IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

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

SUGGESTIONS IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The Missouri Republican State Committee ("MRSC") respectfully submits these Suggestions in Opposition to Plaintiffs' Motion for Preliminary Injunction and states as follows:

INTRODUCTION

A preliminary injunction is an "extraordinary and harsh remedy." *Farm Bureau Town and Country Ins. Co. of Mo. v. Angoff,* 909 S.W.2d 348, 354 (Mo. banc 1995). Just this year, the Missouri Supreme Court clarified that a party seeking an injunction against implementation of a statute must satisfy a standard even "more rigorous" than the traditional demanding preliminary injunction standard. *State ex rel. Kehoe v. Zhang*, No. SC 101026, 2025 WL 1564397, at *1 (Mo. May 27, 2025) (quoting *Planned Parenthood Minn., ND., S.D. v. Rounds,* 530 F.3d 724, 731-33 (8th Cir. 2008)). It is not enough for such a movant to establish a "fair chance" that it will succeed on the merits; the movant instead must show a "substantial likelihood of success on the merits." *State ex rel. Kehoe v. Zhang*, No. SC 101026, 2025 WL 1564397, at *1 (Mo. banc May 27, 2025) (quoting *Planned Parenthood Minn., ND., S.D. v. Rounds,* 530 F.3d 724, 731-33 (8th Cir. 2008)). Only after the movant has made that threshold showing will the Court weigh the other factors (the threat of

irreparable harm, the balancing of the harm with injury to other interested parties, and the effect on the public interest). *See Rounds*, 530 F.3d at 732.

Plaintiffs bear a heavy burden to *prove* each of the *required elements*. *See Supermarket Merch. & Supply, Inc. v. Marschuetz*, 196 S.W.3d 581, 585 (Mo. App. 2006). They cannot carry their burden as to *any* of those elements. The Court should deny Plaintiffs' Motion.

As to the threshold issue, Plaintiffs cannot show any prospect—let alone a substantial likelihood—of success on their claim that House Bill 1 ("HB 1") "clearly and undoubtedly contravene[s] the constitution." *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012) (quotations omitted). Nothing in Article III, Section 45 ("Section 45") "expressly prohibit[s]" the General Assembly from performing mid-decade congressional redistricting, so it does not oust the General Assembly's legislative authority to engage in such redistricting. *State v. Clay*, 481 S.W.3d 531, 532 (Mo. banc 2016). In fact, the U.S. Constitution's Elections Clause grants the General Assembly plenary power to conduct congressional redistricting, *see* U.S. Const. art. I, § 4, cl. 1, including to perform mid-decade redistricting, *see League of United Latin American Citizens v. Perry*, 548 U.S. 399, 415, 418-19 (2006) (plurality op.) ("*LULAC*").

Plaintiffs' failure to demonstrate a substantial likelihood of success on the merits alone warrants denial of injunctive relief. Plaintiffs, moreover, have failed to show *any* irreparable harm—and, in fact, the balance of equities weighs conclusively against enjoining use of the General Assembly's duly enacted HB 1. Plaintiffs' theory of irreparable harm is that HB 1 places them in new districts away from their preferred "communities" and representatives. Sugg. 14 and 17.[1] But there is no right to be placed in a district with communities or representatives of one's choosing. In fact, HB 1 *protects* the

[1] "Sugg" refers to Plaintiffs Suggestions in Support of Plaintiffs' Motion for Preliminary Injunction and Consolidation of Trial on Count 1 with Preliminary Injunction Hearing, filed on September 12, 2025.

voting rights of all Missouri voters, including Plaintiffs: All Missouri voters, including Plaintiffs, remain free to participate in elections and to cast ballots on equal terms as all other voters.

On the other side of the scale, Intervenor, the State, and Missouri voters would be irreparably harmed by issuance of an injunction. In particular, Intervenor will struggle to identify viable candidates and to raise funds under any injunction. Moreover, the State and its citizenry suffer irreparable harm any time a court enjoins enforcement of a statute duly enacted by the General Assembly.

The Court should deny Plaintiffs' Motion For Preliminary Injunction.

I. Plaintiffs Cannot Show A Substantial Likelihood Of Success On The Merits Because Mid-Decade Congressional Redistricting Is Constitutional.

Plaintiffs' request for preliminary injunctive relief fails at the threshold because they cannot show a substantial likelihood of success on the merits. Section 45 does not prohibit the General Assembly from conducting mid-decade congressional redistricting. On the contrary, the Elections Clause of the U.S. Constitution vests power to conduct congressional redistricting, including mid-decade redistricting, in the General Assembly. Plaintiffs' Count I therefore fails.

A. Section 45 Does Not Expressly Prohibit Mid-Decade Congressional Redistricting.

"The Constitution is not a grant but a restriction upon the powers of the legislature." *Liberty Oil Co. v. Dir. of Rev.*, 813 S.W.2d 296, 297 (Mo. banc 1991). "Consequently, the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained by the Constitution*." *Id.* (quotations omitted) (emphasis in original); *see also Bohrer v. Toberman*, 227 S.W.2d 719, 723 (Mo. banc 1950) (General Assembly has "all the powers and privileges which are necessary to enable it to exercise in all

respects . . . its appropriate functions, except so far as it may be restrained by the express provisions of the Constitution"). Thus, "where the constitution is silent, the legislature may properly address the issue." *State ex rel. Mathewson v. Bd. of Elec. Comm'rs of St. Louis Cnty.*, 841 S.W.2d 633, 636 (Mo. banc 1992).

Like any statute, a redistricting plan enacted by the General Assembly "is assumed to be constitutional and will not be held unconstitutional unless the plaintiff proves that it 'clearly and undoubtedly contravene[s] the constitution.'" *Johnson*, 366 S.W.3d at 20 (quoting *Mo. Prosecuting Att'ys v. Barton Cnty.*, 311 S.W.3d 737, 740-41 (Mo. banc 2010)). Courts therefore must uphold a redistricting plan "unless it plainly and palpably affronts fundamental law embodied in the constitution." *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741). Any "'doubts will be resolved in favor of the constitutionality' of the plan." *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741); *see also Liberty Oil Co.*, 813 S.W.2d at 297 ("Deference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by any reasonable construction of that action or by any reasonable construction of the Constitution.").

Section 45 directs:

> **Congressional apportionment.** — 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 "sets out only three requirements for the redistricting of seats in Missouri for the United States House of Representatives": Congressional districts "shall" be composed of "contiguous territory as compact and as nearly

equal in population as may be." *Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. banc 2012). "As long as the districts comply with these constitutional requirements, the circuit courts *shall* respect the political determinations of the General Assembly." *Id.* at 40 (emphasis added).

Section 45's lone mention of the timing of congressional redistricting mandates only that the General Assembly "shall" adopt a new plan after the 1950 census and every census thereafter. Mo. Const. art. III, § 45. Missouri adopted Section 45 after decades of the General Assembly failing to redraw its congressional map. *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); Lloyd M. Short, *Congressional Redistricting in Missouri*, 25 AM. POL. SCI. REV. 634, 639 (1931). The 1945 Constitution therefore imposed a minimum mandatory duty on the General Assembly to perform congressional redistricting after each decennial census, *see* Mo. Const. art. III, § 45; *Am. Fed'n of State, Cnty. & Mun. Emps. v. State*, 653 S.W.3d 111, 120 (Mo. banc 2022) ("the word 'shall' imposes a mandatory duty"), years before the U.S. Supreme Court articulated the one-person, one-vote mandate conveying a similar duty, *see, e.g.*, *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

Section 45, however, is completely silent on whether the General Assembly may choose to conduct mid-decade redistricting. *See* Mo. Const. art. III, § 45. It therefore places no "express[] prohibit[ion]" or "restrain[t]" on the General Assembly's power to make that choice. *Liberty Oil Co.*, 813 S.W.2d at 297. This silence alone dooms Plaintiffs' challenge to HB 1, *see id.*; *Bohrer*, 227 S.W.2d at 723; *State ex rel. Mathewson*, 841 S.W.2d at 636, and forecloses their claim that HB 1 "clearly and undoubtedly contravenes the constitution," *Johnson*, 366 S.W.3d at 20 (quotations omitted); *see also Liberty Oil Co.*, 813 S.W.2d at 297.

Plaintiffs' Motion does not acknowledge, much less attempt to reconcile their claim with, their heavy burden of proof or the rule, established by long precedent, that the General Assembly has power to legislate "except as expressly restrained by the Constitution." *Id.* Instead, Plaintiffs assert two main arguments in an effort to read a non-existent prohibition on mid-decade congressional redistricting into Section 45 and then a final attempt to look at foreign courts for support of their position. All fail.

First, Plaintiffs' main thrust posits that, by mandating that the General Assembly "shall" draw a new congressional map after each decennial census, Section 45 means that Missouri's congressional districts may only be drawn *once* in a decennial period. *See* Sugg. 3-13. But Section 45's lack of an express prohibition on mid-decade congressional redistricting *disproves* Plaintiffs' claim and *proves* that the General Assembly has authority to perform such redistricting. *See Liberty Oil Co.*, 813 S.W.2d at 297; *Johnson*, 366 S.W.3d at 20; *see also Clay*, 481 S.W.3d at 532, 537; *Bohrer*, 227 S.W.2d at 723; *State ex rel. Mathewson*, 841 S.W.2d at 636.

If more were somehow needed, the Framers of the 1945 Constitution knew how to impose "express[] prohibit[ions]" on the General Assembly's exercise of legislative power. *Clay*, 481 S.W.3d at 532. The Constitution is replete with such prohibitions framed in declarations that the General Assembly "shall have no power to" or "shall not" have certain powers. *See, e.g.*, Mo. Const. art. III, §§ 37 ("shall have no power."); 38(a) ("shall have no power"); 39 ("shall not have power [to] ..."); 40 ("shall not pass ..."). Indeed, the terms "shall have no power" and "shall not" are "words of prohibition." *Brooks v. State*, 128 S.W.3d 844, 847 (Mo. banc 2004). That the Missouri Framers did not include those terms in Section 45—or anywhere else in Missouri law when it comes to congressional redistricting—only further underscores that the

Constitution permits, rather than prohibits, mid-decade congressional redistricting by the General Assembly.

Second, Plaintiffs point to the Missouri Supreme Court's decision in *Pearson*, *see* Sugg. 4-5, but once again that case undermines Plaintiffs' claim and supports Defendants' reading of the Constitution. *Pearson* did not address the question of mid-decade congressional redistricting, much less read the Constitution to forbid it. In fact, *Pearson* recognized that Section 45 "sets out only three requirements for" congressional redistricting—none of which precludes mid-decade redistricting—and that "[a]s long as the districts comply with these constitutional requirements, the circuit court *shall* respect the political determinations of the General Assembly." *Pearson*, 359 S.W.3d at 38, 40 (emphasis added). Thus, if anything, *Pearson* confirms that the choice whether to conduct mid-decade congressional redistricting is precisely the type of "political question" the Constitution entrusts to the General Assembly. *Id.* at 39.

The foreign court decisions cited by Plaintiffs are based on very different underlying law. These decisions have no precedential effect or value in Missouri. Additionally, the cases referenced have different constitutional language than the broad language of Section 45.

For example, Plaintiffs cite *In re Below*, 855 A.2d 459 (N.H. 2004). There the New Hampshire Supreme Court was reviewing language in the New Hampshire constitution that restricted redistricting to "every ten years thereafter." *Id.* at 471 *citing* N.H. Const. pt. II, art. 9. Section 45 of the Missouri Constitution contains no such limiting language. Unlike New Hampshire, Missouri does not limit redistricting to every ten years.

Similarly, *In re Certification of a Question of Law from the U.S. Dist. Ct., Dist. of S.D., W. Div.*, 615 N.W.2d 590 (S.D. 2000) referred to a provision of the

South Dakota Constitution that also included the same ten year restriction. S.D. Const. art. 3, § 5.

Finally, in all events, even if the Court concludes that Plaintiffs have raised "doubt" regarding the General Assembly's authority to conduct mid-decade congressional redistricting, it must resolve that doubt in favor of the General Assembly and HB 1's constitutionality. *Johnson*, 366 S.W.3d at 20; *see also Clay*, 481 S.W.3d at 537. The Court should deny Plaintiffs' Motion for this reason alone.

B. The Elections Clause Authorizes the General Assembly to Conduct Mid-Decade Congressional Redistricting.

Plaintiffs' Count I and Motion fail for another reason as well: construing Section 45 to preclude mid-decade redistricting would violate the U.S. Constitution's Elections Clause.

Because federal offices "'aris[e] from the Constitution itself,'" state authority "to regulate election to those offices . . . 'had to be delegated to, rather than reserved by, the States.'" *Cook v. Gralike*, 531 U.S. 510, 522 (2001) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804-05 (1995)). The Elections Clause effects that delegation by directing that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof," subject to a grant of authority to Congress to "make or alter such Regulations." U.S. Const. art. I, § 4, cl. 1. The Elections Clause thus vests the Missouri General Assembly with authority "to provide a complete code for congressional elections." *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

That grant of authority includes the power to conduct mid-decade redistricting. "[T]he Constitution and Congress state no explicit prohibition" on "mid-decade redistricting to change districts drawn earlier in conformance with a decennial census." *LULAC*, 548 U.S. at 415 (plurality op.). Moreover,

"[t]he text and structure of the Constitution and [Supreme Court] case law indicate there is nothing inherently suspect about a legislature's decision to re[district] mid-decade." *Id.* at 418-19. The Missouri General Assembly has authority under the Elections Clause to enact mid-decade congressional redistricting plans like HB 1. *See, e.g.*, U.S. Const. art. I, § 4, cl. 1; *LULAC*, 548 U.S. at 414-15 (plurality op.); *Smiley*, 285 U.S. at 366.

For their part, courts "must respect" the federal Framers' "deliberate choice" to "expressly vest[] power" to set federal election rules "in 'the Legislature' of each State." *Moore v. Harper*, 600 U.S. 1, 34 (2023). Indeed, the Elections Clause imposes significant limitations on state courts' power to review, much less to set aside, under state law a state legislature's statutes governing federal elections, including its congressional redistricting plans. *See id.*; *see also* THE FEDERALIST NO. 59 (Alexander Hamilton) (C. Rossiter ed., 1961) (explaining that the Elections Clause vests primary responsibility for election regulation in state legislatures). Accordingly, state courts do not have "free rein" to set aside such laws or redistricting plans. *Moore*, 600 U.S. at 34. Instead, they must abide by "the ordinary bounds of judicial review" when applying state constitutions in this context. *Id.* at 36. A state court thus violates the Elections Clause when it "transgress[es] the ordinary bounds of judicial review such that [it] arrogate[s] . . . the power vested in [the General Assembly] to regulate federal elections." *Id.*

Construing the Missouri Constitution to preclude the General Assembly from engaging in mid-decade congressional redistricting would constitute such a violation. After all, Missouri law is clear that "the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained by the Constitution*," *Liberty Oil Co.*, 813 S.W.2d at 297—and nothing in Section 45 or any other provision of the Missouri Constitution purports to prohibit or restrain the General Assembly's authority to conduct

mid-decade congressional redistricting, *see supra* Part I. Arriving at the conclusion that the Missouri Constitution somehow *does* effect such a prohibition would grossly depart from governing Missouri law and, thus, "transgress the ordinary bounds of judicial review" in violation of the Elections Clause. *Moore*, 600 U.S. at 36. Plaintiffs' Motion fails for this reason as well.

Simply put, the law does not support a conclusion that the Plaintiffs are likely to prevail on the merits of Count I. This ends the inquiry, and this Court should deny Plaintiffs' Motion. *Kehoe*, 2025 WL 1564397, at *1 (Mo. May 27, 2025); *Rounds,* 530 F.3d at 732.

II. PLAINTIFFS HAVE FAILED TO SHOW THAT THE BALANCE OF EQUITIES FAVORS AN INJUNCTION

Plaintiffs' failure to show a substantial likelihood of success on the merits requires denial of their Motion, regardless of the balance of equities. *Kehoe*, 2025 WL 1564397, at *1; *Rounds,* 530 F.3d at 732. In any event, Plaintiffs have failed to show that the balance of equities favors granting an injunction. To the contrary, the balance of equities requires denying an injunction here, even if Plaintiffs had shown a substantial likelihood of success on the merits.

Plaintiffs contend that they face irreparable harm from HB 1's placement of them in new districts away from their preferred "communities". Sugg. 13-14. But there is no right to be placed, or to remain, in a district with communities or representatives of one's choosing. After all, if such a right existed, the General Assembly could *never* redistrict because it would be precluded from placing *any* voter in a district the voter does not prefer.

Indeed, far from guaranteeing that every voter is placed in a district with like-minded communities and preferred candidates, the "fundamental" right to vote guarantees that every voter has an opportunity to cast a ballot of the same weight as every other voter's ballot. *Weinschenk v. State*, 203 S.W.3d 201, 2011 (Mo. banc 2006) (cited at Sugg. 13). HB 1 effectuates that right for all Missouri

voters: Under HB 1, all Missouri voters, including Plaintiffs, are free to participate in elections and to cast ballots on equal terms as all other voters. Plaintiffs thus suffer no harm, let alone irreparable harm, from HB 1.

> On the other side of the scale:
>
> The balance-of-harms and public-interest factors "merge when the Government"—or, in this case, a state official in his official capacity—"is the [nonmoving] party." *Eggers v. Evnen*, 48 F.4th 561, 564-65 (8th Cir. 2022); *see also Morehouse Enters., LLC v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 78 F.4th 1011, 1018 (8th Cir. 2023) ("The third and fourth factors for a preliminary injunction—harm to the opposing party and the public interest—merge when the Government is the party opposing the preliminary injunction.").

Comprehensive Health of Planned Parenthood Great Plains v. State, No. WD 88244, 2025 WL 2907584, at *17 (Mo. Ct. App. Oct. 14, 2025).

The analysis is straightforward. As discussed, Plaintiffs have no harm. But Intervenor and the general public will suffer irreparable harm if this Court enjoins HB 1.

Intervenor has to recruit candidates for the August 4 primary (and then the ensuing November 3 general election). That recruiting, plainly put, takes time and financial resources. An injunction from this Court would only create *uncertainty*, not certainty, about Missouri's congressional district lines in 2026 (and beyond) and where and how Intervenor should deploy its scarce candidate-recruitment resources. After all, a Cole County court already is considering an identical challenge to the mid-decade redistricting in HB 1. *See Luther v. Hoskins*, No. 25AC_CC06964 (Cole County Cir. Ct.) (mid-decade redistricting challenge argued Nov. 11, 2025). Obviously, *conflicting* rulings from this Court and the Cole County court would create chaos and significantly harm Intervenor. Moreover, in all events, neither this Court nor the Cole County court will have the last word on Missouri's congressional district lines because any ruling will be directly appealed to the Missouri Supreme Court.

See Mo. Const. art. V, § 3. To force Intervenor to pause—or attempt to conduct—candidate recruitment, during a congressional election year, pending appeal of an injunction against use the General Assembly's duly enacted districts in HB 1 invariably would hamper Intervenor's efforts and force it to expend time and money that could not be recovered after appeal.

This harm to Intervenor is not the only irreparable harm that would flow from granting an injunction. The State and Missouri's citizenry would also be harmed by an injunction: "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303, 133 S. Ct. 1, 3, 183 L. Ed. 2d 667 (2012) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.,* 434 U.S. 1345, 1351, 98 S.Ct. 359, 54 L.Ed.2d 439 (1977)). Thus, the public interest is generally served by upholding the law adopted by the legislature. *Ass'n for Accessible Medicines v. Ellison*, 140 F.4th 957, 961 (8th Cir. 2025) (citing *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020)).

CONCLUSION

The Court should deny Plaintiffs' Motion for Preliminary Injunction and dismiss Count I of the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via the Court's electronic filing system on December 4, 2025 on all parties of record.

/s/ Marc H. Ellinger