

No. 26A326

IN THE SUPREME COURT OF THE UNITED STATES

CONGRESSMAN ROBERT “BOB” ONDER, ET AL.,

Plaintiffs-Respondents,

v.

STATE OF MISSOURI,

Respondent,

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN,

Applicants.

Application from the United States Court of Appeals for the Eighth Circuit

(No. 26-2797)

**PLAINTIFFS-RESPONDENTS’ BRIEF IN OPPOSITION TO APPLICANTS’
EMERGENCY APPLICATION FOR STAY PENDING DISPOSITION
OF A PETITION FOR A WRIT OF CERTIORARI**

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RULE 29.6 STATEMENT

As required by Supreme Court Rule 29.6, Plaintiffs-Respondents state that they are natural persons.

Date: September 10, 2026

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INTRODUCTION

Applicants ask this Court for relief that would be truly extraordinary. The stay they request would, in practical effect, supplant the Missouri General Assembly’s congressional redistricting authority and duly enacted House Bill 1 (“HB 1”) plan *after* a primary election in which more than 1.2 million Missourians voted under that plan and *after* the state-law deadline for ordering changes to the ballot for the imminent 2026 general election. Unsurprisingly, Applicants come nowhere close to making the demanding showing necessary to justify such an order.

In fact, the Application fails at the threshold because Applicants lack Article III standing. Applicants do not even *attempt* to prove in this Court that they satisfy the requirements for standing to appeal the District Court’s temporary restraining order (“TRO”). At most, Applicants make reference to their status as the “official proponents” of a ballot referendum challenging HB 1 and their undifferentiated “interest in proper application of the Constitution and laws.” *Hollingsworth v. Perry*, 570 U.S. 693, 706, 713 (2013). But neither that proponent status nor their “generalized grievance” confers standing to seek this Court’s review, and the Court should deny the Application for that reason alone. *See id.*

If more reasons for denying a stay were somehow needed, there is more—much more. For one thing, the equities weigh overwhelmingly in favor of denial. The Missouri Supreme Court purported to set aside HB 1 *after* upholding it in four prior cases and permitting it to be used in the recent congressional primary elections. *See Healey v. State*, 732 S.W.3d 827 (Mo. banc 2026) (consolidated with *Wise v. State*, No.

SC101572); *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. banc 2026); *Maggard v. State*, 733 S.W.3d 411 (Mo. banc 2026). General election day, November 3, 2026, looms less than eight weeks away. Missouri’s statutory deadline for ordering changes to general election ballots has passed. Candidates, voters, political parties, and members of the public are already exercising their constitutional rights to participate in the general election under the HB 1 plan. That participation includes actively raising and spending money, organizing get-out-the-vote efforts, mobilizing support, and preparing to cast ballots. Election officials, too, are preparing to administer the general election under the same HB 1 plan used in the primary elections.

The TRO therefore preserves the status quo that existed before the Missouri Supreme Court threw the State into electoral chaos by ordering it to revert to the 2022 plan at the whim of a mere “five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a). The chaos caused by using a different map at this juncture is obvious: replacement candidates would have to familiarize themselves with entirely new electorates, campaigns would abandon months of investment and strategy in districts that no longer exist, and local election authorities would have to reassign hundreds of thousands of voters and communicate an entirely new electoral plan to the public—all in less than eight weeks.

This Court’s intervention would thus foster immense disruption, a result which the Court has repeatedly tried to avoid under less severe circumstances, including four months *before* the primary and eleven months before the general election in *Abbott v. League of United Latin American Citizens*, 607 U.S. ----, 146 S. Ct. 418, 419

(2025); *see also* *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of stay). A stay, moreover, would cause widespread voter confusion, erode the public’s confidence in the State’s elections, and inflict irreparable harm on Plaintiffs-Respondents—all without preventing irreparable harm to Applicants or anyone else.

Not only do the equities warrant denying a stay, but Applicants also do not even *attempt* to argue that this dispute is cert-worthy, even though cert-worthiness is a baseline requirement for a stay. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *accord Does 1-3 v. Mills*, 142 S. Ct. 17, 17-18 (2021) (Barrett, J., concurring). Nor could they. This case is not an appropriate vehicle to reach any of the issues presented because Applicants lack Article III standing. In addition, the Eighth Circuit denied a stay in part because it “lack[ed] jurisdiction over the appeal” of an “interlocutory appeal from the District Court’s grant of a TRO.” App. 73a (quotations omitted). This Court would therefore have to entertain that preliminary issue, which Applicants do not even *raise*, let alone contend is a viable candidate for certiorari review. Applicants thus introduce two jurisdictional barriers to the Court’s consideration of the Application—yet they do not argue either is an important issue that warrants this Court’s consideration. *See* Sup. Ct. R. 10.

Even if the Court were to reach the merits of the Application, those issues likewise warrant denial of a stay. *First*, Applicants strain, but fail, to identify any barrier to the District Court’s consideration of the federal-law questions presented here. For example, Applicants’ arguments that this case had to proceed before a

three-judge court and that the District Court had to abstain under *Younger* both miss the mark. There was no basis to convene a three-judge court because Plaintiffs-Respondents are not challenging the constitutionality of a redistricting plan, but instead the constitutionality of the Secretary's actions, as compelled by a court order, to violate voters' constitutional rights. See 28 U.S.C. § 2284. For its part, *Younger* abstention is inapplicable for multiple reasons, the most obvious being that Plaintiffs-Respondents were not parties to the state court case and had no opportunity, adequate or otherwise, to litigate their federal claims in that suit.

Second, federal law precludes the state court from ordering a change in the State's redistricting plan between a primary and general election. Such an order fractures the integrated primary-general election process in violation of Article I, Section 2 and creates two classes of voters in violation of the Equal Protection Clause.

Third, the Elections Clause "expressly vests power" to conduct congressional redistricting "in 'the Legislature' of each State." *Moore v. Harper*, 600 U.S. 1, 34 (2023). This Court requires a clear statement before concluding that an authority the Constitution expressly assigns to a specific actor has been displaced. See, e.g., *United States v. Gradwell*, 243 U.S. 476 (1917). But the Missouri Constitution's generic referendum provision says nothing about congressional redistricting, and thus cannot strip the General Assembly of authority the Elections Clause expressly confers. And even if a clear statement existed under Missouri law, the Elections Clause would prohibit the State from permitting a fraction of the electorate to suspend the General Assembly's duly enacted congressional plan during an ongoing election.

The Court should deny the Application.

OPINIONS BELOW

The United States District Court for the Eastern District of Missouri’s decision granting the TRO is attached to Applicants’ brief at Appendix 1a. The United States Court of Appeals for the Eighth Circuit’s decision denying Applicants’ motion for a stay pending appeal is attached to Applicants’ brief at Appendix 73a.

STATEMENT OF THE CASE

The Missouri General Assembly enacted HB 1 on September 12, 2025. 1a. HB 1 repealed Missouri’s prior congressional districting plan and established new boundaries for Missouri’s eight congressional districts. *Id.* HB 1 passed by a margin of 21 to 11 in the Senate and 90 to 65 in the House of Representatives. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025). Governor Michael L. Kehoe signed HB 1 into law on September 28, 2025.

Applicant People Not Politicians (“PNP”) launched a referendum campaign to challenge HB 1. 2a. PNP eventually submitted a referendum petition to the Secretary of State on December 9, 2025, invoking the referendum provisions in Article III of the Missouri Constitution. Under Article III, Section 52(a), “[a] referendum may be ordered . . . by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a). Article III’s referendum provisions are silent regarding congressional redistricting. *See id.* art. III, §§ 49, 52(a)-(b). Article III, however, elsewhere

expressly states that “[n]o redistricting plan shall be subject to the referendum.” *Id.* art. III, § 3(i); *see also id.* § 7(h) (same).

PNP’s submission triggered the Secretary’s statutory duty to review the referendum petition. *See Maggard*, 733 S.W.3d at 416. That review encompasses the timeliness, legality, and sufficiency of the petition, as well as the sufficiency of the signatures offered in support of the petition. *See* §§ 116.120–116.140, RSMo. “After” review, “if the secretary of state finds [the petition] sufficient, the secretary of state shall issue a certificate setting forth that the petition contains a sufficient number of valid signatures to comply with the Constitution of Missouri and with this chapter.” § 116.150.1, RSMo. But “[i]f the secretary of state finds the petition insufficient, the secretary of state shall issue a certificate stating the reason for the insufficiency.” § 116.150.2, RSMo.

The Secretary was required to complete this extensive review “not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election or two weeks after the date the election authority certifies the results of a petition verification pursuant to subsection 2 of section 116.130, whichever is later.” § 116.150.3, RSMo. The thirteenth Tuesday prior to this year’s general election fell on Tuesday, August 4, the date of the State’s primary elections. 2a.

While the Secretary and Missouri’s local election officials were reviewing PNP’s submission, two plaintiffs separately challenged HB 1’s effectiveness, seeking a declaratory judgment and an injunction preventing use of the HB 1 plan until voters approved it through the referendum process. *See Maggard*, 733 S.W.3d at 413. The

Missouri Supreme Court unanimously rejected their claims, holding that “the December 9 referendum petition filing did not automatically suspend HB 1 under article III, sections 49, 52(a), or 52(b) of the Missouri Constitution.” *Id.* at 421.

Following the Missouri Supreme Court’s ruling, the Attorney General released an opinion letter requiring “State and local election officials” to “take all appropriate steps to ensure the HB 1 map is fully implemented in advance of the 2026 primary elections.” Mo. Att’y Gen., Op. Letter 03-2026 (May 13, 2026). Local election officials then implemented the HB 1 plan in Missouri’s Centralized Voter Registration (“MCVR”) system, transferring hundreds of thousands of voters to the new districts. After implementation, state and local officials prepared ballots and conducted the August 4 primary elections under the HB 1 plan. 2a.

A total of 1,206,871 Missourians voted in the State’s congressional primary elections under the HB 1 plan. State Of Missouri Election Results – Primary Election August 4, 2026, *available at* <https://enr.sos.mo.gov/> (last visited Aug. 24, 2026). Prior to 5 p.m. on August 4, the last day to vote in the primary elections, Secretary Hoskins announced that he was issuing a certificate finding PNP’s petition insufficient. 2a.

Applicant Richard von Glahn filed suit later that evening in state court seeking immediate suspension of the use and implementation of the HB 1 map and an order reverting the State to the 2022 congressional districting plan. The circuit court tried the matter on stipulated facts and exhibits on August 19, 2026, and entered judgment in favor of the Secretary that same day. The circuit court also made detailed factual findings establishing that changing the plan before the general election is not merely

inequitable; it is “*impossible*.” *Von Glahn*, 52a. No changes in voters’ district assignments can currently be made in MCVR, which is locked and will remain locked until at least mid-November. *See id.*; *see also* Hoskins Decl. ¶ 6. Moreover, implementing any plan other than the HB 1 plan would require transferring hundreds of thousands of voters through a multi-week process that cannot be completed before the general election. *See von Glahn*, 52a; *see* Hoskins Decl. ¶¶ 9-12.

The Missouri Supreme Court did not even mention, let alone reverse, the circuit court’s findings of impossibility. It nevertheless reversed the circuit court’s judgment on September 3, 2026. Because the Missouri Supreme Court concluded that any “claimed federal law violations” had been “waived and abandoned” by the Secretary of State, that court limited its holding to the single state-law issue of whether the Missouri Constitution authorizes referenda on congressional redistricting plans. *See von Glahn*, 5a n.5. The Missouri Supreme Court resolved that state-law question in favor of a referendum. *See von Glahn*, 13a. The Missouri Supreme Court enjoined the Secretary from using HB 1 for the November general election without considering whether that relief violated federal law. *See von Glahn*, 5a & n.5. This Court denied the Secretary’s application for a stay. *See* Dkt. No. 26A304.

On September 4, 2026, Plaintiffs-Respondents—a group of Missouri voters and congressional candidates—filed a complaint against the Secretary in the United States District Court for the Eastern District of Missouri, bringing federal law claims under the Elections Clause; Article I, Section 2 of the U.S. Constitution; and the

Equal Protection Clause. 3a. Plaintiffs-Respondents moved for a temporary restraining order and preliminary injunction seeking to enjoin Secretary Hoskins from implementing the *von Glahn* order to their detriment. *See* Dist. Ct. Dkt. 1 26. They asked the District Court to require the November 3, 2026 general election to be conducted under the HB 1 congressional map. Applicants PNP and von Glahn then intervened as proponents of the referendum. PNP is a proponent of the referendum. *See* Dist. Ct. Dkt. 12 ¶ 2. Von Glahn is a Missouri voter who lives in St. Louis and supports the referendum. *See id.*

On September 8, 2026, Judge Clark issued a Memorandum and Order granting Plaintiffs-Respondents' motion for a temporary restraining order. 1a. The District Court found a high probability of success on the Article I, Section 2 and Equal Protection claims and found that the balance of harms and the public interest strongly favor preserving the election rules under which the primary was conducted. 1a-13a. The TRO remains in effect for 14 days, pending a preliminary injunction hearing to be scheduled. 13a.

The same day, Applicants filed an application for a stay in the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit denied the application for two reasons. *First*, it concluded that it “lack[ed] jurisdiction over” “an interlocutory appeal from the district court’s grant . . . of a TRO.” App. 73a (quotations omitted). *Second*, it concluded that the factors for a stay had not been met. *Id.* Applicants filed their stay application in this Court later that day.

REASONS FOR DENYING THE APPLICATION

The Court should deny the Application to protect the rights of voters and preserve the constitutional authority of the Missouri General Assembly and ensure Missouri's elections are conducted according to the laws enacted by the State's elected representatives.

“A stay is an ‘intrusion into the ordinary process of administration and judicial review.’” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotations omitted). Applicants therefore “bear[] the burden of showing that the circumstances justify” one. *Id.* at 433-34. This Court will only grant a stay if there is “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth*, 558 U.S. at 190; *accord Does 1-3*, 142 S. Ct. at 17-18 (Barrett, J., concurring).

Applicants come nowhere close to meeting this standard. At the outset, Applicants lack Article III standing, which precludes this Court's review of the Application altogether. If that were not enough, the equities strongly weigh against this Court's intervention. As the District Court recognized, Missouri is in the midst of an ongoing election in which candidates, voters, and election officials have relied on HB 1 for a year, including during the primary elections in which 1.2 million citizens voted last month. By contrast, Applicants will suffer no injury from proceeding under HB 1, the status quo on which every candidate, voter, and election

official in Missouri has relied for the past year. *See Malliotakis*, 146 S. Ct. at 811 (Alito, J., concurring). Applicants simply ignore the certworthiness requirement, no doubt because their application so plainly flunks it due to multiple jurisdictional obstacles to the merits. Finally, even if the Court somehow reached the merits, the Court would likely affirm the ruling below because multiple provisions of federal law foreclose any court-ordered change to the State’s congressional plan between the primary and general elections.

I. APPLICANTS LACK ARTICLE III STANDING IN THIS COURT.

The Court should deny the Application at the threshold because Applicants lack standing to appeal. “For there to be . . . a case or controversy” within the meaning of Article III, “it is not enough that the party invoking the power of the court have a keen interest in the issue.” *Hollingsworth*, 570 U.S. at 700. “That party must also have ‘standing,’ which requires, among other things, that it suffered a concrete and particularized injury.” *Id.* Because “Article III demands that an ‘actual controversy’ persist throughout all stages of litigation,” standing “must be met by persons seeking appellate review.” *Id.* at 705.

The plaintiffs in *Hollingsworth* sued California state officials and secured a favorable judgment against Proposition 8. *See id.* at 702. The state officials declined to appeal that judgment. *See id.* The official proponents of the Proposition 8 initiative intervened in the district court and sought to appeal the judgment. *See id.* On review, this Court dismissed the case for lack of jurisdiction because the proponents lacked a cognizable Article III injury. *See id.* at 702-06.

This case is indistinguishable from *Hollingsworth*. Applicants have failed to establish Article III standing to seek appellate review of the TRO in this Court or any other federal court. The sole “legally protected interest” Applicants identified in support of their motion to intervene was their status as the referendum’s official proponents, *see* Dist. Ct. Dkt. 12-1 8-9, but that status is insufficient to establish standing to appeal, *see Hollingsworth*, 570 U.S. at 702-07. So, too, is their status as intervenors in the District Court. *See id.*

Applicants, moreover, simply face no cognizable injury from the TRO. The TRO does not harm them “in a personal and individual way.” *Id.* at 705 (quotations omitted). After all, the TRO does not order them “to do or refrain from doing anything.” *Id.* At most, the TRO implicates Applicants’ interest “in the proper application of the Constitution and laws.” *Id.* at 706. Their Application thus “seek[s] relief that no more directly and tangibly benefits [them] than it does the public at large.” *Id.* Such a “generalized grievance . . . does not state an Article III case or controversy.” *Id.* (quotations omitted).

Nor can Applicants’ standing be established based on von Glahn’s assertion that he is a “qualified voter” in Missouri. Dist. Ct. Dkt. 12 ¶ 2. Von Glahn’s status as a voter, like his status as the referendum’s official proponent, alone is insufficient to establish his standing to appeal. *See Lance v. Coffman*, 549 U.S. 437, 441-42 (2007). Von Glahn, moreover, offers no argument—much less evidence—that the TRO harms him “in a personal and individual way.” *Hollingsworth*, 570 U.S. at 705 (quotations omitted). The TRO does not, for example, change the district in which he resides or

order him “to do or refrain from doing anything” as a voter. *Id.* To the contrary, “[t]he only injury [Applicants] allege is that the law . . . has not been followed.” *Lance*, 549 U.S. at 442. Once again, “[t]his injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government” that does not constitute an Article III injury. *Id.* The Court should deny the Application for this reason alone.

II. THE EQUITIES WEIGH STRONGLY AGAINST A STAY.

Even if the Court had jurisdiction to entertain the Application, the equities weigh strongly in favor of denying a stay. Missouri has already completed its August 4 primary elections, in which over 1.2 million Missourians selected nominees who are now the only candidates of their respective parties for the November 3 general election. *See* § 115.343, RSMo. The general election will be completed less than eight weeks from now. The state-law deadline for ordering changes to the general election ballot has passed. *See* § 115.125(2), RSMo. If this Court issues a stay, the stay will produce the exact result it so often tries to avoid: “voter confusion and consequent incentive to remain away from the polls” and an erosion of the “[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

Months ago, this Court stayed a three-judge federal district court’s order enjoining use of Texas’s 2025 congressional redistricting plan and requiring the State to revert to its 2022 plan. *Abbott*, 146 S. Ct. at 419. The district court issued its injunction shortly after the opening of candidate filing, approximately four months before the primary, and eleven months before the November 2026 general election.

See League of United Latin Am. Citizens v. Abbott, 809 F. Supp. 3d 502 (W.D. Tex. 2025). This Court issued the stay because the district court had “improperly inserted itself into an active primary campaign, causing much confusion” with its late-breaking injunction. *Abbott*, 146 S. Ct. at 419; *see Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir. 2022) (per curiam), *stay issued sub nom., Ardoin v. Robinson*, 142 S. Ct. 2892, 2892-93 (June 28, 2022) (staying injunction of congressional redistricting plan issued five months before primary elections); *Callais v. Landry*, 732 F. Supp. 3d 574, 613-14 (W.D. La. Apr. 30, 2024), *stay issued sub nom., Robinson v. Callais*, 144 S. Ct. 1171 (May 15, 2024) (staying injunction of congressional redistricting plan issued more than six months before the next election).

It is a “basic tenet of election law” that “[w]hen an election is close at hand, the rules of the road should be clear and settled.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (mem.) (Kavanaugh, J., concurring). “[L]ate-breaking, court-ordered rule changes can ‘result in voter confusion and consequent incentive to remain away from the polls,’ and thus undermine the ‘[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy.’” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026) (quoting *Purcell*, 549 U.S. at 4-5); *see also Abbott*, 146 S. Ct. at 419. After all, “running a statewide election is a complicated endeavor,” involving “a host of difficult decisions about how best to structure and conduct the election.” *Democratic Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). And those decisions must then be communicated to the “state and local officials” tasked with implementing them, who in turn “must

communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting.” *Id.* When a “court alters election laws near an election,” *id.*, candidates, voters, and even officials are left scrambling to understand the court-imposed alteration, “inviting confusion and chaos and eroding public confidence in electoral outcomes,” *id.* at 30 (Gorsuch, J., concurring).

These considerations counsel judicial restraint and deference to the democratic process on the eve of an election. The General Assembly is responsible for redrawing the State’s congressional districts. *See* U.S. Const. art. I, § 4, cl. 1; *see also* *Ariz. State Legis. v. Ariz. Ind. Redistricting Com’n*, 576 U.S. 787, 808 (2015). This allocation makes practical sense. Legislatures “enjoy far greater resources for research and factfinding” than courts, and “make policy and bring to bear the collective wisdom of the whole people when they do, while courts dispense the judgment of only a single person or a handful.” *Democratic Nat’l Comm.*, 141 S. Ct. at 29 (Gorsuch, J., concurring). “It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a . . . court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent.” *Id.* at 31 (Kavanaugh, J., concurring).

This case presents the exact harm *Purcell* identified. If it would cause confusion and uncertainty to change a congressional map four months before a primary, *see Abbott*, 146 S. Ct. at 419, imagine what will happen if Missouri must

change its map *after* the primary has already occurred and mere weeks before the general election. Candidate filing closed months ago. Over 1.2 million Missourians voted in the August 4 primary. Nominees have been selected. Campaigns for the November 3 general election are underway. *See* 4a; *von Glahn*, 50a ¶ 165. The disruption Applicants invite would dwarf anything contemplated in *Abbott*, *Ardoin*, or *Callais*.

The Missouri Supreme Court’s decision only confirms that the disruption to voters, candidates, and officials alike would be staggering if a stay were granted. The Missouri Supreme Court did not even purport to explain what happens next, merely stating that the 2022 plan is “in full force.” *Von Glahn*, 13a. What that means is anyone’s guess, thus raising a cascade of unanswered questions that underscore the chaos a stay would unleash. Are the nominees selected in the August 4 primary disqualified? If not, in which districts are they running? If so, how are replacement nominees selected—and under what legal authority? Namely, would the State have to conduct a new primary under the 2022 plan? If so, how, given that UOCAVA’s 45-day ballot-transmission deadline applies to *both* the primary and general elections, creating a deadline that has already passed? The Missouri Supreme Court answered none of these questions. It simply declared the 2022 plan operative and left the State, its officials, its candidates, and its voters to sort out the wreckage.

In fact, issuing a stay at this late juncture would force Missouri officials to do the “impossible.” *See von Glahn*, 52a ¶¶ 170-71. The state trial court credited the affidavit of a Missouri election official, who explained that implementing a new

congressional map requires local election officials to transfer hundreds of thousands of individual voters in the MCVR system. *Id.* ¶ 170. That is a meticulous process involving careful analysis of printed maps and multiple rounds of proofreading; it ordinarily takes more than two weeks, and at least 7-10 days even under emergency conditions. *Id.* But even that timeline is academic here, because the MCVR system locks shortly before absentee ballots are distributed and remains locked until an election is certified two weeks after election day. *Id.* ¶ 171. The circuit court found that this year, the system will remain locked until at least mid-November because of a Jackson County special election on September 1, 2026. *Id.*

A stay would also cause significant harms to Plaintiffs-Respondents. Courts have repeatedly recognized that candidates suffer cognizable injuries when courts force them to compete under election rules other than those enacted by legislatures. *See, e.g., Mecinas v. Hobbs*, 30 F.4th 890, 898 & n.3 (9th Cir. 2022) (candidates and political parties have a “shared interest in fair competition” and suffer injury when forced “to participate in an illegally structured competitive environment”) (cleaned up); *Shays v. Fed. Election Comm’n*, 414 F.3d 76, 86-87 (D.C. Cir. 2005) (candidates suffer injury when changes to election laws and procedures “alter the competitive environment’s overall rules” and force them to “adjust their campaign strategy”). Here, a stay would force Plaintiffs-Respondents to compete under rules contradicting those enacted by the General Assembly. Consequently, Plaintiffs-Respondents would be forced to scrap months of campaign planning and redirect resources to educate candidates, poll watchers, and voters about the new congressional plan as a result of

the Missouri Supreme Court’s decision. *See von Glahn*, 1251a ¶¶ 12-15; 1256a-1257a ¶¶ 12-15; 1262a ¶¶ 12-15.

By contrast, the status quo would not significantly harm any party. Quite the opposite: “[F]ar from causing disruption or upsetting legitimate expectations” denying the Application would “eliminate[] much of the uncertainty and confusion that would exist if” Missouri has to revert to the 2022 plan after the primary and weeks before the general election. *Malliotakis*, 146 S. Ct. at 811 (Alito, J., concurring). The Court should deny a stay.

III. THIS COURT WOULD NOT GRANT CERTIORARI.

There is no possibility that this Court would consider this case a viable vehicle to reach the issues presented. *See Hollingsworth*, 558 U.S. at 190 (2010) (per curiam); *accord Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring). Applicants do not argue otherwise and for good reason. At the outset, there are multiple jurisdictional barriers to this Court’s review. *First*, Applicants lack standing under this Court’s long-established precedent. *See supra* Part I. This Court would not grant a case that presents such a fundamental obstacle to its review. *Second*, the Eighth Circuit concluded that it lacked jurisdiction over “an interlocutory appeal from the district court’s grant . . . of a TRO.” App. 73a. Applicants do not *mention* that ruling, let alone explain why this Court would have any basis to review it. In short, this Court could never reach the merits of Applicants’ claims and would deny a certiorari petition if it were filed.

Even if this Court were to ignore those defects, it *still* could not reach the merits without considering further jurisdictional arguments that Applicants introduced. Applicants *agree* that this Court first would have to consider whether a three-judge court should have been convened. App. at 14-16. And Applicants also *agree* that this Court would have to consider whether to abstain from these proceedings altogether. *Id.* at 16-17. Applicants do not even attempt to suggest that either issue warrants this Court's attention, let alone that lower courts need clarity in either area. In short, Applicants request splitless error correction with no error apparent on jurisdictional arguments that they say would prevent this Court from reaching the merits.

IV. APPLICANTS' JURISDICTIONAL ARGUMENTS ARE UNTENABLE, AND APPLICANTS ARE NOT LIKELY TO PREVAIL ON THE MERITS.

If this Court were to somehow reach Applicants' jurisdictional objections to the District Court's order, it would conclude that the District Court had jurisdiction to issue the temporary restraining order and had no basis to abstain under *Younger v. Harris*. On the merits, this Court would conclude that the District Court correctly ruled that the Secretary would violate Article I, Section 2 and the Equal Protection Clause by changing Missouri's congressional map in between a primary and general election. In addition, the Court would conclude that the Secretary would violate the Elections Clause by changing the congressional plan.

A. The District Court Had Jurisdiction To Issue The TRO.

Applicants attempt to avoid the District Court's merits analysis by claiming that the District Court had to convene a three-judge panel before issuing its order.

App. 14-16. The plain text of the statute, 28 U.S.C. § 2284(a), refutes that position. That statute requires a three-judge panel only when “an action is filed challenging the constitutionality of the apportionment of congressional districts.” *Id.*

Plaintiffs-Respondents do not challenge the constitutionality of any apportionment plan. To the contrary, they challenge the actions of the Secretary, as compelled by an order of the Missouri Supreme Court, switching district maps between the primary and general election as a violation of their federal constitutional rights. Put differently, Plaintiffs-Respondents’ challenge does not turn on the constitutionality of any plan itself, but instead on the constitutionality of the Missouri Supreme Court’s order violating voters’ federal constitutional rights (an issue that court declined to reach). The District Court thus did not have to convene a three-judge panel before issuing the TRO.

At any rate, even if the District Court did have to convene a three-judge panel, Applicants *concede* that “[a] single judge may enter a temporary restraining order” that may remain in place “until the hearing and determination by the district court of three judges of an application for a preliminary injunction.” App. 15 (quoting 28 U.S.C. 2284(b)(3)). Applicants try to salvage that concession by recasting the TRO as a “preliminary injunction.” That is wrong. The District Court could not have been more explicit that it weighed the factors required to issue a TRO, 4a, and ultimately “grant[ed] Plaintiffs’ motion for a temporary restraining order” for a brief period of 14 days pending a preliminary injunction hearing, 1a, 13a. Applicants identify no basis to countermand the District Court’s conclusion and analysis, except to cite a

non-binding Third Circuit case where some other district court merely stated that “plaintiff’s application is denied,” “without specifying whether [the] action [was] the denial of a temporary restraining order, or of a preliminary injunction.” *Page v. Bartels*, 248 F.3d 175, 186 (3d Cir. 2001). The Third Circuit found that description “less than pellucid,” *id.*, a far cry from the District Court’s express statements here.

B. *Younger* Abstention Does Not Apply.

Undeterred, Applicants also suggest the District Court had to abstain from reviewing Plaintiffs-Respondents’ federal claims under *Younger v. Harris*, 401 U.S. 37 (1971). But federal courts have a “virtually unflagging” obligation to hear and decide a case such as this one within its federal-question jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). To be sure, under “exceptional circumstances,” a federal court may abstain to accommodate an “ongoing” state proceeding that provides “an adequate opportunity to raise federal challenges.” *Sprint Comm’s, Inc. v. Jacobs*, 571 U.S. 69, 70, 81 (2013) (quotations omitted).

But neither criterion for *Younger* abstention is met here. *Von Glahn v. Hoskins* has concluded. The Missouri Supreme Court issued its decision as the highest court in the State. There are no “ongoing” or further state proceedings, nor can there be. *Id.*

Moreover, the state proceedings *did not* provide an adequate opportunity for Plaintiffs-Respondents to raise their federal challenges. Plaintiffs-Respondents were not parties to *von Glahn*. The Missouri Supreme Court expressly stated that it *ignored* any federal claims. *Von Glahn* was a statutory action challenging the

Secretary's decision not to certify a referendum petition for the ballot initiated by the proponent of that petition against Secretary Hoskins. As Applicants previously *insisted*, the Missouri Supreme Court relied on state law alone to support its judgment, ignoring any federal defenses based on what Applicants previously characterized as an adequate and independent state ground. *See von Glahn*, 5a n.5. Plaintiffs-Respondents therefore appropriately brought their federal claims in federal court, and there was no basis for the District Court to abstain from resolving them.

Applicants appear to think that the District Court could not conclude that federal law prohibits something that Missouri law permits. *See App.* at 17. But the Supremacy Clause says the exact opposite. If state law requires Missouri to revert to the 2022 plan, but federal law prohibits it, then federal law prevails, full stop. That is exactly what happened here. No matter what the Missouri Supreme Court said about state law, the District Court concluded that the U.S. Constitution prohibits any changes to Missouri's congressional map between a primary and general election. That ruling only illustrates why federal courts have a "virtually unflagging" obligation to decide federal claims. *Colorado River*, 424 U.S. at 817.

Applicants resort to citing the contempt proceedings in Missouri state court against Secretary Hoskins as a purportedly "ongoing" proceeding. *App.* 17. But those proceedings did not even commence until *after* the District Court issued the TRO; they were not "ongoing" during the proceedings in District Court. In addition, Plaintiffs-Respondents (as non-parties) cannot participate in those proceedings, so they are an inadequate forum to raise Plaintiffs-Respondents' federal claims. Most

fundamentally, it defies credulity that a state court could initiate contempt proceedings in order to insulate a decision under state law from federal scrutiny—much less from preemption due to the decision’s violations of the U.S. Constitution. Applicants point to no comparable precedent, no doubt because this Court would never sanction it.

C. Article I, Section 2 Prohibits The Secretary From Altering The Congressional Map After The Primary.

Holding a general election under a different congressional map than the one used in the August 4 primary would violate Article I, Section 2 of the U.S. Constitution. That provision guarantees that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States.” U.S. Const. art. I, § 2. This Court has long recognized that “[w]here the state law has made the primary an integral part of the procedure of choice,” then “the right of the elector to have his ballot counted at the primary[] is likewise included in the right protected by Article I, § 2.” *United States v. Classic*, 313 U.S. 299, 318 (1941).

Missouri law makes the primary integral: “all candidates for elective office shall be nominated at a primary election,” § 115.339, RSMo., and “[t]he person receiving the greatest number of votes at a primary election as a party candidate for an office shall be the only candidate of that party for the office at the general election,” § 115.343, RSMo. A candidate may be replaced only if he or she dies, is disqualified, or voluntarily withdraws. *See* § 115.363.3(1)-(3), .4, RSMo. The Missouri Supreme Court has thus confirmed that “primary elections have constitutional stature” and

serve as an “*integral* part of [the State’s] election machinery.” *State ex rel. McClellan v. Kirkpatrick*, 504 S.W.2d 83, 86 (Mo. banc 1974) (emphasis added); *see also* 8a-9a.

The Missouri Supreme Court’s injunction plainly violates the right of Missouri voters to have their ballot counted. More than 1.2 million Missourians voted in the August 4 congressional primaries under the HB 1 map and selected nominees in each of Missouri’s eight districts. *See von Glahn*, 19a-20a ¶ 15. The injunction requires the State to ignore those votes, stripping the nominees of the mandate their voters conferred. *See* 9a; *see also von Glahn*, 13a-14a.

This Court has long recognized that primary and general elections are a unified process, not separate events. In *Smith v. Allwright*, the Court described “[t]he fusing . . . of the primary and general elections into a single instrumentality for choice of officers.” 321 U.S. 649, 660 (1944). Because the primary and general election constitute a “single instrumentality for choice of officers,” *id.*, changing the districts between those two stages does not merely alter the ballot; it fractures the instrumentality itself, *see also Storer v. Brown*, 415 U.S. 724, 735 (1974) (primary is “not merely an exercise or warm-up for the general election but an integral part of the entire election process, the initial stage in a two-stage process by which the people choose their public officers”). Article I, Section 2 forbids this result. *See* 8a-9a.

Applicants’ various arguments to the contrary do not prove otherwise. *First*, Applicants assure the Court that “[a]ll qualified voters had the opportunity to vote in the primary, and the primary votes were counted and used to select nominees.” App. 23. That assurance provides no comfort because it ignores the Article I, Section 2

violation here: the Missouri Supreme Court’s fracturing of the State’s “single instrumentality for the choice of officers” formed by the primary and general elections. *Smith*, 321 U.S. at 660. Applicants, moreover, never explain precisely *what* those votes “were counted” for. App. 23. They therefore do not dispute that, at most, those votes were counted to select nominees who, under the Missouri Supreme Court’s injunction, now must run in the general election in districts *different* from the ones in which “primary votes were counted” and “nominees” were “select[ed].” *Id.* Thus, Applicants merely restate the problem with the Missouri Supreme Court’s injunction; they do not solve it. The District Court’s TRO, however, *does* solve it.

Second, Applicants argue that Article I, Section 2 does not confer “entitlement to vote *in the same constituency* at both the primary and general election.” *Id.* But that rule flows from the Court’s prior decisions. Applicants offer no explanation as to what rights voters have where, as here, the State has adopted a “single instrumentality for the choice of officers” through an integrated primary and general election. *Smith*, 321 U.S. at 660. Those rights must be greater than the mere right to have one’s primary vote “counted,” App. 23, because a voter *always* has that right, *see Reynolds v. Sims*, 377 U.S. 533, 555-56 (1964). The right of “the People” to choose their “Members” therefore must entail the right to vote under the same congressional districting plan throughout the “single instrumentality” of a primary and general election for selecting those Members. U.S. Const. art. I, § 2; *Smith*, 321 U.S. at 660.

Third, Applicants’ rejection of “the premise that the Constitution guarantees every voter an opportunity to participate personally in every electoral step that

ultimately determines who represents that voter,” App. 23, is baffling in light of their position below but also ultimately irrelevant. The Court’s decision in *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8-12 (1982) (App. 23), did not even address that premise because it involved Puerto Rico’s process for filling interim vacancies in offices *without* elections, not the right of voters to participate in every “electoral step,” App. 23, when Article I, Section 2 requires congressional representatives to be chosen by “the People” (or more generally when a State has chosen elections as the method for choosing its officers). In fact, *Rodriguez* recognized that “when a state . . . has provided that its representatives be elected, a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” 457 U.S. at 10 (cleaned up). *Rodriguez* therefore *forecloses*, rather than justifies, the Missouri Supreme Court’s fracturing of the State’s “single instrumentality for the choice of officers” formed by the primary and general elections. *Smith*, 321 U.S. at 660; *see* 8a-9a.

D. The Equal Protection Clause Prohibits The Injunction Requiring The Secretary To Alter The Congressional Map After The Primary.

It would also violate the Equal Protection Clause for a state court to require Missouri to hold the general election under a different congressional map than the one used in the primary. U.S. Const. amend. XIV, § 1. This Court has held that primary-election procedures constitute “‘state action’ within the meaning of the Fourteenth Amendment” and “must be exercised in a manner consistent with the Equal Protection Clause.” *Bullock v. Carter*, 405 U.S. 134, 140-41 (1972). This Court

has also made clear that “[o]nce the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote . . . wherever their home may be in that geographical unit.” *Gray v. Sanders*, 372 U.S. 368, 379 (1963).

The Missouri Supreme Court’s injunction violates this standard. It forces hundreds of thousands of Missourians to vote in the general election in districts different from the ones in which they had already cast their primary ballots. *See* 10a. Those voters would possess materially less voting power than voters whose districts remained the same because the former group would have to select from candidates they never had the opportunity to evaluate, support, or oppose in the primary. *See id.* The displaced voters would thus be denied the right to choose their own representative through the integrated primary and general elections. Meanwhile, voters who happened to remain in the same district would retain the full benefit of their primary vote. *See id.* The Missouri Supreme Court’s order thus creates two classes of voters—those who had the opportunity to select their general election candidate and those who did not—in direct violation of the Equal Protection Clause. *See id.* The District Court’s TRO remedies that violation. *See* 9a-11a.

Applicants offer three main arguments, but none rebuts this dispositive point. *First*, Applicants point out that *Gray v. Sanders* “invalidated an electoral system that weighted votes in rural areas more heavily than votes in urban centers,” and baldly assert that “[n]othing comparable is alleged here.” App. 19. But it is precisely such unequal treatment of voters and their votes that the Missouri Supreme Court’s

injunction perpetrates here because it creates different classes of voters: those who had the opportunity to select their general election candidate and those who did not. *See* 9a-11a.

Second, Applicants’ opaque contention that equal protection does not guarantee voters “an uninterrupted opportunity to determine who ultimately represents them, let alone who is *nominated* to represent them,” App. 19, again misses the point. Applicants do not explain what they mean by “uninterrupted opportunity.” In any event, *none* of the cases they cite upholds a state-court order moving hundreds of thousands of voters into new congressional districts between a primary and a general election, or any other regime in which a State (or state court) created two classes of voters and treated them unequally. *See, e.g., Rodriguez*, 457 U.S. at 10-12 (discussed *supra* at 23). In fact, all voters in the district were treated *identically* in the two circuit cases Applicants cite. *See Donatelli v. Mitchell*, 2 F.3d 508 (3d Cir. 1993) (no voters in district had voted for new senator assigned to the district) (App. 20); *Republican Party of Oregon v. Kiesling*, 959 F.2d 144 (9th Cir. 1992) (all voters had equal right to vote for senators whenever staggered terms arose) (App. 20). And those cases confirm that the Equal Protection Clause requires that “[a]ll qualified voters” have “an equal opportunity to select a district representative in the general election,” *Donatelli*, 2 F.3d at 517 (quoting *Rodriguez*, 457 U.S. at 10), an opportunity absent under the Missouri Supreme Court’s injunction, *see* 9a-11a.

Third, Applicants’ argument that “the ordinary consequences of redistricting, vacancies, and candidate substitution” support a stay here, App. 21, sails wide of the

mark. *None* of these scenarios involves unequal treatment of voters when they participate in elections. To the contrary, *all* place voters on equal footing when they participate in elections. For example, a “consequence of redistricting” is that some voters are moved into new districts—but once there, they participate in the next election on the same terms as every other voter in that district. *See, e.g., Donatelli*, 2 F.3d 508; *Republican Party of Oregon*, 959 F.2d 144; *Ferrell v. Okla. ex rel. Hall*, 339 F. Supp. 73, 82 (W.D. Okla. 1972), *aff’d sub nom. Ferrell v. Hall*, 406 U.S. 939 (1972) (App. 21). Moreover, the “consequence” of filling a candidate vacancy or substituting a candidate is that *no* voter in the district had a previous opportunity to consider that candidate (unless they all did because the candidate ran in the primary or previously stood for election in that district). The “ordinary consequences of redistricting, vacancies, and candidate substitution” thus do not create two classes of voters subject to unequal treatment during an election. App. 21. Those consequences’ *equal* treatment of voters during elections only underscores the Equal Protection violation in the Missouri Supreme Court’s *unequal* treatment of the State’s voters, the propriety of the TRO, and the impropriety of a stay. *See* 9a-11a.

E. It Would Violate The Elections Clause To Allow A Fraction Of Voters To Oust The General Assembly’s Redistricting Authority Absent A Clear Statement.

The U.S. Constitution expressly assigns authority over congressional redistricting to the General Assembly. *See* U.S. Const. art. I, § 4. Where the U.S. Constitution delegates decisional authority to a specific actor, this Court requires a clear statement before concluding that it was pawned off elsewhere. This principle

spans the vertical and horizontal separation of powers, guarding the prerogatives of all three branches of the federal government, *see, e.g., RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 335 (2016), and protecting the states from federal intrusions, *see, e.g., Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

It applies equally to protect state legislatures and their constitutionally assigned responsibilities. As this Court recently instructed, courts “*must respect*” the Constitution’s “deliberate choice” to “expressly vest[] power” to set federal election rules “in ‘the Legislature’ of each State.” *Moore*, 600 U.S. at 34.

The Missouri Supreme Court did the opposite. With no textual footing in Missouri law or historical precedent for their position, the Missouri Supreme Court permitted a fraction of the electorate to wrest control over redistricting from the Missouri General Assembly. That ruling invites practical and structural upheaval, transforming deliberative lawmaking into a plebiscite animated by special interest groups. Because the Missouri Constitution contains no clear statement transferring authority to conduct congressional redistricting from the General Assembly, Applicants are unlikely to succeed on the merits and the Application should be denied.

1. Clear Statement Rules Protect And Uphold The U.S. Constitution’s Express Delegations Of Authority.

Enforcing constitutional boundaries ranks among courts’ most vital duties. Consistent with that role, courts will not lightly infer a significant restructuring of a constitutional allocation of power. Where the Constitution assigns authority to a specific actor, that power cannot be divested absent a clear statement. *See West*

Virginia v. EPA, 597 U.S. 697, 735 (2022) (Gorsuch, J., concurring) (explaining that clear-statement rules “operate[] to protect foundational constitutional guarantees”).

Courts deploy an array of clear statement rules to safeguard the prerogatives of each branch of the federal government in its proper sphere. For example, Article I of the Constitution delegates responsibility “to make the laws that govern us” to “the people’s elected representatives.” *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. 109, 124 (2022) (Gorsuch, J., concurring). To protect Article I’s grant of authority, courts will not infer that Congress delegated to executive agencies the power to resolve major policy questions absent a clear statement. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000). This expectation of clarity reflects and reinforces the constitutional structure. *See West Virginia*, 597 U.S. at 723 (explaining that the major questions doctrine rests on “both separation of powers principles and a practical understanding of legislative intent”). “Because the Constitution vests Congress with ‘all legislative Powers,’ a reasonable interpreter would expect it to make the big-time policy calls itself, rather than pawning them off to another branch.” *Biden v. Nebraska*, 600 U.S. 477, 515 (2023) (Barrett, J., concurring) (citation omitted). Accordingly, the clear statement rule keeps the legislative power “where . . . it belongs.” *Nat’l Fed’n of Indep. Bus.*, 595 U.S. at 124 (Gorsuch, J., concurring).

Clear statement rules likewise protect the President’s constitutional prerogatives in Article II. It is axiomatic that “[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.” *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) (quotations

omitted). So “unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect,” courts will presume it does not apply extraterritorially. *Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (citation modified). In this context, the clear statement rule reflects the structural principle that Congress does not ordinarily intend to intrude on the President’s authority to conduct foreign relations. *See RJR Nabisco*, 579 U.S. at 348.

Underscoring the point, federal courts routinely employ clear statement rules to protect their Article III authority. Federal courts will not imply a repeal of their jurisdiction in “the absence of clear congressional language mandating” that result. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 483-84 (1991); *see also Goncalves v. Reno*, 144 F.3d 110, 122 (1st Cir. 1998) (applying “the long standing rule disfavoring repeal of jurisdictional provisions by implication”). For example, this Court has long required that if Congress intends to make exceptions to this Court’s appellate jurisdiction, it must do so with unmistakable clarity, not “by mere implication.” *Ex parte Yerger*, 75 U.S. 85, 106 (1869). This principle ensures that any retrenchment of federal courts’ core functions occurs, if at all, only by Congress speaking with the clarity the Constitution’s separation of powers demands.

Clear statement rules also help police the “constitutional balance of federal and state powers.” *Gregory*, 501 U.S. at 460. The Constitution’s structure, including the Tenth Amendment’s reservation of powers, counsels restraint in inferring federal limitations on state authority. Hence, “if Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make

its intention to do so unmistakably clear in the language of the statute.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989) (cleaned up). This clear statement rule governs attempts to displace state sovereign immunity, *see Seminole Tribe v. Florida*, 517 U.S. 44, 55 (1996) (“unequivocal[] express[ion]” required “to abrogate the immunity”) (quotations omitted), to preempt state legislation, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (courts will assume state police powers not superseded “unless that was the clear and manifest purpose of Congress”), to impose conditions on states accepting federal funds, *see Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (“unambiguous[]” language required to “impose a condition on the grant of federal moneys”), and to criminalize conduct traditionally regulated by the states, *Bond v. United States*, 572 U.S. 844, 857 (2014) (absent “clear indication,” courts will not read statutes to “intrude[] upon traditional state criminal jurisdiction”) (quotations omitted).

This Court has long applied the same clear-statement principle to a State’s alleged surrender of sovereign authority. *Providence Bank v. Billings*, 29 U.S. 514, 561 (1830) (“[T]he relinquishment of such a power is never to be assumed” and “its abandonment ought not to be presumed[] in a case in which the deliberate purpose of the [S]tate to abandon it does not appear”). That rule extends beyond any particular sovereign power. *Jefferson Branch Bank v. Skelly*, 66 U.S. 436, 446 (1861) (“[N]othing passes but what has been granted in clear and explicit terms” and “neither the right of taxation, nor any other power of sovereignty, will be held by this Court to have been surrendered, unless such surrender has been expressed in terms too plain to be

mistaken”). Indeed, the rule applies “with special force” when the claimed surrender “calls for any abridgment of the powers of the government, or any restraint upon their exercise.” *In re Delaware R.R. Tax*, 85 U.S. 206, 225–26 (1874) (“Nothing can be taken against the State by presumption or inference”; “rights, privileges, and immunities not expressly granted are reserved”; and “the surrender when claimed must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power”). A State therefore cannot be presumed, from general language or implication, to have surrendered or displaced authority expressly assigned by the U.S. Constitution to a particular state institution.

In short, across multiple doctrinal settings, clear statement rules serve as a structural safeguard ensuring that only a deliberately expressed choice—not ambiguity or implication—can recalibrate the Constitution’s usual balance of shared authorities among competing actors.

2. The Elections Clause Requires A Clear Statement To Displace The State Legislature’s Redistricting Authority.

The Elections Clause, no less than other enumerated delegations, requires a clear statement before courts may determine that a state has reallocated power over redistricting from the state legislature. This clear statement rule flows from the Elections Clause itself, which expressly provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof; but the Congress may at any time by Law make or alter such Regulations” U.S. Const. art. I, § 4 (emphasis added).

This delegation reflects a reasoned constitutional settlement. The Framers recognized “electoral districting problems and considered what to do about them,” and they “settled on a characteristic approach, assigning the issue to the state legislatures, expressly checked and balanced by the Federal Congress.” *Rucho v. Common Cause*, 588 U.S. 684, 699 (2019). Courts “must respect” the Constitution’s “deliberate choice” to “expressly vest[] power” to conduct congressional redistricting “in ‘the Legislature’ of each State.” *Moore*, 600 U.S. at 34.

As with other express delegations in the U.S. Constitution, courts require a clear statement before concluding that a state has displaced its legislature’s authority over congressional redistricting. It is well established that Congress must employ “positive and clear statutes” in order to override a state legislature’s prerogative to regulate federal elections. *Gradwell*, 243 U.S. at 485. Because Congress—the sole actor the Elections Clause empowers to supersede state legislative regulations—may do so only through unmistakable, affirmative enactments, any contention that some state actor or process has displaced the state legislature’s redistricting role must at a minimum rest on equally explicit and unequivocal language.

This Court’s Elections Clause cases confirm the point. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, this Court weighed whether Arizona could create an independent commission to draw congressional districts. 576 U.S. at 792-93. This Court sustained that arrangement because Arizona’s Constitution expressly “remove[d] congressional redistricting authority from the State Legislature.” *Id.* at 796-97. Likewise, in *State of Ohio ex rel. Davis v.*

Hildebrant—a case in which it did *not* consider the Elections Clause’s application to state law—this Court considered whether a constitutional referendum could displace the Ohio General Assembly’s authority to redistrict. 241 U.S. 565, 566-67 (1916). This Court concluded that it could only because state law “conclusive[ly]” “ma[d]e[] it clear that . . . the referendum constituted a part of the state Constitution and laws” applicable to congressional redistricting. *Id.* at 568. In both cases, no doubt existed that the state had deliberately overridden the legislature’s authority.

Applicants cite *Hildebrant*, suggesting that it establishes that a state may subject congressional redistricting to the referendum without any express constitutional statement to that effect. *See* App. 24-25. That account mischaracterizes *Hildebrant* in several respects.

First, the provisions of the Ohio Constitution at issue in *Hildebrant* materially differ from the provisions of the Missouri Constitution before this Court. Ohio had no provision vesting authority to draw congressional districts in the General Assembly. Missouri does. *See* Mo. Const. art. III, § 45. Ohio also had no provision exempting redistricting from the referendum. Missouri has two such provisions, each of which states in unqualified terms that “[n]o redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 3(i); *id.* § 7(h).

Second, *Hildebrant* did not even address whether the Elections Clause permits a State to displace the legislature’s authority over congressional redistricting without a clear statement or through a referendum. *See Hildebrant*, 241 U.S. at 567-68; *see also Ariz. State Legis.*, 576 U.S. at 840 (Roberts, C.J., dissenting) (“*Hildebrant* in no

way suggested that the state legislature could be displaced from the redistricting process.”). Instead, this Court addressed only *Congress’s* authority under the Elections Clause as part of its inquiry into whether Congress had permitted a referendum to displace state legislative authority over congressional redistricting in the Appropriation Act of 1911. *See Hildebrant*, 241 U.S. at 568-69. There is no such issue of Congress’s authority in this dispute. Moreover, the only federal constitutional question this Court addressed with respect to Ohio’s state-law referendum arose under the Guarantee Clause. *See id.* at 569-70; *accord Ariz. State Legis.*, 576 U.S. at 840 (Roberts, C.J., dissenting). This Court concluded that question was a nonjusticiable political question. *See Hildebrant*, 241 U.S. at 567-70.

Third, *Hildebrant* arose in a non-election year. The referendum was conducted in November 1915, not between a primary and general election in the same year. *See id.* at 566; 94 Ohio St. 154, 154-55 (1916). It thus did not present the disruption here to an ongoing election in which more than 1.2 million citizens have already voted.

3. Missouri’s Referendum Provisions Do Not Provide A Clear Statement Displacing The General Assembly’s Authority.

The Missouri Constitution does not supply *any* statement—let alone a clear one—reallocating authority over congressional redistricting away from the General Assembly to a referendum process. Article III, Section 45 mandates that “the *general assembly* shall by law divide the state into [congressional] districts,” Mo. Const. art. III, § 45 (emphasis added). Indeed, the Missouri Constitution supplies the opposite

of what Applicants need by declaring that “[n]o redistricting plan shall be subject to the referendum.” Art. III, § 3(i); *id.* § 7(h).

The Missouri Supreme Court did not identify any clear statement in Missouri law displacing the General Assembly’s authority over congressional redistricting. Instead, it pointed to the generic referendum provision in Article III, Section 49, which provides that “[t]he people reserve power . . . to approve or reject by referendum any act of the general assembly.” Mo. Const. art. III, § 49. This is a textbook example of a broad, undifferentiated clause that does not provide a clear statement overriding the U.S. Constitution’s express grant of authority to the General Assembly. *See Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 139 (2005) (plurality opinion) (“[C]lear statement rules ensure [the state] does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation.”). Section 49 gives no indication that Missouri “specifically considered” whether to displace the General Assembly’s federally assigned authority over redistricting and “intentionally legislated on the matter.” *Sossamon v. Texas*, 563 U.S. 277, 290 (2011). Accordingly, it does not provide a “conclusive” statement divesting the General Assembly of its Elections Clause authority over congressional redistricting, much less vesting that authority in the referendum process. *Hildebrant*, 241 U.S. at 568.

4. The Elections Clause Invalidates Article III, Section 52(b) As Applied To A Congressional Map Enacted By The Legislature.

The Missouri Supreme Court’s decision violates the Elections Clause for another reason. Even if a clear statement were not necessary to subject congressional

redistricting to the referendum, the Elections Clause forbids the application of Article III, Section 52(b) to a congressional map enacted by the General Assembly.

As discussed, the Elections Clause vests redistricting authority squarely in the state legislature. *See* U.S. Const. art. I, § 4. Indeed, this Court recently cautioned that state law may not be wielded to “arrogate” the “power vested in state legislatures to regulate federal elections.” *Moore*, 600 U.S. at 36.

That is precisely what would happen if Article III, Section 52(b) applies to congressional maps. The Missouri Supreme Court held that Section 52(b) suspends legislation subject to a referendum once a sufficient petition is filed. Mo. Const. art. III, § 52(b); *see also Maggard*, 733 S.W.3d at 418. A referendum petition is sufficient if signed by merely “five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a). The Missouri Supreme Court thus empowered a small fraction of voters to suspend a congressional map duly enacted by the General Assembly before any Missourians have voted for or against it—and even after that map has been used to conduct primary elections.

That theory inverts the constitutional design. The Elections Clause guarantees that the People’s elected representatives control the time, place, and manner of federal elections. But according to the Missouri Supreme Court, a small, unelected minority wields effective veto power over the General Assembly’s redistricting decisions. This case illustrates the point. HB 1 passed overwhelmingly in both chambers of the General Assembly and was signed by the Governor. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J.

37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025). Yet the Missouri Supreme Court held that a small minority of voters can suspend the map months before the election without any statewide vote. The Elections Clause forbids any arrangement that would so thoroughly “annihilate[]” the General Assembly’s redistricting authority. *Hildebrant*, 241 U.S. at 569.

Applicants appear to think that because *Hildebrant* approved referenda on congressional maps (which, as explained, it did not), it also approved every mechanism a state might attach to the referendum process. That does not follow. Any approval this Court has lent to the referendum rests on its democratic foundation. A statewide referendum vote at least carries democratic legitimacy because the majority of the electorate speaks. *Cf. Ariz. State Legis.*, 576 U.S. at 793-94, 819-24. But a suspension triggered by petition signatures from a small minority of the electorate does the opposite, overriding the legislature’s express authority without any majoritarian check. Unsurprisingly, Applicants point to no precedent—from this Court or any other—upholding such an arrangement as applied to congressional redistricting. The reason is straightforward: nothing like it has ever happened before. That Applicants cannot locate a single historical analogue for the maneuver they defend is itself a “telling indication of [a] severe constitutional problem.” *Free Enterprise Fund v. Public Co. Accounting Bd.*, 561 U.S. 477, 505 (2010) (quotations omitted). Applicants have failed to show a likelihood of success on this basis as well.

CONCLUSION

The Court should deny the Application.

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Respectfully submitted,

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