IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

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

DEFENDANTS' SUGGESTIONS IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND CONSOLIDATION OF TRIAL ON COUNT 1 WITH PRELIMINARY INJUNCTION HEARING

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INTRODUCTION

Under the Missouri Constitution, "the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained by the Constitution*." *State v. Clay*, 481 S.W.3d 531, 537 (Mo. banc 2016) (quoting *Liberty Oil Co. v. Dir. of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991)) (emphasis added). This plenary power includes mid-decade congressional redistricting.

Seeking preliminary injunctive relief, Plaintiffs ask this Court to jettison that fundamental rule of Missouri constitutional law, inserting nonexistent restrictions into the plain language of art. III, § 45 of the Missouri Constitution to achieve their transparently political goals. Worse still, they invite this Court to deploy disfavored tools of interpretation when *every* presumption cuts in favor of the General Assembly's mid-decade redistricting power. This Court should deny their motion for preliminary injunctive relief for the following reasons.

First, the General Assembly has clear discretion to conduct mid-decade redistricting. This authority flows from the Missouri Constitution's legislative plenary power doctrine *and* the U.S. Constitution's Election Clause. The General Assembly "has the authority to adopt laws, except when expressly prohibited by the constitution. . . ." *Alpert v. State*, 543 S.W.3d 589, 596 (Mo. banc 2018) (quoting *Clay*, 481 S.W.3d at 532–33). That rule should be applied especially strictly in the context of federal redistricting, where the U.S. Constitution *explicitly* "assigns to state legislatures the power to prescribe the 'Times, Places and Manner of holding Elections' for Members of Congress. . . ." *Rucho v. Common* Cause, 588 U.S. 684, 697 (2019) (quoting U.S. Const. art. I, § 4, cl. 1). Plaintiffs can point to *no* textual,

constitutional limitation—in Article III, § 45 or elsewhere—that strips the General Assembly's plenary legislative power. On those grounds alone, Plaintiffs' allegations fail.

Second, text, history, and precedent only reinforce the General Assembly's discretionary power. The plain text of § 45 sets a *floor* for congressional redistricting—once per decade *at a minimum*. It imposes no temporal limitation on mid-decade redistricting. This aligns neatly with the provision's history. After early twentieth century redistricting droughts, the 1945 Constitution imposed a *de minimis* requirement on the General Assembly to act at least once per decade. Binding state precedent further bolsters the General Assembly's redistricting prerogative to adjust and realign districts.

Third, Plaintiffs' attempts to extra-textually divest the General Assembly of a core legislative power misfire. Their errors are multiple. Plaintiffs' constitutional analysis is defective. Flipping the burden of proof, they ignore the key distinctions between the conferred authority of commissions and the plenary power of the General Assembly. The General Assembly "has the authority to adopt laws, except when expressly prohibited by the constitution. . . ." *Alpert v. State*, 543 S.W.3d at 596 (Mo. banc 2018) (quoting *Clay*, 481 S.W.3d at 532–33). Next, they misread the Constitution deploying the disfavored negative implication canon to insert nonexistent language into § 45. And, even if this canon was applicable, Plaintiffs fumble it. Section 45 states that the General Assembly *must* redistrict at the start of each decade; applying the negative-implication canon confirms that the General

Assembly is not *obligated* to act at other times. But that conclusion says nothing to bar redistricting at other times.

Next, Plaintiffs mangle history and precedent. Plaintiffs misapprehend the 1943–44 Missouri Constitutional Convention, adopting an interpretation at odds with text and history. Case law is no refuge either: *zero* cases even hint—much less hold—that the General Assembly cannot engage in mid-decade redistricting. *Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. banc 2012), strongly cuts against Plaintiffs' theory, as it suggests that the only state constitutional limits on federal redistricting are (1) equal population and (2) compactness, and (3) contiguity.

Fourth, out-of-state persuasive precedents favor the General Assembly's plenary authority, not Plaintiffs' endeavor to rewrite the Missouri Constitution. Plaintiffs place unwarranted faith in distinguishable, non-Missouri cases. And plenty of precedent—including from the U.S. Supreme Court—rebuts their position.

Finally, beyond the merits, Plaintiffs cannot demonstrate irreparable harm. Through the narrow lens of their Count 1 claims, they cannot identify any irreparable injuries that proceed from the General Assembly's mid-decade redistricting. Any allegations they do make are attributable only to the non-Count 1 claims in their Petition. Moreover, the balance of harms favors the State. With all background presumptions arrayed against them, Plaintiffs would rewrite the Missouri Constitution, limiting the General Assembly's power—and in turn, the representative voice of Missourians—without any textual basis.

For all these reasons, this Court should reject Plaintiffs' motion.

LEGAL STANDARD

"When considering a motion for a preliminary injunction, a court should weigh 'the movant's probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and the public interest.'" *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (quoting *Pottgen v. Mo. State High Sch. Activities Assoc.*, 30 F.3d 926, 928 (8th Cir. 1994); *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc)). "To show entitlement to injunctive relief, a petition must plead facts that show (1) the plaintiff has no adequate remedy at law, and (2) irreparable harm will result if the relief is not granted." *Glenn v. City of Grant City*, 69 S.W.3d 126, 130 (Mo. App. W.D. 2002) (citing *Walker v. Hanke*, 992 S.W.2d 925, 933 (Mo. App. W.D. 1999)). Plaintiffs cannot obtain the "extraordinary" remedy of a preliminary injunction without a "*clear showing*" of entitlement to relief. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting 11 Wright & Miller, Federal Practice and Procedure § 2948, pp. 129–130 (2d ed. 1995)).

When challenging a statute, it is "presumed constitutional and will be found unconstitutional only if 'it clearly and unambiguously contravenes a constitutional provision.'" *State v. Shanklin*, 534 S.W.3d 240, 241–42 (Mo. banc 2017) (quoting *Lopez-Matias v. State*, 504 S.W.3d 716, 718 (Mo. banc 2016)). "Due regard for a coordinate branch of the government would likewise require that any doubt as to the power of the legislature be resolved in favor of the general assembly and against nullifying or restricting its power of operation." *Brown v. Morris*, 290 S.W.2d 160,

167 (Mo. banc 1956) (citing *Bohrer v. Toberman*, 227 S.W.2d 719, 723–24 (Mo. banc 1950)).

ARGUMENT

I. Plaintiffs show no likelihood of success on the merits because the General Assembly has discretion to conduct mid-decade redistricting.

Even if this Court could somehow adjudicate Plaintiffs' claims, they cannot show any "likelihood of success on the merits" on Count 1. *Impey v. Clithero*, 553 S.W.3d 344, 354 (Mo. App. W.D. 2018). Foundational constitutional principles, plain text, history, and precedent utterly doom Plaintiffs' quest to derail Missouri's congressional map.

A. Two constitutional principles demonstrate that the General Assembly has discretion to conduct mid-decade redistricting.

The General Assembly has the power to redistrict congressional seats mid-decade. This power flows from (1) the General Assembly's state plenary legislative authority *and* (2) the U.S. Constitution. *See Coldwell Banker Residential Real Estate Servs., Inc. v. Mo. Real Estate Com'n*, 712 S.W.2d 666, 668 (Mo. banc 1986) ("The power of our General Assembly is plenary."); *Moore v. Harper*, 600 U.S. 1, 38 (2023) (Kavanaugh, J., concurring) (observing that "the Election Clause assigns authority respecting federal elections to state legislatures").

1. The General Assembly exercises plenary power to redistrict mid-decade.

The General Assembly has power to conduct mid-decade congressional redistricting. ""The general assembly's authority is plenary, except when express

constitutional provisions intervene,'" *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 835 (Mo. banc 1991) (quoting *Harrell v. Total Health Care, Inc.*, 781 S.W.2d 58, 63 (Mo. banc 1989)), and here no such provisions "intervene." *Id.* For decades the General Assembly exercised its federal redistricting power without any explicit authorization in the Missouri Constitution—as some state legislatures still do. *See, e.g.*, *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 702 (Tex. 2022) (explaining that § 28 of the Texas Constitution, by not mentioning congressional redistricting, imposed *no* limits on the Texas's mid-decade redistricting) (citing *Mumme v. Marrs*, 40 S.W.2d 31, 33 (Tex. 1931)). In 1945, the new Missouri Constitution added a mandatory requirement that the General Assembly *must* redistrict at least after each census. This was a duty—not a denial of power. *See Ward v. Ely-Walker Dry Goods Bldg. Co.*, 154 S.W. 478, 484 (Mo. 1913) ("[d]uty and right are correlative") (quoting *Willy v. Mulledy*, 78 N.Y. 310, 314 (N.Y. 1879)).

Plaintiffs botch basic constitutional concepts, conflating enumerated federal legislative power with plenary state legislative power. *See* Suggestions in Support of Plaintiffs' Motion for Preliminary Injunction and Consolidation of Trial on Count 1 with Preliminary Injunction Hearing (hereafter "Pls. SISO PI") at 4–5. This characterization is improper. "Unlike the Congress of the United States, which has only that power delegated by the United States Constitution, the legislative power of Missouri's General Assembly, under Article III, Section 1 of the Missouri Constitution, is plenary, unless, of course, it is limited by some other provision of the constitution." *Board of Educ. of City of St. Louis v. City of St. Louis*, 879 S.W.2d 530,

532–33 (Mo. banc 1994) (citing *Liberty Oil*, 813 S.W.2d at 297; *Three Rivers Junior College v. Statler*, 421 S.W.2d 235, 238 (Mo. banc 1967)). As noted *supra*, courts *must* "strictly construe[ ]" any such limitation, to the extent it even exists, in favor of the General Assembly. *Id.* at 533 (quoting *Brown v. Morris*, 290 S.W.2d at 954).

2. The General Assembly exercises federal authority to redistrict mid-decade.

The General Assembly's mid-decade redistricting powers also emanate from Article I, § 4 of the U.S. Constitution. *See League of United Latin American Citizens v. Perry*, 548 U.S. 399, 414 (2006) (hereafter "*LULAC*") (explaining that art. I, § 4 "'leaves with the States primary responsibility for apportionment of their federal congressional . . . districts") (quoting *Growe v. Emison*, 507 U.S. 25, 34 (1993)). This key state responsibility, at the heart of "Our Federalism," *Younger v. Harris*, 401 U.S. 37, 44 (1971), creates a presumption *in favor of* mid-decade redistricting so state political processes can respond to changes in federal law. As the Supreme Court made clear, "[w]ith respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition." *LULAC*, 548 U.S. at 415 (2006). Mid-decade redistricting discretion is thus, by default, allowed under the U.S. Constitution's Elections Clause.

B. Text, constitutional history, and precedent do not impose any temporal restraint on redistricting.

In light of Missouri's plenary power doctrine and the U.S. Constitution's Elections Clause, Plaintiffs must show that the Missouri Constitution "*expressly*" takes away the power to conduct mid-decade redistricting. *Liberty Oil*, 813 S.W.2d

at 297 (citing *Bohrer v. Toberman*, 227 S.W.2d at 723). But Plaintiffs cannot make that showing because § 45's language is totally silent on the question. Consistent with that silence, the Missouri Supreme Court has never recognized any limit on mid-decade redistricting, and it has strongly suggested no such limit exists. *See Pearson*, 359 S.W.3d at 38 ("Article III, section 45 of the Missouri Constitution sets out only three requirements for the redistricting of seats in Missouri . . . . The districts 'shall' be composed of 'contiguous territory as compact and as nearly equal in population as may be.'") (quoting Mo. Const. art. III, § 45). And history shows that § 45 imposes a *de minimis* floor for redistricting, not a temporal restraint.

1. Section 45's text merely requires the General Assembly to congressionally redistrict at least once per decade.

Article III, § 45 of the Missouri Constitution states as follows:

> When the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled, which districts shall be composed of contiguous territory as compact and as nearly equal in population as may be.

Mo. Const. art. III, § 45. Section 45's text says nothing about the question of mid-decade redistricting. Rather, § 45 is mandatory—not prohibitory. It merely says that the General Assembly *must* redistrict following the decennial census—a command that makes perfect sense given the General Assembly's prior failures to conduct any congressional redistricting. Section 45 is silent as to *additional* redistrictings.

2. Constitutional context reveals that § 45 does not impose any temporal restraint on redistricting.

Broadening one's view to related constitutional provisions confirms that § 45 is indeed silent on mid-decade redistricting. *See State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991) (Court must interpret constitutional provisions "in harmony with all related provisions") (citing *State ex inf. of Martin v. City of Independence*, 518 S.W.2d 63, 66 (Mo. 1974)).

Section 45 states that the "the general assembly *shall*" redistrict following the decennial census. Mo. Const. art. III, § 45 (emphasis added). "[T]he word 'shall' imposes a mandatory duty." *Am. Fed'n of State, Cnty. & Mun. Emps. v. State*, 653 S.W.3d 111, 120 (Mo. banc 2022).

When compared to the language of other provisions, it becomes clear that § 45 imposes merely a constitutional floor. Other sections in Article III are instead phrased in the negative: "the general assembly shall have no power to . . ." or "the general assembly shall not . . ." *E.g.*, Mo. Const. art. III, § 37 ("The general assembly shall have no power to contract or authorize the contracting of any liability of the state, or to issue bonds therefor . . . ."); *id.* at § 38(a) ("The general assembly shall have no power to grant public money or property . . . ."); *id.* at § 39 ("The general assembly shall not have power [to] . . . ."); *id.* at § 40 ("The general assembly shall not pass any local or special law . . . ."). "Shall not" are "words of prohibition." *Brooks v. State*, 128 S.W.3d 844, 847 (Mo. banc 2004). These examples show that the constitutional framers knew how to restrict the General Assembly's power and that they could have done so in § 45. But they did not. This absence of prohibitory

language in § 45 confirms that there is no temporal restriction on redistricting. Imposing one here, as Plaintiffs ask, would read this requirement into the Missouri Constitution and be, in effect, a constitutional amendment.

3. Missouri's pre-1945 history illuminates why § 45 lacks any temporal restraint on redistricting.

The General Assembly *has* conducted mid-decade redistricting under the previous state Constitutions, and, under the 1945 Constitution, the General Assembly can still conduct mid-decade redistricting.

Historically, Missouri's General Assembly, like state legislatures nationwide, exercised great discretion consistent with its plenary authority and art. I, § 4 of the U.S. Constitution.[1] Responding to the Fourteenth Amendment's ratification, the General Assembly passed an apportionment act in February 1872. A mere five years later, starting in 1877, *before* the 1880 census, the Missouri General Assembly met again to conduct mid-decade redistricting to shore up Democratic power in the wake of the 1876 election. *See Twenty-Ninth General Assembly*, The Springfield Leader, (Jan. 25, 1877) ("The special committee on congressional boundaries met and organized last night . . . . The committee agreed to redistrict the state, or at least change some of the congressional districts.").[2] It realigned Missouri's congressional

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[1] Missouri's first constitution (1820) did not enumerate or limit the General Assembly's congressional redistricting power. Until 1842, Congress simply changed the size of the House in response to Censuses, allowing the state legislatures to dictate the details of the election of members. *See* Emanuel Celler, *Congressional Apportionment—Past, Present, and Future*, 17 LAW & CONTEMP. PROBS. 268, 268–69 (Spring 1952).

[2] *See also Jefferson City. Proceedings of the Legislature Yesterday*, THE KANSAS CITY JOURNAL (Jan. 20, 1877) ("Mr. Anthony, of Morgan, one of the special committee selected by the Democrats to redistrict the state, reported a bill this morning that

districts intra-decennially. *See* Ex. D. No legal challenge derailed this partisan initiative, indicating a broad understanding that the General Assembly had the power to conduct mid-decade redistricting. Again, mid-decade redistricting was common nationwide at the time.[3]

In subsequent decades, Missouri swung from excess redistricting to the opposite extreme: not enough redistricting. From 1901 to 1931, Missouri did not adjust its congressional districts at all.[4] In 1930, Governor Caulfield vetoed the General Assembly's redistricting bill, prompting several years of (now unconstitutional) at-large representation.[5] This history explains *why* the 1943–1944 Constitutional Convention added § 45—to ensure that the 1901–1931 redistricting drought would not occur again.

To achieve that end, the Missouri Constitutional Convention agreed in 1944 on Amendment 7 to File No. 21, what became § 45. Amendment 7's history establishes that § 45 creates a mandatory floor for redistricting to occur *at least* once per decennial period, triggered by the decennial census and subsequent congressional

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aims to make, beyond peradventure, all the congressional districts of the state Democratic."); *Re-Districting the State*, THE SEDALIA WEEKLY EAGLE (Jan. 26, 1877) ("Among the first acts of our Democratic Legislature was the raising of a committee in the House to re-district the State into Congressional Districts.").

[3] *See* Erik J. Engstrom, *Stacking the States, Stacking the House: The Partisan Consequences of Congressional Redistricting in the 19th Century*, 100 AM. POL. SCI. REV. 419, 421 (Aug. 2006) (noting how in Ohio, the general assembly redistricted seven times between 1878 and 1892).

[4] Lloyd M. Short, *Congressional Redistricting in Missouri*, 25 AM. POL. SCI. REV. 634, 639 (1931).

[5] ERIK J. ENGSTROM, PARTISAN GERRYMANDERING AND THE CONSTRUCTION OF AMERICAN DEMOCRACY 76 (2013).

reapportionment. *See* Debates of the 1943-1944 Constitutional Convention of Missouri—1943–44, vol. 22, 6750, 7030–32 (September 6, 1944), https://dl.mospace.umsystem.edu/umkclaw/islandora/object/umkclaw%3A7736#page/280/mode/2up. After agreement on Amendment 7, the Committee on Phraseology rewrote its language, establishing the adopted and current form of § 45. *See* File No. 21, Report No. 1 of Committee No. 23 on Phraseology, Arrangement and Engrossment, Article IV, Legislative Department, Congressional, State Senatorial and Representative Districts at 19–24 (September 19, 1944), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=1088&q1=congress&view=2up. This revision corrected the previous version that stated that redistricting would be triggered by the "census of 1950," rather than the certification of the Census to the Governor. *Id.* at 22. There is no evidence that the 1943–1944 Constitutional Convention deemed mid-decade redistricting to be a problem—even though delegates surely knew it had previously happened in Missouri. *Id.* at 22–24. The fact that the delegates then said nothing about mid-decade redistricting reinforces that they did not intend to ban it. *Cf. Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 63 (2004) (noting another case involving a "dog that didn't bark") (quoting *Church of Scientology of Cal. v. IRS*, 484 U.S. 9, 17–18 (1987)).

4. Post-1945 history confirms the General Assembly's mid-decade redistricting power.

Successive, mid-decade congressional redistrictings in the 1960s *confirm* the General Assembly's power. They reinforce why the General Assembly has a default mid-decade redistricting power to alter districts at will. During the 1960s, Missouri

struggled to establish constitutionally-compliant congressional districts. In 1965, a federal court declared the General Assembly's 1961 congressional map unconstitutional. *Preisler v. Sec'y of State*, 238 F. Supp. 187, 190 (W.D. Mo. 1965) (per curiam) [*Preisler I*]. The court deferred drawing new congressional districts itself, reasoning that "the State Legislature of Missouri has an *unmistakable duty* to reapportion the Congressional Districts of that State." *Id.* at 191 (emphasis added). This holding would have made no sense if the Missouri Constitution was understood to prohibit mid-decade redistricting.

Following the court's ruling, the General Assembly redistricted in 1965. *See Preisler v. Sec'y of State*, 257 F. Supp. 953, 956 (W.D. Mo. 1966) [*Preisler II*]. Again, the district court determined these maps were unconstitutional and enjoined the Secretary of State from using them. *Id.* at 980, 984–85, *aff'd*, *sub nom. Kirkpatrick v. Preisler*, 385 U.S. 450, 450 (1967).

In 1967, the General Assembly redistricted again, and again, the federal district court rejected the map. *Preisler v. Sec'y of State*, 279 F. Supp. 952, 955, 1004 (W.D. Mo. 1967) [*Preisler III*], *aff'd, sub nom. Kirkpatrick v. Preisler*, 394 U.S. 526, 533 (1969). Two years later in 1969, the General Assembly passed yet another congressional redistricting bill. *See generally Preisler v. Sec'y of State*, 341 F. Supp. 1158, 1160 (W.D. Mo. 1972) [*Preisler IV*]. In total, the General Assembly conducted *three* mid-decade redistrictings in the 1960s in response to previous maps being thrown out by the courts.

In all these cases, the federal courts recognized that the General Assembly had the power to redistrict mid-decade. *E.g.*, *Preisler II*, 257 F. Supp. at 982 ("Primary responsibility . . . rests on the 1967 General Assembly of Missouri."); *Preisler IV*, 341 F. Supp. at 1161–62 ("unless and until there shall be timely enacted a new constitutionally permissible Missouri Congressional Redistricting Act"). These courts recognized that the General Assembly can "take all necessary action"—redistricting mid-decade—"to comply with its duty under the Federal, *as well as its own State*, Constitution." *Preisler I*, 238 F. Supp. at 191 (emphasis added). Yet under Plaintiffs' theory, all these federal court rulings were legally erroneous.

5. Missouri precedent highlights the General Assembly's power to redistrict.

Missouri precedent confirms the General Assembly's discretion to conduct mid-decade redistricting. Article III, § 45 requires congressional districts to "be composed of contiguous territory as compact and as nearly equal in population as may be." And the Missouri Supreme Court has recognized *only* those three limitations on the General Assembly's redistricting power. *See Pearson*, 359 S.W.3d at 40. "As long the districts comply with these constitutional requirements [contiguous, compactness, and equal population], the circuit court *shall* respect the political determinations of the General Assembly and allow for minimal and practical deviations required to preserve the integrity of the existing lines of our various political subdivisions." *Id.* (emphasis added) (citing *State ex rel. Teichman v. Carnahan*, 357 S.W.3d 601 (Mo. banc 2012); *Preisler v. Hearnes*, 362 S.W.2d 552, 556 (Mo. banc 1962)). Beyond that, "the General Assembly . . . is vested in its representative capacity with all the

primary power of the people and . . . has the power to enact any law not prohibited by the federal or state constitution." *Three Rivers Junior Coll. Dist. of Poplar Bluff v. Statler*, 421 S.W.2d 235, 243 (Mo. banc 1967).

To the extent that Missouri case law concerning state legislative districts provides guidance for interpreting § 45, it strengthens the General Assembly's mid-decade redistricting powers. In *State ex rel. Major v. Patterson*, 129 S.W. 888 (Mo. 1910), the Missouri Supreme Court bolstered the General Assembly's power to redistrict state legislative districts at will:

> This section 9, art. 4 [analog to today's Art. III, § 10], is merely directory in terms, and in our judgment reserves to the Legislature the right to provide for the alteration of legislative districts once established as per the terms of the Constitution. In other words, the Constitution contemplates that these districts shall be established at decennial periods, but has reserved a power in the Legislature to provide by law for a change in the same.

Id. at 892. The lack of "guideposts" for "alteration" of districts, "strongly tends to show that this clause of the Constitution was intended to give legislative authority to act, and by proper laws provide for such alteration or changes in previously established districts." *Id.* at 893. Section 9 was "a reservation of a power in the Legislature to make provisions for readjusting the districts, *if* the Legislature saw fit so to do." *Id.* at 894 (emphasis added). Even though the General Assembly had not conducted such a mid-decade adjustment of district boundaries, "[t]he Legislature could" if it had wished. *Id.*

The General Assembly having a "reserve[ed]" power to redistrict state districts when it "saw fit" shows that the General Assembly retains this power over congressional districts too. *Id.* The only restrictions on this power could come from

the Elections Clause or explicitly in the text of § 45, but as established above, there are no restrictions. Therefore, the General Assembly retains the power to redistrict congressional districts as it "s[ees] fit." *Id.*

C. Plaintiffs' textual, historical, and precedential arguments fail.

The Missouri Constitution, the U.S. Constitution, and historical practice demonstrate the General Assembly's mid-decade redistricting authority. Plaintiffs' effort to read in nonexistent constitutional restrictions fails. Invoking inapposite nonbinding precedents, faulty historical support, and misinterpretations of the Missouri Constitution, they ignore that "[i]f the constitution [is] silent on the subject the general assembly would be absolute in its power." *State ex rel. Davis v. White*, 63 S.W. 104, 106 (Mo. 1901). They also ignore that the U.S. Constitution and federal law buttress the General Assembly's mid-decade congressional redistricting power.

1. Flipping the burden of proof, Plaintiffs improperly conflate the General Assembly with commissions of delegated powers.

Throughout their briefing, Plaintiffs elide the meaningful differences between the General Assembly and the state legislative redistricting commissions. In this elision, Plaintiffs completely fail to override the presumption in favor of the General Assembly's power: "Any constitutional limitation, therefore, must be *strictly construed in favor of the General Assembly*." *Board of Educ. of City of St. Louis*, 879 S.W.2d at 533 (citing *Brown v. Morris*, 290 S.W.2d 160, 166 (Mo. 1956)) (emphasis added). This presumption further dooms Plaintiffs' misfired importation of state legislative redistricting provisions to erect fictional legislative restraints in § 45.

Article III, §§ 3 and 7 vest control over *state legislative* redistricting in "constitutionally created commission[s] of *limited authority*." *Teichman*, 357 S.W.3d at 607 (emphasis added). "In other words, [they] only ha[ve] the authority expressly granted to [them] by the language of the constitution and implicitly necessary to carry out [their] express duties." *Id.* (citing *Thompson v. Committee on Legislative Research*, 932 S.W.2d 392, 395 (Mo. banc 1996)). Here, "[a]rticle III, sec. 7 of the Missouri Constitution grants the nonpartisan reapportionment commission important but very limited authority." *Id.* Meanwhile, the General Assembly's prerogatives are plenary. And, as a matter of constitutional construction, the state legislative redistricting sections contain all types of language excluded from art. III, § 45. For example, regarding state legislative redistricting, if the House fails to redistrict, a judicial commission takes control. Mo. Const. art. V, § 4.[6]

The distinction with § 45 is glaring. Unlike the "limited authority" conferred upon the independent commissions, "[t]he power of our General Assembly is plenary. It is not necessary to point to a specific constitutional provision in order to sustain a statute." *Coldwell Banker*, 712 S.W.2d at 668 (citing *Penner v. King*, 695 S.W.2d 887 (Mo. banc 1985); *State v. Holekamp Lumber Co.*, 340 S.W.2d 678 (Mo. banc 1960)). Section 45's concision reflects its mere status as enshrining a mandatory duty and nothing more. The State does not need to demonstrate that the General Assembly *has* the power to redistrict congressional seats mid-decade, merely that there is no

[6] Members of the commissions are also "disqualified from holding office as members of the general assembly for four years following the date of the filing by the commission of its final redistricting plan." Mo. Const. art. III, § 3.

explicit constitutional "restraining clause[ ]." *State Auditor v. Joint Committee on Legislative Research*, 956 S.W.2d 228, 231 (Mo. banc 1997) (quoting *Ludlow-Saylor Wire Co. v. Wollbrinck*, 205 S.W. 196, 197 (Mo. 1918)). The Constitution consciously does not lump together congressional redistricting with state legislative redistricting. Nor does it include by reference §§ 3 and 7's restrictions into § 45.

Relatedly, Plaintiffs ignore federal case law indicating the General Assembly's expansive redistricting authority, discussed *supra*. "[T]he Elections Clause expressly vests power to carry out its provisions in 'the Legislature' of each State. . . ." *Moore*, 600 U.S. at 34. One session of the General Assembly should not be permitted to conclusively bind, through legislation, a successive session. *See LULAC*, 548 U.S. at 420 (noting how hampering mid-decade redistricting could "encourage partisan excess at the outset of the decade, when a legislature redistricts pursuant to its decennial constitutional duty and is then immune from the charge of sole motivation"). This perverse entrenchment speaks to the importance of *consistent* legislative discretion to redistrict at will.

2. Impermissibly, Plaintiffs use the disfavored negative implication canon to rewrite the plain language of the Constitution.

Plaintiffs wrongly gesture at the negative implication canon, reasoning that allowing for start-of-the-decade redistricting implies a disallowance of other redistrictings. Pls. SISO PI at 4.

First, the Missouri Supreme Court has repeatedly cautioned against leaning too heavily on this canon. *See Six Flags Theme Parks, Inc. v. Dir. of Revenue*, 179 S.W.3d 266, 269–30 (Mo. banc 2005) (warning that the canon "is to be used with great

caution") (quoting *Pippins v. City of St. Louis*, 823 S.W.2d 131, 133 (Mo. App. E.D. 1992)). "The maxim should be invoked only when it would be natural to assume by a strong contrast that that which is omitted must have intended for opposite treatment." *Id.* at 270 (citing *Springfield City Water Co. v. City of Springfield*, 182 S.W.2d 613, 618 (Mo. 1944)). Moreover, § 45 lacks such ambiguity. Derived from its plain language, background plenary power, and the Elections Clause, its meaning is not ambiguous. *Expressio unius*'s application here—to insert extra-textual meaning beyond the Constitution's textual four corners—is impermissible.

Second, in any event, Plaintiffs misapply the negative implication canon. Section 45's temporal component does not exclude legislative discretion to redistrict at other times. Section 45 merely states that census certification creates the mandatory condition for redistricting. With *expressio unius*, it follows that such redistricting is *not* mandatory at other times. *See Tinnin v. Modot & Patrol Employees' Retirement System*, 647 S.W.3d 26, 35 (Mo. App. W.D. 2022) (noting in the statutory context, "'the word "shall" generally prescribes a mandatory duty'") (quoting *Gross v. Parson*, 624 S.W.3d 877, 889 (Mo. banc 2021)). "Shall by law" does not mean that the General Assembly *may* redistrict, but that it *must* redistrict. The proper use of the negative implication canon means that at other times, redistricting (mid-decade) is, therefore, not mandatory but remains *permissible*.

3. An *in pari materia* reading of the Missouri Constitution reveals no limitation of the General Assembly's legislative power to conduct mid-decade redistricting.

Next, Plaintiffs muse that because § 45 falls near the "Limitation of Legislative Power" header this Court should read in an extra-textual restriction on the General

Assembly's congressional redistricting powers. Pls. SISO PI at 3. To start, § 45 is included under the header of "State Lottery," not "Limitation of Legislative Power." If the "Lottery" header is as incidental and meaningless as Plaintiffs insinuate, Pls. SISO PI at 3, n.2, then it is reasonable to assume that the framers gave little weight to these headers' meaning.

In any event, the "Limitation"-type sections restricting legislative power and the "presumption of consistent usage," *U.S. v. Castleman*, 572 U.S. 157, 174 (2014) (Scalia, J., concurring in part), indicate that § 45 is a *floor*, not a *ceiling*, on legislative power. As noted before, the "Limitation" portion of the Constitution features section after section *unambiguously* designating restrictions on the General Assembly's powers with plain language: "the general assembly shall have no power."[7] In fact,

[7] *See, e.g.*, art. III, §§ 37 ("Limitation on state debts and bond issues. The general assembly shall have no power to contract or authorize the contracting of any liability of the state, or to issue bonds thereof, except (1) to refund outstanding bonds, the refunding bonds to mature not more than twenty-five years from date. . . ."); 40 ("The general assembly shall not pass any local or special law: (1) authorizing the creation, extension or impairment of liens; (2) granting divorces; (3) changing the venue in civil or criminal cases. . . ."); 41 ("Indirect enactment of local and special laws—repeal of local and special laws.—The general assembly shall not indirectly enact a special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed."); 42 ("Notice of proposed local or special laws.—No local or special law shall be passed unless a notice, setting forth the intention to apply therefor and the substance of the contemplated law, shall have been published in the locality where the matter or thing to be affected is situated at least thirty days. . . ."); 43 ("Title and control of lands of the United States—exemption from taxation—taxation of lands of nonresidents.—The general assembly shall never interfere with the primary disposal of the soil by the United States, nor with any regulation which Congress may find necessary for securing the title in such soil to bona fide purchasers."); 44 ("No law shall be valid fixing rates of interest or return for the loan or use of money, or the service or other charges made or imposed in connection therewith, for any particular group or class engaged in lending money.").

Art. III, § 39—entitled "Limitation of power of general assembly"—has a long list of *specific*, enumerated instances where "the general assembly shall not have power." *Id.*

In contrast, § 45's adjacent provisions provide *de minimis requirements* (floors) for the General Assembly, not *prohibitions* (ceilings). For example, § 46, discussing the General Assembly's militia *requirements* and powers, uses "shall provide" language. Mo. Const. art. III, § 46.[8] Section 46 does *not* provide prohibitions like the "shall not" sections. Here, the "shall" is consistent with Art. III, § 45: "the general assembly shall by law divide. . . ." *Id.* This also aligns neatly with the requirement section of the Elections Clause of the U.S. Constitution: "The Times, Places and Manner of holding Elections for Senators and Representatives, *shall be prescribed* in each State by the Legislature thereof. . . ." U.S. Const. art. I, § 4 (emphasis added). Any proper contextual reading of the Missouri Constitution conclusively shows that § 45 is *not* a "limitation" in the sense advanced by Plaintiffs because it differs dramatically from the *actual limitation sections*. And "'[u]nless otherwise defined in the text, words used in the constitution are given their plain and ordinary meaning.'" *Heidbrink v. Swope*, 170 S.W.3d 13, 15 (Mo. App. E.D. 2005) (quoting *City of Jefferson v. Mo. Dept. of Natural Resources*, 863 S.W.2d 844, 850 (Mo. banc 1993)).

[8] "The general assembly *shall* provide for the organization, equipment, regulations and functions of an adequate militia, and *shall* conform the same as nearly as practicable to the regulations for the government of the armed forces of the United States." Mo. Const. art. III, § 46 (emphasis added).

4. Plaintiffs misconstrue the history and subsequent interpretations of the 1945 Constitution.

Plaintiffs' invocation of history and precedent does not support their judicial rewriting of the Missouri Constitution. In fact, Missouri history and Missouri precedent underscore the *de minimis* threshold nature of § 45 *and* the General Assembly's unfettered discretionary prerogative to conduct mid-decade congressional redistricting.

a. Plaintiffs misread the Constitutional Convention.

No historical evidence suggests that the delegates of the 1943-1944 Constitutional Convention deemed mid-decade redistricting to be a problem. Despite the dearth of evidence, Plaintiffs contort historical square pegs to fit in the circular holes of their preferred narrative. In particular, Plaintiffs place great weight on the Committee's statement that "[u]nder the rewriting of this section the first re-apportionment would be made in 1951 for the election in 1952." File No. 21, Report No. 1 of the Committee No. 23 on Phraseology, Arrangement and Engrossment, Art. IV, Legislative Department, Congressional, State Senatorial and Representative Districts at 23–24 (Sept. 19, 1944). However, this rewrite had *nothing* to do with any explicit or implicit restriction on mid-decade redistricting.

First, § 45's plain text, like the adopted amendment preceding it, lacked any temporal restriction. If the Convention sought to restrict the General Assembly with a back-end temporal limitation, it would have said so. *Second*, the Committee commentary about the "first re-apportionment" explains that the new enumeration of districts will take place in 1951 for the census of 1950. The clue is in the full

language, which the Plaintiffs ignore. The Committee states that "[u]nder the rewriting of this section," *id.*, 1951 is when the first *mandatory* redistricting take place. This makes sense. Under the prior amendment version, the General Assembly would be required to redistrict in 1950, *before the new number of representatives* was enumerated by Congress. 2 U.S.C. § 2a(a)–(b) (deadline for reporting apportionment to the States); *see also* 13 U.S.C. § 141(a)–(b) (deadline for calculating apportionment). Therefore, Missouri could have fewer drawn districts in 1952 than those to which it was entitled after the 1950 census. If § 45 is setting a minimum threshold, 1951—after the new congressional apportionment—rather than 1950, is a logical correction.

Third, even entertaining Plaintiffs' peculiar interpretation of the Phraseology Committee's one-off sentence as somehow restraining redistricting from 1945 to 1951, there was *no restriction* on the General Assembly's ability to *redraw* districts mid-decade during those years. Instead, the "first re-apportionment" would refer to Missouri's permitted number of congressional representatives under the new census. A mid-decade redistricting does *not* alter the number of congressional representatives; it only adjusts the boundaries of *x* number of districts.

b. Precedent does not support Plaintiffs' erroneous contentions.

Deprived of historical ammunition for their theories, Plaintiffs find equally little foundation in Missouri precedent. In *Preisler v. Doherty*, 284 S.W.2d 427 (Mo. 1955), the Missouri Supreme Court did nothing to displace the holdings of *State ex rel. Major v. Patterson*. Despite Plaintiffs' protestations, *see* Pls. SISO PI at 6, n.4,

Preisler's endorsement of *Major* only bolsters the General Assembly's expansive redistricting powers.

First, *Preisler* concerned constitutional controls on commissions, not the General Assembly. The distinction is dispositive. The former "only ha[ve] the authority expressly granted to [them] by the language of the constitution and implicitly necessary to carry out [their] express duties." *Teichman*, 357 S.W.3d at 607 (citing *Thompson v. Comm. on Legislative Research*, 932 S.W.2d 392, 395 (Mo. banc 1996)). Conversely, the General Assembly exercises plenary authority.

Second, Plaintiffs mangle the meaning of *Preisler*. They state that the *Preisler* Court held that "Section 10's 'time to time' provision does not authorize a second redistricting within a Census period." Pls. SISO PI at 6. They follow this supposition with a quote: "'[O]nly one valid apportionment is intended for each decennial period. This must be true because the decennial census is made the basis of reapportionment.'" *Id.* (quoting *Preisler* at 436–37). Not so fast. Plaintiffs leap from the *Preisler* quote—that only one state legislative *apportionment* occur per decennial period—to concluding that no readjustment of district boundaries can be effected in that time either. That is not what *Preisler* says.

And, even worse for Plaintiffs, *Preisler* does not displace *Major*. In fact, *Preisler* explicitly adopts it. *See Preisler*, 284 S.W.2d at 473 ("However, in accordance with the reasoning of *State ex rel. Major v. Patterson*. . . ."). And, *Preisler* does not even deal with congressional districts. Thus, *Preisler* provides no authority (despite Plaintiffs' contentions) that the General Assembly faces restrictions on adjusting

congressional district boundaries mid-decade. After all, *Preisler* was "not dealing with a law enacted by our General Assembly, which as a coordinate branch of our government has all of the legislative power of the State except that denied it by express limitations of the Constitution." *Id.*, at 431–32. Its conclusions do not implicate nor bind the General Assembly.

Third, even if one entertains Plaintiffs' theories, the "time to time" language simply does *not* feature in § 45 and its absence *cannot* and *does not* imply a restriction upon the General Assembly's congressional redistricting powers. Plaintiffs' attempt to read disempowerment from silence offends Missouri's methods of constitutional interpretation. "Provisions of the constitution that relate to the same subject matter are *in pari materia* and construction in such instances, as of statutes, proceeds on the premise that the provisions are intended to be read consistently and in harmony." *Ketcham v. Blunt*, 847 S.W.2d 824, 827–28 (Mo. App. W.D. 1992) (citing *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 200 (Mo. banc 1991)). Section 10, just like art. III, § 9 of the 1875 Constitution, explicitly refers to "senatorial and representative districts." Mo. Const. art. III, § 10. There is no reason to (1) override the plain restricting language of § 10 to "senatorial and representative districts" or (2) presume that the dearth of a "time to time" provision in § 45 creates any lack of consistency or "harmony." *Ketcham*, 847 S.W.2d at 827–28. Again, it is no surprise that the state legislative and congressional redistricting provisions of the Constitution are spatially separated. The former govern the processes of apportionment *and* redistricting by

commissions. The latter governs *only* redistricting by the General Assembly since the Congress controls apportionment.

D. Out-of-state persuasive precedents bolster the General Assembly's mid-decade congressional redistricting authority.

Missouri courts can look to out-of-state precedents to help inform their jurisprudence. "[A]ppellate court decisions from other states can be persuasive when they are based on similar facts and 'sound principles and good reason.'" *Penzel Construction Co., Inc. v. Jackson R-2 Sch. Dist.*, 544 S.W.3d 214, 234 (Mo. App. E.D. 2017) (quoting *Craft v. Philip Morris Companies, Inc.*, 190 S.W.3d 368, 380 (Mo. App. E.D. 2005)). Although both parties can identify some out-of-state precedential support, most cases reinforce the General Assembly's mid-decade redistricting ability.

For example, the Minnesota Supreme Court grappled with a 1913 mid-decade redistricting of legislative districts, and employing principles familiar to Missouri courts today, the court permitted mid-decade redistricting. *State ex rel. Meighen v. Weatherill*, 147 N.W. 105, 106 (Minn. 1914). The court held that Minnesota's redistricting clause, without a clear statement restricting when the legislature could redistrict, sets a floor, not a ceiling. *Id.*

As the *Weatherill* court explained, "in the absence of some constitutional limitation upon the subject, the Legislature would possess the power to redistrict the state at will." *Id.* Just like the Missouri General Assembly, the Minnesota Legislature exercised plenary power and, just like the Missouri Constitution, the Minnesota "Constitution is generally construed as a limitation, and not a grant of

power." *Id.* The *Weatherill* court concluded that "the theory that the Constitution imposes that [redistricting] as a duty, and not as a mere prohibition against reapportionment at some time other than at the first session after a census, seems most consistent with the manifest purpose to be attained." *Id.* And, it demanded a clear statement: "[H]ad there been any intention to restrict or limit the time when a reapportionment might be made, those framing the Constitution had language at their command which, if employed, would not have left that intention shrouded in doubt or uncertainty." *Id.* This logic cleanly demonstrates the limited function of § 45 and the proper use of the negative-implication canon. Courts look for clear statements restricting legislative power and the absence of restricting language indicates an absence of a restriction. *See id.* This Court should too.

Other States have also reinforced their legislatures' ability to redistrict mid-decade. Similar to Minnesota, they have upheld legislative redistricting discretion and that absence of truly restrictive, back-end language *means* an absence of actual restriction. For example, in Texas, Article III, § 28 of its Constitution discusses legislative reapportionment. The Texas Supreme Court explained that § 28 "neither expressly nor impliedly forecloses this [redistricting] power from being exercised at another time." *Mexican Am. Legis. Caucus*, 647 S.W.3d at 702 (citing *Mumme v. Marrs*, 40 S.W.2d at 33). As in Missouri, where the redistricting power is explicitly housed in the legislature's hands, "the Legislature is exercising its legislative power to make laws, not 'a power ordinarily and intrinsically belonging to another department of the government.'" *Id.*

The Georgia Supreme Court also refused to read in nonexistent restrictions on mid-decade redistricting authority. The court stated, "[h]ad the intent been to depart from the 1976 Constitution and limit the General Assembly to only one redistricting after each census, the framers of the 1983 Constitution could have made an express provision to that effect . . . ." *Blum v. Schrader*, 637 S.E.2d 396, 398 (Ga. 2006). As in Missouri, the Georgia Constitution "requires the General Assembly to reapportion itself at least once after the census if 'necessary,' but does not limit the exercise of that power to a once-in-a-decade occurrence. The frequency of reapportionment between censuses is *solely a matter of unfettered legislative discretion*, unrestricted by any state constitutional prohibition." *Id.* at 399 (emphasis added). Interpreting § 45 to not allow mid-decade redistricting, would be out of step with these other States with similar constitutional provisions. This Court should not make Missouri an outlier.

1. Plaintiffs' out-of-state precedents are unpersuasive.

Plaintiffs spend significant time discussing a handful of out-of-state cases where courts imposed limitations on redistricting. *See* Pls. SISO PI at 10–11 (citing out-of-state cases). For example, Plaintiffs focus on California case law in *Legislature v. Deukmejian*, 669 P.2d 17 (Cal. 1983); *see* Pls. SISO PI at 11. But, unlike Missouri, the provision of the California Constitution examined in *Deukmejian* had specific language temporally bounding when reapportionment must take place. These cases are distinguishable, incompatible with Missouri's methods of constitutional interpretation, and inapposite as persuasive precedent

a. The 1898 *Mooney* out-of-state case is distinguishable.

The holdings of many of Plaintiffs' cited cases invoke *People ex rel. Mooney v. Hutchinson*, 50 N.E. 599 (Ill. 1898), for the same proposition: "It is the general rule that once a valid apportionment is enacted no future act may be passed by the legislature until after the next regular apportionment period prescribed by the Constitution." *Harris v. Shanahan*, 387 P.2d 771, 779–80 (Kan. 1963) (citing *Mooney* generally) (additional citations omitted); *see also In re Certification of a Question of Law from U.S. Dist. Court, Dist. of South Dakota, Western Div.*, 615 N.W.2d 590, 595 (S.D. 2000) (citing *Mooney*, 50 N.E. at 601). The web of cases Plaintiffs cite primarily link, one way or another, back to this late nineteenth century opinion concerning mid-decade *state legislative* redistricting. *Mooney* and its progeny share similar faults.

The *Mooney* court considered a challenge to an Illinois state senate—not congressional—redistricting bill in 1898. The relevant constitutional provision examined by the *Mooney* court, art. IV, § 6 of the 1870 Illinois Constitution reads as follows:

> The general assembly shall apportion the State every ten years, beginning with the year one thousand eight hundred and seventy-one, by dividing the population of the State, as ascertained by the federal census, by the number fifty-one, and the quotient shall be the ratio of representation in the Senate. . . .

Ill. Const. art. IV, § 6 (1870). Here the deviation from Missouri law and the Missouri Constitution begins. *First*, the language of the 1870 Illinois Constitution *supra* is distinct from the Missouri Constitution. Whereas the Missouri Constitution only contains the word "when" as a temporal trigger to mandate redistricting, the 1870

Illinois Constitution enumerated an exact period of time: "every ten years." Ill. Const. art. IV, § 6 (1870).

Second, Missouri courts disfavor the *Mooney* court's reliance on the negative implication canon to drastically revise constitutional text. The *Mooney* court states that "[i]f legislative power is given in general terms, and is not regulated, it may be exercised in any manner chosen by the legislature; but where the constitution fixes the time and mode of exercising a particular power it contains a necessary implication against anything contrary to it. . . ." *Mooney*, 53 N.E. at 601. This mode of constitutional interpretation is explicitly disfavored in Missouri. *Six Flags*, 179 S.W.3d at 269–70. And this hesitancy is only heightened when applying the canon to the Missouri Constitution.

Third, the *Mooney* court only addressed a state legislative redistricting issue. As highlighted by the state responsibility bestowed by the U.S. Constitution, this is distinct from congressional redistricting provisions. In fact, the 1870 Illinois Constitution—like the 1875 Missouri Constitution—has no reference to congressional redistricting at all.

b. Plaintiffs' reliance on *Salazar* is misplaced.

Arguably, Plaintiffs' favorite out-of-state case is *People ex rel. Salazar v. Davidson*, 79 P.3d 1221 (Colo. 2003). *Salazar* concerned a challenge to Colorado's mid-decade redistricting in the wake of a judicially-drawn map following the 2000 census. The crux of *Salazar*'s point on redistricting timing echoes *Mooney*: "Furthermore, as other states have found, when the constitution specifies a timeframe for redistricting, then, by implication, it forbids performing that task at

other times." *Salazar*, 79 P.3d at 1238 (citing *Mooney*, 50 N.E. at 601; *Denney v. State ex rel. Basler*, 42 N.E. 929, 931–32 (Ind. 1896)). And, *Salazar* imports the same problems, inferring them to the context of congressional redistricting.

First, *Salazar* elides the background principle that congressional redistricting is *distinct* from state legislative redistricting. Redistricting power is derived from federal law, not a mere creature of state constitutions, cloaked in legislative plenary power. *Salazar* simply ignores this.

Second, a plain reading analysis of the Colorado Constitution does not show any stipulation that congressional redistricting may only occur once per decade. As Justice Kourlis points out, "[a]lthough 'when' might well be read as imposing a duty upon the legislature to act as soon as possible after the predicate event, it does not in any way imply the imposition of a back-end limitation upon the at duty." *Salazar*, 79 P.3d at 1250 (Kourlis, J., dissenting). Moreover, the Colorado Constitution, like Missouri's art. III, §§ 3 and 7, however, does contain stricter time limitations for state redistricting. Contrary to Plaintiffs' interpretation, the absence of these time limits in Missouri's § 45 and Colorado's analogous congressional component does *not* imply prohibition of mid-decade redistricting.

Third, the *Salazar* court, like the Plaintiffs, misapplies the negative implication canon. The *Salazar* court said that "[t]here is no language empowering the General Assembly to redistrict more frequently or at any other time." *Id.* at 1225. But this reads the provision backwards. There is no language disempowering the General Assembly. Restrictions on state legislative authority are not assumed to

exist when they are not presented in the text. Again, the Missouri Supreme Court has cautioned that it is the "rare case in which *expressio unius est exclusio* . . . applies." *C.S. v. Mo. State Highway Patrol Criminal Justice Information Service*, 716 S.W.3d 264, 267 n.3 (Mo. banc 2025). And, when there is ambiguity, Missouri courts read it in favor of the General Assembly.

II. Plaintiffs do not demonstrate a threat of irreparable harm.

Plaintiffs have narrowed their desired relief to Count 1 of their petition. The sole permissible basis of their requested preliminary injunction and declaratory judgment is limited to their mid-decade redistricting claim. The only permissible harms they can allege must stem from Count 1. However, Plaintiffs' briefing blurs allegations and supposed irreparable harms from counts *not included in their sought relief*. They fail to show how the General Assembly's *exercise of mid-decade redistricting* works a deprivation of their constitutional rights sufficient to form an irreparable injury warranting injunctive relief.

Unlike other cases where courts have held that *voting* in allegedly unconstitutional districts constitutes an "irreparable harm," *GRACE, Inc. v. City of Miami*, 674 F. Supp. 3d 1141, 1160 (S.D. Fla. 2023), Count 1 only alleges that the *exercise* of the State's mid-decade redistricting powers, not the *actual* redistricting map itself, violates the Missouri Constitution. *Compare Miller v. Johnson*, 515 U.S. 900, 911–12 (1995) (quoting *Shaw v. Reno*, 509 U.S. 630, 657 (1993)) (discussing race-based voting assignment).

Plaintiffs embed their asserted irreparable harms in statements about voting rights. However, their medley of cases do not form a controlling precedent establishing a sufficient threat of irreparable harm. For example, Plaintiffs invoke *Rebman v. Parson*, 576 S.W.3d 605 (Mo. banc 2019), to allege that mid-decade redistricting legislation would "'constitute an irreparable injury.'" Pls. SISO PI at 13 (quoting *Rebman*, 576 S.W.3d at 612). However, *Rebman*, and the case upon which it ultimately relies, *Elrod v. Burns*, 427 U.S. 347 (1976), address a narrow range of cases where individuals faced *employment termination* due to some unconstitutional state action. Plaintiffs do not demonstrate how a *mid-decade* redistricting would render an irreparable harm when the map is presumptively correct.

Plaintiffs complain that "[n]o monetary award could adequately compensate for these deprivations of constitutional rights." Pls. SISO PI at 15 (citing *Glenn*, 69 S.W.3d at 130). These supposed "deprivations of constitutional rights" are illusory. Plaintiffs cannot clearly identify how redistricting in 2025, versus 2022 executed through the same legislative process, prevents Plaintiffs "from exercising their fundamental right to vote for members of Congress. . . ." Pls. SISO PI at 14. Many of their assertions touch upon compactness as a supposed basis for an injunction, *see id.* at 14 ("carves up communities"; "district which extends across the entirety of the northern part of Missouri"), but that is *not* the count upon which they are seeking relief. They are *solely* challenging the propriety of mid-decade redistricting and their alleged irreparable harms must be proximately caused by that conduct.

III. The balance of harms favors the State.

Plaintiffs are also not entitled to injunctive relief because the balance of the equities and public interest also firmly weigh in favor of Defendant. *See City of Normandy v. Kehoe*, 709 S.W.3d 327, 335–39 (Mo. banc 2025) (reviewing equities and public interest for injunctive relief). Separation of powers, practical considerations, and the threat of conflicting rulings all militate in favor of denying Plaintiffs' motion.

A. Plaintiffs' sought relief threatens Missouri's democratic political process and separation-of-powers doctrine.

Plaintiffs' sought injunctive relief would intrude on the General Assembly's, and by extension, Missouri voters', constitutional prerogative to set congressional district boundaries, "predominately a political question." *Pearson*, 359 S.W.3d at 39. "The inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 & n.17 (2018). Plaintiffs face fierce headwinds of presumptions favoring legislative authority for good reason.

Judicial rewriting of the Missouri Constitution would extinguish the General Assembly's default power to rearrange congressional districts responsive to changes in federal law. First, Plaintiffs' version of § 45 weakens democratic responsiveness, favoring the political preferences of one session of the General Assembly to the detriment of succeeding sessions. Second, legislative hamstringing damages Missouri's separation of powers. *See Barrett v. Greitens*, 542 S.W.3d 370, 379 (Mo. App. W.D. 2017) (citing *Weinstock v. Holden*, 955 S.W.2d 408, 410 (Mo. banc 1999)) ("The separation of powers doctrine is vital to our form of government because it prevents the abuses that can flow from centralization of power."). Plaintiffs' desired

relief would compel judicial intrusion into redistricting "decisions . . . political in nature and best left to political leaders." *Pearson*, 359 S.W.3d at 39.

B. Plaintiffs would deprive the General Assembly from remedying potential constitutional defects with the old map.

There is a serious risk that the prior map violates the U.S. Constitution's Equal Protection Clause. The minority opportunity district in the Missouri First Congressional District may violate the U.S. Constitution. *See, e.g.*, *Pearson v. Koster*, 367 S.W.3d 36, 54 (Mo. banc. 2012) (noting district boundaries were intentionally shaped to maximize minority representation); *Berry v. Ashcroft*, 2022 WL 2643504, at *2 (E.D. Mo. July 8, 2022) (concerning a challenge to Missouri's 1st Congressional District on allegations of racial gerrymandering). But the U.S. Supreme Court appears poised to hold that Section 2 of the Voting Rights Act is unconstitutional to the extent it requires creating such districts. *See, e.g.*, Amy Howe, *Court appears ready to curtail major provision of the Voting Rights Act*, SCOTUSblog (Oct. 15, 2025), https://perma.cc/P4A5-ZKVR. Thus, granting Plaintiffs the remedies they seek would potentially force Missouri to violate the U.S. Constitution and plunge the State into legal chaos over which legislative map will govern midterm elections in 2026. The Court should decline to embark on that chaotic and unlawful journey, which would inflict grave harm on the State.

C. Plaintiffs' political, duplicative complaints do not justify judicial arrogation.

Granting Plaintiffs' sought injunctive relief would create undue chaos and undermine uniform consideration of the purely legal issues raised in Count 1.

Missouri courts disfavor duplicative litigation. *See, e.g.*, *State ex rel. Kansas City Exchange Co. v. Harris*, 81 S.W.2d 632, 638 (Mo. App. 1935) (noting that "that equity should intervene to prevent a multiplicity of suits"). Here, when Plaintiffs seek a *discretionary* remedy—injunctive relief—from this Court, such concerns are only heightened. Right now, parallel litigation in Cole County, *see, e.g.*, *Luther v. Hoskins*, case no. 25AC-CC06964, is ongoing. The *Luther* court is similarly contemplating the constitutionality of the new map and it already conducted a bench trial addressing the *exact* same constitutional argument as Count 1 of Plaintiffs' petition. The State awaits a ruling in *Luther*, which would resolve the *entirety* of Count 1. By granting preliminary injunction relief here, the Court would potentially create a conflict with the final judgment in the *Luther* case. And regardless of how this Court rules, the Missouri Supreme Court will soon have to decide the *Luther* case, thus giving a final answer that moots Count I in this case.

Once again, Plaintiffs are free to bring alleged substantive challenges to the new map, but here they only focus on Count 1 of their petition. Plaintiffs' political objections to mid-decade redistricting are best aired in Missouri's *political* branches and their pursuit of unfounded injunctive relief should be denied.

Plaintiffs have a heavy burden and they fall far short. Plaintiffs ask this Court to impose nonexistent limitations on the General Assembly's clearly-established congressional redistricting authority. They ask this Court to employ exotic constitutional interpretation at odds with Missouri law to rewrite the Constitution

and interfere with the General Assembly's redistricting prerogatives established under art. I, § 4 of the U.S. Constitution.

CONCLUSION

For the foregoing reasons, Defendants respectfully request this Court deny all relief requested in Plaintiffs' Petition and enter judgment for Defendants.

Dated: December 4, 2025

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was filed and served electronically on all counsel of record via the Court's e-filing system on December 4, 2025.

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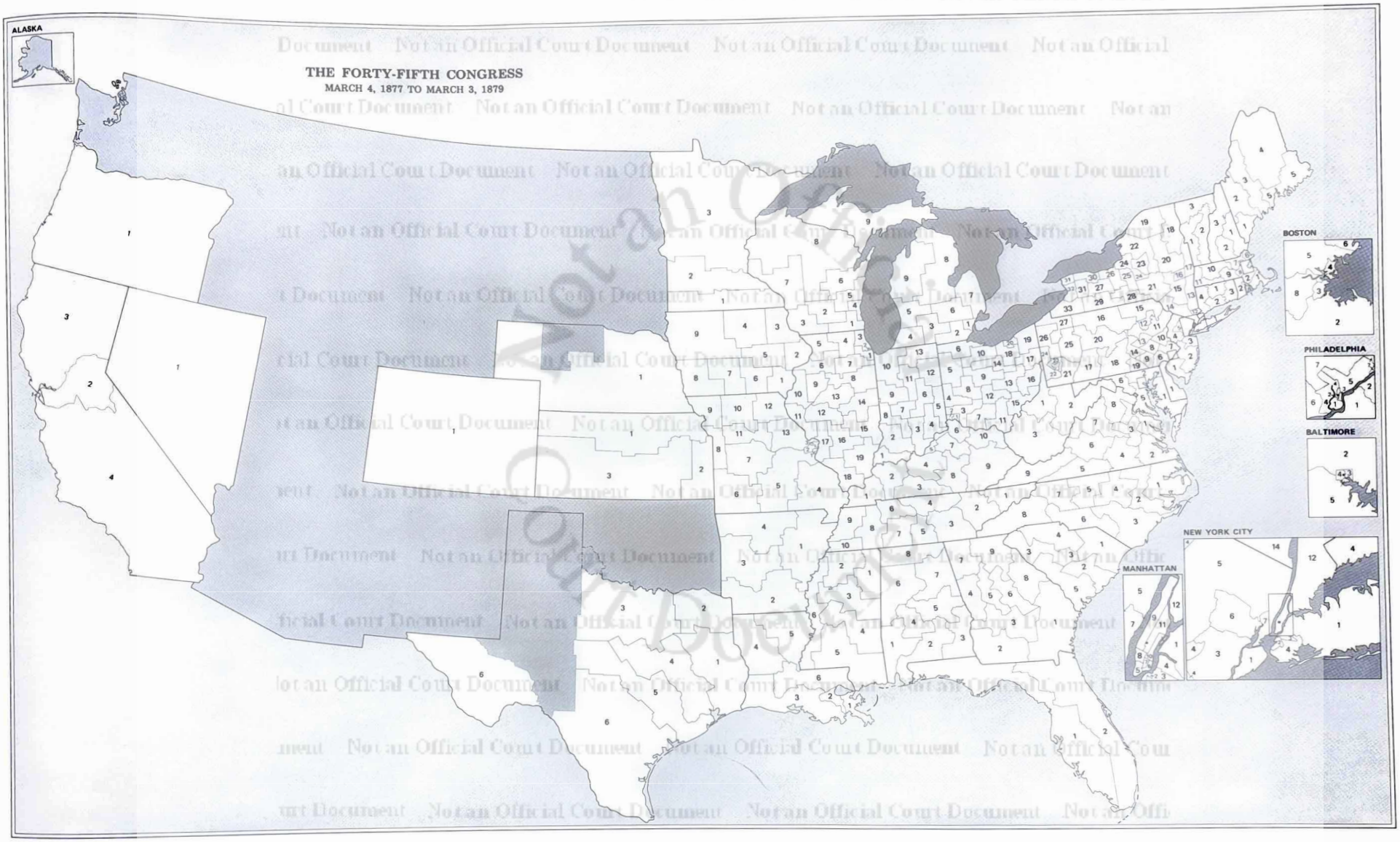
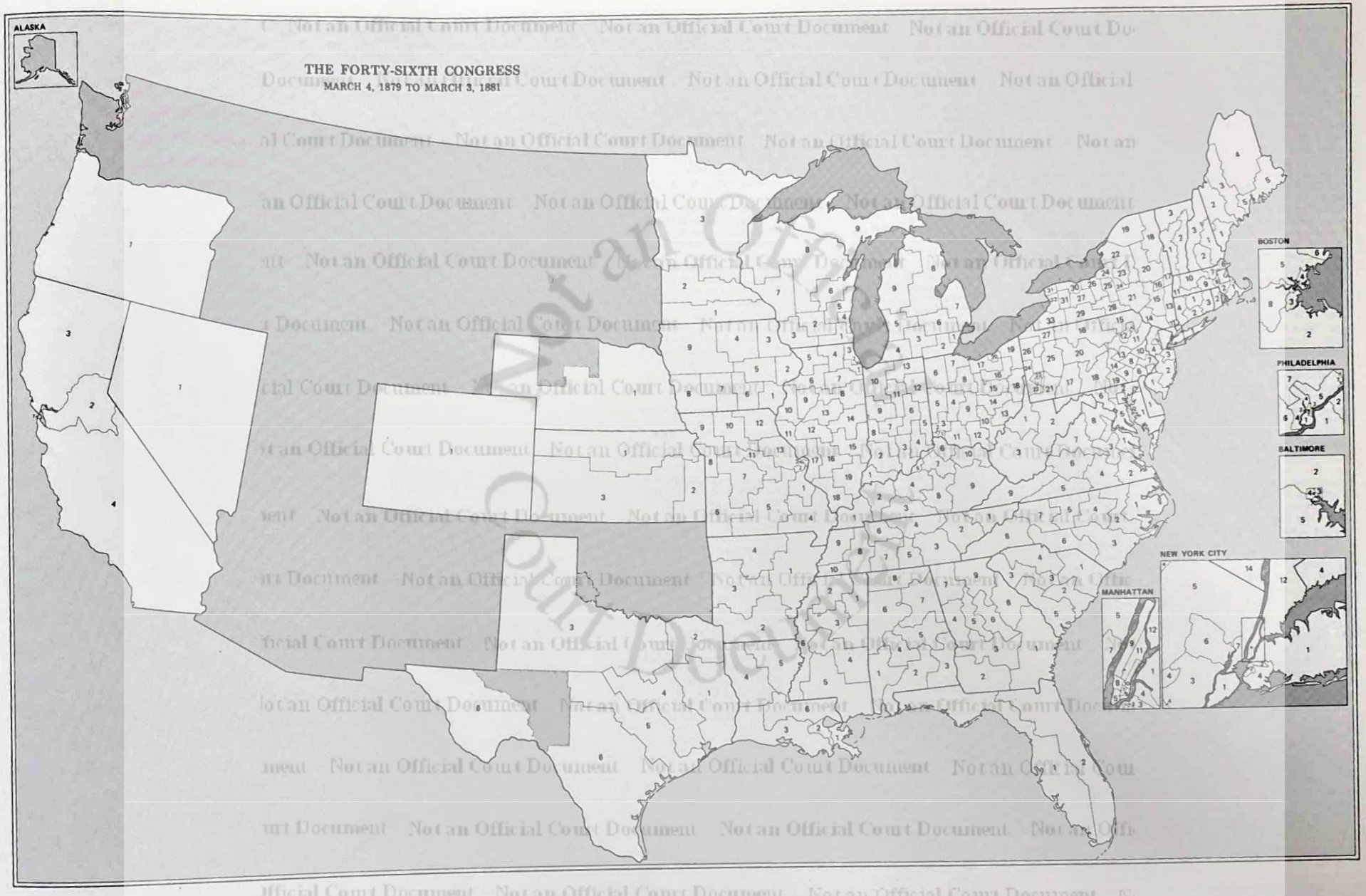
Exhibit D



First Session October 15, 1877 to December 3, 1877. **Second Session** December 3, 1877 to June 20, 1878. **Third Session** December 2, 1878 to March 3, 1879. **Special Session of the Senate** March 5, 1877 to March 17, 1877. **Number of Representative Seats** 293. **Speaker of the House** Samuel J. Randall (PA 3). **Map Notes** See *Additional Urban Insets* page for detailed maps of St. Louis, Chicago, and Pittsburgh.



First Session March 18, 1879 to July 1, 1879. **Second Session** December 1, 1879 to June 16, 1880. **Third Session** December 6, 1880 to March 3, 1881. **Number of Representative Seats** 293. **Speaker of the House** Samuel J. Randall (PA 3). **Map Notes** See *Additional Urban Insets* page for detailed maps of St. Louis, Chicago, and Pittsburgh.