

No. 26A326

IN THE
Supreme Court of the United States

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN,

Applicants,

v.

CONGRESSMAN ROBERT ONDER, *et al.*,

Respondents.

and

STATE OF MISSOURI AND DENNY HOSKINS,
in his official capacity as Missouri Secretary of State,

Respondents.

**BRIEF OF *AMICI CURIAE* CAMPAIGN LEGAL CENTER, AMERICAN
CIVIL LIBERTIES UNION OF MISSOURI FOUNDATION, AND AMERICAN
CIVIL LIBERTIES UNION FOUNDATION IN SUPPORT OF APPLICANTS**

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INTERESTS OF *AMICI CURIAE*¹

Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization dedicated to securing free and fair elections for all voters. CLC regularly litigates before this Court and state high courts on voting rights and redistricting matters, including as counsel for parties or *amici curiae* in *Watson v. Republican National Committee*, 146 S. Ct. 2165 (2026), *Moore v. Harper*, 600 U.S. 1 (2023), *Rucho v. Common Cause*, 588 U.S. 684 (2019), *Gill v. Whitford*, 585 U.S. 48 (2018), and *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015).

The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan organization with more than 1.7 million members, founded in 1920 and dedicated to the principles of liberty and equality enshrined in the Constitution. In support of those principles, the ACLU has appeared before this Court as counsel or *amicus curiae* in numerous cases involving electoral democracy or redistricting, including *Smith v. Allwright*, 321 U.S. 649 (1944), *Reynolds v. Sims*, 377 U.S. 533 (1964), *Thornburg v. Gingles*, 478 U.S. 30 (1986), *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), *Department of Commerce v. New York*, 588 U.S. 752 (2019), *Allen v. Milligan*, 599 U.S. 1 (2023), and *Moore v. Harper*, 600 U.S. 1 (2023). The ACLU has an interest in promoting free and fair elections and fair districting, including specifically in Missouri, having served as counsel in *Wise v.*

¹ No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

State, 732 S.W.3d 827 (Mo. 2026), and *Missouri State Conference of the National Association for the Advancement of Colored People v. Ferguson-Florissant School District*, 894 F.3d 924 (8th Cir. 2018); both cases sought to address the harmful impacts of the challenged districts on minority voters in Missouri.

The American Civil Liberties Union of Missouri (“ACLU-MO”) is the statewide affiliate of the ACLU, with over 20,000 members and a longstanding interest in and history of protecting the constitutional rights of all Missourians. Through direct representation or on behalf of *amicus curiae*, the ACLU-MO regularly engages in litigation to protect rights related to voting, including the right to referendum. These cases include, but are not limited to *Maggard v. State*, 733 S.W.3d 411 (Mo. 2026); *State v. League of Women Voters of Missouri*, 730 S.W.3d 591 (Mo. 2026); *Missouri State Conference of the National Association for the Advancement of Colored People v. State*, 730 S.W.3d 550 (Mo. 2026); *Coleman v. Ashcroft*, 696 S.W.3d 347 (Mo. 2024); *State ex rel. Fitz-James v. Bailey*, 670 S.W.3d 1 (Mo. 2023); and *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484 (Mo. 2022).

CLC, ACLU, and ACLU-MO participated as *amici* in *Von Glahn v. Hoskins*, No. SC101805, 2026 WL 2628846 (Mo. Sep. 3, 2026) and in *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. 2026), and were counsel for the plaintiffs in *Wise v. State*, 732 S.W.3d 827 (Mo. 2026). They also submitted an *amicus* brief in this Court on Monday in *Hoskins v. Von Glahn*, No. 26A304 (S. Ct.). Each has an interest in ensuring Missourians the opportunity to vote in lawful congressional districts and in the sound interpretation of federal law governing redistricting and redistricting litigation.

SUMMARY OF ARGUMENT

What was originally a manufactured emergency by Missouri's Secretary of State is now a real one. Moments after this Court declined to stay the Missouri Supreme Court's unanimous order and injunction, a single federal district judge decided to intervene and second-guess the decisions of this Court and the state high court. This is simply unprecedented and must be urgently halted.

The district court had no jurisdiction to enter its temporary restraining order ("TRO"), the TRO violates federal law, and the Secretary is purporting to comply in a manner that violates both Missouri and federal law. After months of a cynical scheme to run out the clock and cause chaos in Missouri's elections, Secretary Hoskins was told by the Missouri Supreme Court that HB 1 (the 2025 congressional map) "is not the law and has never been the law," and that the 2022 map was the only legal map in Missouri. App. 27a n.8. Secretary Hoskins applied to this Court for emergency relief, and Justice Kavanaugh denied the Secretary's request. Less than half an hour later, a single judge of the federal District Court for the Eastern District of Missouri issued an order purporting to enjoin the Secretary from using any map *other than* the HB 1 map, a map that "is not the law and has never been the law" in Missouri. *Id.* The TRO must be urgently stayed.

First, in effect, the TRO leaves Missouri with *no congressional map whatsoever*. This is an untenable situation, and one that directly violates federal law, which requires a lawful congressional map. Moreover, the district court cannot require the use of the HB 1 map as the Secretary claims it has done. Among many other jurisdictional infirmities, the district court failed to take the required steps to convene

a three-judge district court as federal law requires, and a single judge cannot issue a mandatory injunction in this situation. Recognizing this limitation, the district court purported to issue only a TRO preventing the Secretary from using any map other than HB 1. But this order results in *no congressional map at all*, because it does not and cannot disturb the Missouri Supreme Court’s order enjoining the Secretary from using HB 1—an order Justice Kavanaugh declined to stay.

Second, the TRO itself violates the Elections Clause and federal law. Exercising its Elections Clause authority, Congress has mandated that Representatives be elected from districts, and those districts may “only” be those “established by law.” 2 U.S.C. § 2c. An order that leaves a State with *no* map—or with a map the court lacks jurisdiction to impose—is decidedly *not* the “law” and thus flouts both Section 2c and Congress’s Elections Clause authority. A district court cannot order relief that compels a violation of federal law, and its equitable authority to issue a temporary injunction does not give it license to override Congress’s express directives or the Constitution. There must be a map, and that map is the 2022 map the Missouri Supreme Court ordered to be used.

Third, the district court’s order is a stark violation of the *Purcell* principle. While claiming to preserve the status quo, the district court’s order violently *upended* the status quo less than two months before the general election, and minutes after Justice Kavanaugh rejected the Secretary’s request to do just that. To avoid a violation of the Elections Clause and federal statutes passed pursuant to it, this Court

should immediately stay the order below, including by granting an administrative stay.

ARGUMENT

I. The district court lacked jurisdiction to mandate use of the HB 1 map.

The district court lacks jurisdiction to mandate the use of HB 1—and indeed the court’s order did not expressly do so, *see infra*. When an action is filed challenging the constitutionality of a congressional map, a “district court of three judges shall be convened.” 28 U.S.C. § 2284(a). This mandatory language “creates an obligation impervious to judicial discretion.” *Shapiro v. McManus*, 577 U.S. 39, 43 (2015). Though the statute mentions a “request” for a three-judge court being “fil[ed],” the mandatory language in the statute makes the convening of a three-judge court a “jurisdictional requirement once it becomes clear” there is a plausible constitutional claim satisfying the conditions set forth in § 2284(a). *See Armour v. Ohio*, 925 F.2d 987, 989 (6th Cir. 1991); *see also Kalson v. Paterson*, 542 F.3d 281, 286-87 (2d Cir. 2008) (holding that Section 2284 is jurisdictional and a three-judge court must be convened even in the absence of a party’s request). Whether one or three federal judges must hear a case (and thus whether this Court has mandatory appellate review) is not a decision left to the plaintiff’s prerogative.² Thus, upon determining that the action challenges the constitutionality of a congressional map, the single

² This is plain from the corresponding statute establishing appellate jurisdiction. *See* 28 U.S.C. § 1253 (providing for direct review in this Court of cases “required by any Act of Congress to be heard and determined by a district court of three judges”).

district judge must “immediately notify the chief judge of the circuit” who then must take steps to empanel two other judges. 28 U.S.C. § 2284(b)(1).

A single judge is limited in what actions can be taken on his or her own in cases required to be adjudicated by three-judge courts. Upon “a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted,” the single judge may issue a TRO. 28 U.S.C. § 2284(b)(3). But the single judge may *not* “hear and determine any application for a preliminary or permanent injunction.” *Id.* That is especially the case where, like here, that single judge is mandating the use of a districting plan that was never lawfully enacted. Furthermore, “[a]ny action of a single judge,” including issuance of a TRO, “may be reviewed by the full court at any time.” *Id.*

There is no question that Plaintiffs’ complaint seeks to enjoin the use of Missouri’s legally operative congressional map—the 2022 map—based on claims that its use in the 2026 general election would violate the federal Constitution. *See, e.g.*, ECF No. 1 ¶¶ 50-109³ (alleging that implementing the 2022 congressional map violates U.S. Const. art. I, § 4, cl. 1; art. I, § 2, and amend. XIV); *id.* at Prayer for Relief (seeking declaration that “failure to use the HB1 Congressional maps—as ordered by *von Glahn*—is unconstitutional”). Once it was clear Plaintiffs challenged the constitutionality of congressional apportionment, a panel was required.⁴

³ ECF citations are to the district court docket below, *Onder v. Missouri*, No. 4:26-cv-01424-SRC (E.D. Mo.).

⁴ To the extent Respondents contend that their case was a constitutional challenge to the state supreme court’s order and not the State’s congressional map, that is mere

The single district court judge failed to take any steps to convene a three-judge court as it was “immediately” required to do. 28 U.S.C. § 2284(b)(1). Plaintiffs’ failure to request a three-judge court did not eliminate the district court’s jurisdictional obligation, once the statutory conditions were satisfied, to comply with Section 2284(b)(1)’s requirement that it act “immediately.” *See, e.g., Kalson*, 542 F.3d at 286-87. Yet the district court did not, and still has not, done so.

The nature of the challenge was apparent to the district court from the start—it ordered expedited briefing on September 5 (one day after the complaint was filed) as to other jurisdictional hurdles. ECF No. 13. The district court was also aware of the necessity for a three-judge court because Intervenors raised the issue. ECF No. 12-4 at 15. Rather than notifying the Chief Judge of the Eighth Circuit to request the appointment of two additional judges, the district court waited three more days and then issued its TRO less than half an hour after Justice Kavanaugh denied the Secretary’s application to stay the state supreme court’s order.

The Chief Judge of the Eighth Circuit surely would have acted with haste, given the urgent nature of this case, to appoint two additional judges to provide the necessary complement of three judges to adjudicate Plaintiffs’ request for relief. All three judges could have participated in assessing the propriety of Plaintiffs’ request

semantics. They claim that conducting the 2026 general election under congressional boundaries apportioned pursuant to the 2022 map that is operative Missouri law would violate the U.S. Constitution. That is plainly a “challeng[e] [to] the constitutionality of the apportionment of congressional districts” of the State. 28 U.S.C. § 2284(a). The remedy they sought was a different congressional map on account of constitutional claims.

for relief. By failing to notify the Chief Judge of the Eighth Circuit of the pendency of a constitutional challenge to Missouri’s congressional map and instead by proceeding to issue a TRO, the district court improperly insulated its TRO from dissolution by the three-judge court as Section 2284 contemplates. *See* 28 U.S.C. § 2284(b)(3) (“Any action of a single judge may be reviewed by the full court at any time before final judgment.”). The three-judge court could have already rectified the district court’s erroneous TRO.

Furthermore, the Secretary appears to contend that the district court’s TRO was functionally a mandatory preliminary injunction—relief that Section 2284 does not permit a single judge to grant. This is at odds with the district court, which characterized its order as a TRO that “enjoin[ed]” Secretary Hoskins from “implementing . . . any congressional district map other than the HB 1 map for the November 3, 2026 general election.” App. 13a. By the terms of the TRO, it does not undo or affect the Missouri Supreme Court’s injunction prohibiting the use of HB 1—it merely restrains the Secretary from using some *other* map (such as the 2022 map). While it defines the prohibited maps by reference to HB 1, it does not by its terms *mandate* the use of HB 1 so as to conflict with the Missouri Supreme Court’s order *prohibiting* the use of HB 1. It restrains; it does not compel action. By its express terms, the TRO thus leaves Missouri with *no congressional map* for an election less than two months away.

The Secretary characterizes the district court’s order differently. He claims that the district court ordered the “use [of] the HB 1 map.” App. 50a. And he claims

that any contrary reading is “patently absurd.” App. 61a. But if the Secretary is correct and the district court in fact mandated the implementation of HB 1 for the 2026 general election—a map that is “not the law and has never been the law,” App. 27a n.8—then that is a *mandatory injunction*, not a restraining order. See *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996) (explaining that a “mandatory injunction” requires a “party to take action” while a “prohibitory injunction [] *restrains* a responsible party”) (citation modified) (emphasis added). The district court did not dispute that HB 1 is not law and that its use violates the Missouri Constitution. App. 5a (acknowledging that issuance of TRO would result in general election not conducted “in accordance with the Missouri Constitution”). Because HB 1 does not spring from any source of Missouri law, the only way the TRO can compel its use is as a court-imposed remedial map—*i.e.*, a mandatory injunction not a restraining order.

The TRO thus does one of two things, neither of which is tolerable. It either (1) restrains the Secretary from using the only map legally available under Missouri law or (2) judicially imposes HB 1 as a remedial map. The former leaves Missouri with *no congressional map* while the latter exceeds the court’s TRO power under Section 2284 in the absence of three judges. On either reading, the TRO must be stayed.

II. The district court’s order violates federal law.

The district court’s order violates the Elections Clause and federal law for much the same reasons *Amici* warned a stay of the Missouri Supreme Court’s judgment would. First, it intrudes on the legislative prerogative of the state’s lawmaking authority, which includes the referendum and is subject to the Missouri

Supreme Court’s exercise of ordinary judicial review. And second, it violates the Elections Clause’s express commitment of congressional redistricting authority to Congress itself by ordering a violation of 2 U.S.C. § 2c. *Amici* focus here on the latter violation.

The Elections Clause vests initial authority to regulate the times, places, and manner of congressional elections in “the Legislature” of each State, which for over a century the U.S. Supreme Court has understood to include the exercise of legislative power by popular referendum. U.S. Const. art. I, § 4, cl. 1; *Moore v. Harper*, 600 U.S. 1, 23-26 (2023). But the ultimate authority over congressional elections lies with Congress, which may “at any time by Law make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1.

Pursuant to its authority under the Elections Clause, Congress enacted 2 U.S.C. § 2c, which requires that “[i]n each State . . . there *shall* be established by *law* a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected *only* from districts so established.” 2 U.S.C. § 2c (emphasis added). Congress has also enacted 2 U.S.C. § 2a(c), which similarly requires each State to “redistrict[] *in the manner provided by the law thereof* after any apportionment.” 2 U.S.C. § 2a(c) (emphasis added). As this Court explained, in 1911, Congress amended 2 U.S.C. § 2a(c) to replace language requiring redistricting by “the legislature” of each State with a new requirement to redistrict “in the manner provided by the law[] thereof” to accommodate states, like Missouri, that incorporated initiative or referendum powers in their state lawmaking processes.

See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n, 576 U.S. 787, 809 (2015); *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 568 (1916). When Congress enacted 2 U.S.C. § 2c in 1967, it carried over the same principle and went even further by requiring that “*only*” districts “established by law” may be used to elect Representatives.

Congress has, in other words, expressed the final word on congressional redistricting under the Elections Clause. It has used that authority to require all States, including Missouri, to elect Representatives in districts, and those districts may *only* be those established by law.⁵

The district court’s TRO directly violates 2 U.S.C. § 2c and the Elections Clause because it prohibits Missouri from using any map other than HB 1, which is *not* the “law.” In effect, it leaves the State in limbo with no legally operative congressional districts, because the only districts “established by law” in Missouri are the 2022 districts enacted by the General Assembly, as the Missouri Supreme Court held. The Secretary has understood the TRO to be a mandatory injunction to use HB 1, which would also plainly violate 2 U.S.C. § 2c’s terms. As noted, the district court did not refute that the 2022 map is the State’s map by law—and for good reason, as the Missouri Supreme Court is the “ultimate expositor[] of state law.” *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975).

⁵ Of course, the phrase “by law” includes remedial redistricting conducted by a state or federal court, either when the state fails to redistrict or when its redistricting map violates state or federal law. *See Branch v. Smith*, 538 U.S. 254 (2003). But the single district court judge here had no jurisdiction to impose HB 1 as a remedial map to remedy alleged constitutional violations. *See* Part I.

The district court instead entered its injunction based on an unsubstantiated *equitable* determination that using a map other than HB 1—which is, again, not the law—will result in irreparable harm. But no matter how a court weighs the equities, its equitable authority does not extend to disregarding federal law. “The power of federal courts of equity to enjoin unlawful . . . action is subject to express and implied statutory limitations.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). “Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law.” *Id.* at 327-28 (citation omitted); *see also United States v. Oakland Cannabis Buyers’ Co-op.*, 532 U.S. 483, 497 (2001) (“[A] court sitting in equity cannot ‘ignore the judgment of Congress, deliberately expressed in legislation’”) (citation omitted).

This principle applies with particular force in the context of congressional redistricting. The Elections Clause commits to Congress the ultimate, superseding authority over congressional elections, so the relevant federal law here is not only a congressional enactment, but the Constitution itself. Moreover, this Court has held that when federal courts fashion remedies in redistricting cases, including interim remedies, they are bound by the same federal-law constraints that bind the State, which in this case, is a directive to use districts legally established by the State’s own laws. *See Perry v. Perez*, 565 U.S. 388, 394 (2012) (“A district court making . . . use of a State’s plan must, of course, take care not to incorporate into the interim plan any legal defects in the state’s plan.”). The legal defect in HB 1 is that it is not the law. The district court’s equitable determination does not permit it to force Missouri to use

an unlawful map or to leave the State without a lawful map in violation of the Elections Clause and 2 U.S.C. § 2c. The order should be immediately stayed.

III. The district court’s order violates *Purcell*.

Purcell requires granting a stay. It is difficult to conceive of a more prototypical candidate for application of the *Purcell* doctrine than a single federal district judge waiting fifteen minutes after an order of the Supreme Court to issue a contradictory order with the effect of precluding a state from using *any congressional map at all*.

This Court’s precedent on this issue forecloses any other outcome. It has repeatedly emphasized that *Purcell* is an equitable principle, rooted in federalism, which forcefully warns that “*lower federal courts* should ordinarily not alter the election rules on the eve of an election.” *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (quoting *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam)) (emphasis added). “[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional . . . districts,” and federal courts must “neither affirmatively obstruct state reapportionment *nor permit federal litigation to be used to impede it*.” *Grove v. Emison*, 507 U.S. 25, 34 (1993) (emphasis added); *see also Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (“While federal courts should not impose changes close to an election, States are free to decide for themselves whether last-minute changes to an election are in their best interests.”) (internal citation omitted).

The basic facts of this case are undisputed and make this Court’s path clear. Missouri’s highest *state* court has unanimously issued a decision on a matter of *state* electoral procedure based entirely on *state* constitutional grounds. App. 28a-29a.

What’s more, Justice Kavanaugh, presented with arguments identical to those presented by Plaintiffs here, has already declined to stay that judgment or to intervene in any way. Nevertheless, fully aware of all of this, the district court granted a TRO entirely incompatible with the Missouri Supreme Court’s order *on the day of the deadline for finalizing the ballot* in Missouri. *See* App. 13a.⁶ If *Purcell* does not foreclose the district court’s incredibly late-breaking action in this case, it is unclear what purpose the doctrine serves.

The district court claims that its order is necessary because “[p]reserving the status quo entails using the same map for the general election that Missouri used for its primaries—the HB 1 map.” App. 5a. But HB 1 is not the status quo. The Missouri Supreme Court could not have been more clear when it stated that “HB 1 is not the law and has never been the law;” the 2022 Map is the only “valid congressional redistricting in effect.” App. 27a n.8. Bafflingly (and erroneously), the district court deems this fact “irrelevant” to its decision. App. 11a. As noted *supra*, Part I, the district court’s equitable authority in this case is limited to preserving the status quo. As such, a clear and direct statement by the Missouri Supreme Court *defining* the legal status quo, undisturbed by the U.S. Supreme Court, is far from “irrelevant”—it is binding.

⁶ Notably, the Secretary has already taken the position that this Court is not bound by that deadline, having previously requested a decision from this Court on his emergency application for a stay of the state supreme court’s order by September 14. Because that state law September 8 deadline is about the candidates appearing on the ballot, and not which voters are assigned to which districts, there is no practical impediment to this Court granting the relief sought here.

Finally, the district court claimed that “[t]his case presents *Purcell* in reverse,” suggesting that “the public interest concerns that the *Purcell* principle invokes—avoiding voter confusion, disincentivizing voting, and preserving the fair and orderly operation of elections—support issuing a TRO.” App. 12a. One need only review the past day’s news coverage to see how far off the mark that is. There is nothing “fair” or “orderly” about a federal court issuing an order that results in *no* possible congressional map or in issuing an order outside its jurisdiction to compel the use of a map that “is not the law and has never been the law,” App. 27a n.8, merely because it was *illegally* used in the state’s primary election as part of an ill-fated and misguided scheme to run the clock.

CONCLUSION

For the foregoing reasons, the application should be granted.

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