipate that had we
6 resolved Count 1, and then do an expedited discovery
7 process on Counts 2, 3 and 4, and have a trial
8 hopefully in early January, mid-January, sometime
9 before the filing deadline in February.

10 THE COURT: For Counts 2, 3 and 4?

11 MR. MULJI: Right.

12 THE COURT: And you don't think
13 Counts 2, 3 and 4 could happen in January? You
14 think that's more February?

15 MS. HUNKER: I think January is
16 really pushing it. I understand sometimes they go
17 on tight deadlines, but when you're talking about
18 three fact claims with multiple experts going into
19 details of analysis and reports and going into the
20 holiday, and preparing for the current trial on
21 Claim 1, that would be a very tight turn-around.

22 Now what I would suggest maybe is
23 that we set the date for Claim 1 and then perhaps
24 have a status conference in a few days, or through
25 briefing of where we can set the schedule for the

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1 remainder. I really do want to talk to my expert
2 before I can give -- before I can represent certain
3 deadlines would work.

4 THE COURT: So let me go back to my
5 original question. If we were to try just Count 1,
6 the preliminary injunction in Count 1, how much time
7 do you think you guys would need for that?

8 MS. HUNKER: There's a PI Motion
9 that's already been filed. The ten-day response
10 plus the --

11 THE COURT: Let me just interrupt you
12 there. Do you need a half a day, you need a full
13 day --

14 MS. HUNKER: Oh, I'm sorry.

15 THE COURT: I blame me for that
16 because I think I asked it three different ways.
17 How much time you do actually need for the
18 presentation of evidence at this trial?

19 MR. MULJI: I don't know that there
20 are any factual disputes on that whatsoever, on that
21 claim.

22 MR. ELLINGER: Less than a half a
23 day, Judge.

24 MR. MULJI: Less than a day.

25 MS. WILCOX: Your Honor, we could

1 probably present stipulated facts, which I think is
2 what they did in *Luther*.

3 MR. ELLINGER: On the redistricting,
4 mid-decade redistricting Claim 1, I think we can
5 stipulate.

6 MS. HUNKER: We took a similar tactic
7 in the *Luther* case, Your Honor, to my knowledge.

8 THE COURT: Okay. So I'm just
9 looking at my calendar. I have a jury trial the
10 week of the 15th. They're all criminal matters. I
11 don't know. I'm looking at maybe the afternoon of
12 the 19th. That's Friday, December the 19th.

13 MR. ELLINGER: Would it be possible
14 to do it the week earlier, Judge?

15 THE COURT: That's going to be really
16 tough because I think I have something else set that
17 afternoon.

18 MR. ELLINGER: I'm scheduled to be
19 out of the country with my family. If I have to
20 change that I will. I'm happy to move it more
21 quickly as opposed to farther.

22 MR. MULJI: I would note that the
23 intervention motion is outstanding for precisely
24 this reason.

25 MR. ELLINGER: I will also note that

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1 I have tried to get it faster, which may cut the
2 other direction on that.

3 THE COURT: Are you gone for the
4 holiday season starting then?

5 MR. ELLINGER: I'm gone from the 17th
6 until the -- I get back on the 28th. But I'm happy
7 to do anything before then. I will adjust my
8 calendar before then, including if we need to do
9 something on the 15th or 16th, I will certainly make
10 that work also, Judge.

11 THE COURT: Okay. I mean, my 16th
12 and 17th are wide open. But it's all contingent on
13 that jury trial going. And that's a murder case.
14 But that would bump you and I don't want to
15 necessarily bump you. I can put you there and I can
16 let you know the week before.

17 MR. ELLINGER: If you can put us on
18 the 15th and 16th and if anything in there works, we
19 can all adjust pretty quickly to get here on time.

20 MR. MULJI: Your Honor, I think this
21 can all be done in as little as an hour.

22 THE COURT: If I have jurors upstairs
23 and as hectic as it is, it's hard to find even an
24 hour. But let's do this. Let's just put you on the
25 16th, okay? And let me do this. I will know on the

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1 8th what that week will look like. And if I need
2 you to come in early, I'll have you come in early on
3 that date. The other alternative that I do have is
4 the very beginning of January could also be an
5 option.

6 MR. MULJI: Our preference, Your
7 Honor, would be to resolve this claim ideally in
8 December if we can.

9 THE COURT: I'm giving you a backup.
10 On a murder case, even early doesn't work because
11 you have immunity issues from time to time and they
12 end up filling up all that space. I wanted to give
13 you guys some backup times, and I'm looking at maybe
14 like the 6th maybe of January.

15 MR. ELLINGER: That works fine,
16 Judge.

17 MR. MULJI: Good for us.

18 THE COURT: Oh, I'm sorry. Actually,
19 yeah, the 6th, maybe even the 9th, the 6th or the
20 9th.

21 MR. ELLINGER: Either of those work,
22 Judge.

23 THE COURT: What dates did I tell
24 you? December 16th?

25 MR. ELLINGER: Yes.

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1 MS. HUNKER: You also had January 6th
2 and 9th for January. I will say Your Honor, State
3 can make any of those dates work, whatever is
4 convenient for the other parties and the Court.

5 MR. ELLINGER: Same for intervenor.

6 MR. MULJI: Same for plaintiffs.

7 THE COURT: Let's go ahead and put it
8 on December 16th at 9:30. By December 8th I will
9 know if that trial is going and I will notify you.

10 If that trial is indeed going, then I am probably
11 going to bump you to the 6th or the 9th. So
12 probably kind of keep those dates a little bit open.

13 I hate to do that to you. I know you guys'
14 calendars get busy. I know they're coming in on
15 December 8th about the case. And maybe if they
16 resolve it sooner, I will let you know, but I just
17 need to give them that.

18 MR. MULJI: Thank you, Your Honor.

19 MR. ELLINGER: Thank you, Judge.

20 THE COURT: I think we have
21 everybody's email address. If we don't, give it to
22 my law clerk. I will rule on the Motion to

23 Intervene. I will rule on the Motion to Dismiss and
24 I will rule on the Motion to Transfer sometime in
25 the next -- probably late next week after I get your

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1 list and filings, okay?

2 MS. HUNKER: Yes, Your Honor.

3 MR. ELLINGER: Thank you, Judge.

4 THE COURT: Anything else we need to
5 take up at this time?

6 MS. HUNKER: I don't think --

7 MS. GAMBHIR: Your Honor, would it be
8 possible to have a date by which we should submit a
9 proposed scheduling order?

10 THE COURT: Oh, that's a great idea.

11 Yes, as soon as possible. And I'm not trying to be

12 super funny, but again, you guys seem to be working

13 well. If you tell me you prefer it, I have to get

14 more involved. But if we know that December 16 is

15 our date, then I need you guys to kind of work

16 backward from that date.

17 MR. MULJI: I think the question was

18 related to the other three counts.

19 THE COURT: Oh, yeah. How much time

20 do we think those would take? Two days to try?

21 MR. MULJI: Two to three days, but I

22 think we can make it happen in two if we had to, but

23 ideally three days. We just came from a trial in

24 Utah on a map that was two days, two experts, two

25 lay witnesses, if both sides agree to sort of move

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1 things along.

2 MS. HUNKER: My trial was four weeks.

3 Your Honor, I would have to confirm,

4 but I think three days, possibly four, depending on

5 the number of witnesses the State wanted to bring in

6 would be the total.

7 MS. WILCOX: You're saying --

8 MS. HUNKER: We would need at least a

9 full day for our presentation.

10 THE COURT: So three days? Three to

11 four?

12 MR. MULJI: Three days or four.

13 MR. ELLINGER: Three at minimum, four

14 at long, is what I'm hearing.

15 THE COURT: And you want them

16 back-to-back dates; is that what you want?

17 MR. ELLINGER: Makes it easier for

18 trial purposes. I don't know that it's necessary.

19 MS. WILCOX: I think we would prefer

20 just to get it done before the end of February

21 filing deadline, so we will work with what the Court

22 has to offer.

23 THE COURT: Okay.

24 MR. RAYMOND: Judge, just so you

25 know, February 24th, Tuesday, is when the opening is

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1 for the candidates.

2 THE COURT: February 24?

3 MR. RAYMOND: Tuesday. So that is
4 the opening day.

5 MR. THOMAS: And we don't do maps
6 overnight.

7 THE COURT: No, I know.

8 MR. THOMAS: Takes about four weeks.

9 MS. HUNKER: Your Honor, if it would
10 be helpful we could maybe consult the party and get
11 back to you with maybe a more cleaner estimate, if
12 that would help with the scheduling.

13 THE COURT: Yeah. I'm looking at the
14 week of January 26. I've got some matters set, but
15 they have some dispositive motions that I need to
16 maybe rule on, so I don't know what's going to
17 happen with those. They're not extremely old. So
18 maybe January 26th, that works?

19 MR. ELLINGER: That week works for
20 us.

21 MS. WILCOX: Yeah.

22 MS. GAMBHIR: That's fine.

23 THE COURT: So let's tentatively say
24 that. Again, we'll know more as we get closer
25 because the problem becomes I'm just jumping over to

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1 February. That's going to put the election board in
2 a tight spot if they need four weeks to do it. But
3 the week of February 5th, is that open? No, that's
4 not.

5 MR. ELLINGER: You mean February 2,
6 Judge?

7 THE COURT: That's not open. They're
8 all crazy, right?

9 MR. ELLINGER: I can make that week
10 work also.

11 THE COURT: Let's just shoot for
12 January 26. You're going to check with your
13 experts. Let us know. If that doesn't work we can
14 try to figure out something via email. And if you
15 need to break it up into two days, then we'll do
16 that, but that is not ideal. We'll try to get four
17 in a row. January 26 might be our best position of
18 getting that. But you check with your witnesses and
19 let us know next week if you can, and we'll try to
20 go from there.

21 MR. MULJI: We'll set that as a
22 deadline, Judge? Perhaps just get with --

23 THE COURT: We'll set it for
24 January 26. That's a Monday, at 9:30. And then we
25 will -- if that needs to be moved, we will move it

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1 from that date, okay? But that will be our
2 tentative date --

3 MR. ELLINGER: Perfect.

4 THE COURT: -- for the remaining
5 counts.

6 MS. WILCOX: Your Honor, are you
7 going to look for four days?

8 THE COURT: I put four days. We'll
9 have to bump some people as we go, but maybe this
10 will only take three days, you know?

11 MS. HUNKER: Your Honor, I am going
12 to point out that the State has a very large -- my
13 division -- on the Common Health lawsuit that is
14 going to go two weeks. And so I need to see how the
15 overlap in time would affect with respect to this.

16 MS. WILCOX: It's just one day.
17 There is just the one day. That's the other case as
18 well in front of Judge Zhang. So that case is
19 January 12 through the 25th. She says five days
20 each side.

21 MS. HUNKER: What I'm saying is I am
22 going to be having -- most of my entire division is
23 going to be dedicated to that. It's a two-week
24 trial.

25 THE COURT: I will say this.

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1 Everybody is busy. I think that's it. Everybody is
2 busy, so we're never going to find the perfect time,
3 but let's put January 26 on the calendar for now and
4 then work from there if we need to move. If we
5 picked a time that worked for everybody, that would
6 be like 2027; that's the reality. So let's just

7 leave it January 26. We'll correspond via email if
8 we need to bump that. But knowing that the election
9 board has some deadlines they need to make, we will
10 try and do our absolute best to do that, okay?

11 MS. WILCOX: Thank you, Your Honor.

12 MR. ELLINGER: Thank you, Judge.

13 THE COURT: Thank you guys for making
14 the trip up here. And if you guys find something
15 that is pretty important, give me courtesy copies.
16 Casenet is sometimes super fast, but most times it
17 is not, so send it over.

18 MS. WILCOX: One quick question. For
19 the December 16th bench trial on Count 1, how soon
20 before that date did you want stipulated facts?

21 THE COURT: As soon as you guys can
22 agree to them.

23 MS. WILCOX: And are we doing 10 days
24 from today then, for the P.I. Response?

25 THE COURT: What is today? The 24th.

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1 Ten days from today, that's December 4th.

2 MS. WILCOX: Typical five days for a
3 reply?

4 THE COURT: Yes. I think we have
5 enough time that we should not have to truncate that
6 down.

7 MS. WILCOX: No.

8 THE COURT: So that should be fine,
9 yeah, and get them over to me.

10 MS. WILCOX: Thank you.

11 THE COURT: And I will let you know
12 as soon as I know something about December 16th if
13 for some reason that does not work.

14 MR. ELLINGER: Thank you, Judge.

15 MS. GAMBHIR: Thank you, Your Honor.

16 MS. WILCOX: Thank you.

17 MS. HUNKER: Thank you.

18 THE COURT: Thank you guys.

19 (The proceedings had were concluded
20 for the day.)

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REPORTER'S CERTIFICATE

I, Kimberly A. Jones, Certified Court Reporter, certify that I am an Official Reporter for Division 15 of the 16th Judicial Circuit Court of Missouri, at Jackson County Court, Kansas City, Missouri; that on November 24th, 2025, I was present and reported all the proceedings in Terrence Wise, et al, vs. State of Missouri, et al, Case Number 2516-CV29597. I further certify that the foregoing pages contain a true and accurate transcription of the proceedings.

In compliance with Supreme Court Rule 84.18, I further certify that the cost of preparing this transcript is as follows:

122 pages at \$4.00 per page = \$488.00

By: /s/Kimberly A. Jones/
 Kimberly A. Jones, Official Reporter,
 CCR#1354

Kimberly A. Jones, Division 15 Reporter

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