

IN THE
Supreme Court of the United States

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN,

Applicants,

v.

CONGRESSMAN ROBERT “BOB” ONDER; RICHARD “RICK” BRATTIN; PATRICIA “PAT”
THOMAS; AND DEBRA HAVENS,

Respondents,

and

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

Respondents.

**EMERGENCY MOTION TO CLARIFY
THIS COURT’S SEPTEMBER 10, 2026 ORDER
AND ALTERNATIVE EMERGENCY APPLICATION FOR STAY AND
ADMINISTRATIVE STAY PENDING APPEAL**

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Applicants People Not Politicians and Richard von Glahn were Intervenor in the United States District Court for the Eastern District of Missouri and Appellant-Intervenor in the United States Court of Appeals for the Eighth Circuit.

Congressman Robert “Bob” Onder, Richard “Rick” Brattin, Patricia “Pat” Thomas, and Debra Havens were Plaintiffs in the United States District Court for the Eastern District of Missouri and Appellees in the United States Court of Appeals for the Eighth Circuit.

The State of Missouri and Secretary of State Denny Hoskins were Defendants in the United States District Court for the Eastern District of Missouri and Defendants in the United States Court of Appeals for the Eighth Circuit.

RELATED PROCEEDINGS

Supreme Court of the State of Missouri:

Richard von Glahn v. Denny Hoskins, No. SC101805 (Sep. 3, 2026) (Opinion and order enjoining use of HB 1)

Richard von Glahn v. Denny Hoskins, No. SC101805 (Sep. 10, 2026) (Judgment of Civil Contempt)

United States Supreme Court:

Denny Hoskins v. Richard von Glahn, No. 26A304 (Sep. 8, 2026) (denying stay of Supreme Court of Missouri Opinion and Order)

People Not Politicians v. Robert Onder, No. 26A326 (Sep. 10, 2026) (granting stay of Eastern District of Missouri temporary restraining order)

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants represent that People Not Politicians does not have any parent entities and does not have any publicly controlled corporation that owns 10% or more of its stock.

/s/ Abha Khanna
Abha Khanna

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TO THE HONORABLE BRETT KAVANAUGH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT.

INTRODUCTION

This case is back before this Court for a familiar reason: a lower court has once again granted relief this Court foreclosed—this time by ordering the district court to issue a new injunction after this Court stayed the first. The district court’s new injunction, now mandated by the Eighth Circuit, imposes the same command—almost to a word—as the injunction it replaces: Secretary Hoskins may not implement “any congressional district map other than the HB 1 map for the November 3, 2026 general election.” *Compare* App. 70a, *with* App. 41a. The only difference is that the replacement injunction is permanent—and it comes while voting is already underway.

A lower court cannot demand the same relief this Court has stayed by cloaking it in a new order. *DHS v. D.V.D.*, 145 S. Ct. 2627, 2629–30 (2025). This Court’s September 10 Order stayed the district court’s first injunction requiring Missouri to use HB 1 through appellate and certiorari review. The Court should clarify that its stay means what it says: the Eighth Circuit cannot evade it by directing entry of a permanent injunction requiring exactly the same thing.

To the extent this Court’s stay does not resolve the matter, *Purcell* does. The first injunction intruded on the eve of the election. Its replacement demands a new map after votes have already been cast. Ballots using the 2022 map have been printed and mailed, and absentee voting, both by mail and in-person, began today. Those

ballots cannot be reassigned to new districts now. As one election official put it, an imperative to change maps now that voting has begun is “the stuff of nightmares for election administrators.”¹ Election officials from all 116 local Missouri jurisdictions are therefore unequivocal: “[a]t this point, it is . . . impossible to revert to the HB 1 map.” Missouri Clerks’ Amicus Br. 12.

And impossibility is only half the problem. The injunction requires Missouri to conduct the election under a map its own Supreme Court has held “is not the law and never has been the law.” App. 53a n.8. State officials are thus left subject to conflicting judicial commands—and ordered to conduct a congressional election using districts that Missouri law does not authorize, contrary to the federal requirement that those districts be “prescribed by the law” of the State. 2 U.S.C. § 2a(c). The result is chaos on both sides of Election Day: confusion over how to conduct the election now, and uncertainty over the rules governing its results. That is *Purcell* at its core.

None of that deterred the Eighth Circuit. Nor did any other constraints on its authority. To justify its extraordinary intervention, the panel adopted a novel interpretation of federal law granting itself the authority to decide the merits of an apportionment challenge Congress reserved to a three-judge court, with review by this Court, not the Eighth Circuit. And its merits decision identifies from whole cloth a right under Article I, Section II that no federal court has recognized: a right to vote

¹ Jason Rosenbaum, “*Appeals Court Rules for GOP-Leaning Map in Missouri, Pending Supreme Court Review*,” KSMU (Sep. 22, 2026), https://www.ksmu.org/news/2026-09-22/appeals-court-rules-for-gop-leaning-map-in-missouri-pending-supreme-court-review?_amp=true&.

for the same candidates within the same constituency at successive stages of an election, even when state law prohibits that result. All to assume an extraordinary role: displacing this Court’s authority to review the Missouri Supreme Court’s order, purporting to “correct” the Missouri Supreme Court’s “erroneous” decision, App. 29a, and reinstating relief this Court had stayed.

Applicants therefore return to this Court for emergency relief. Applicants first move the Court to clarify that its September 10 Order precludes enforcement of the replacement injunction—or any other lower court order granting the relief this Court has stayed. Alternatively, if this Court concludes that its September 10 Order does not already reach the new injunction, Applicants seek a stay of the district court’s new injunction and the Eighth Circuit’s order requiring its entry, together with a recall and stay of the mandate to the extent necessary to preserve the status quo.

This Court’s stays are not invitations for a lower court to repackage the same relief and try again. Nor does the law permit the unprecedented disruption the Eighth Circuit injects here—particularly not on such a faulty basis. With voting already underway, the Court should grant this application before that becomes irreversible.

BACKGROUND

I. The Missouri Supreme Court enjoins use of HB 1, and this Court denies the Secretary’s application to stay that ruling.

On September 12, 2025, the Missouri General Assembly passed House Bill 1 (“HB 1”), to replace Missouri’s prior congressional district map enacted in 2022 (the “2022 Map”). People Not Politicians and its executive director, Richard von Glahn, circulated a referendum petition seeking to suspend HB 1 until it passed a statewide

vote. After the petition and more than 300,000 signatures in support were submitted on December 9, 2025, the Secretary waited until the statutory deadline of August 4, 2026—when the primary was already underway—to issue a certification denying the petition.

Multiple courts weighed in on the referendum and certification process in the interim. Both a federal court and the Missouri Supreme Court cautioned that, if valid, the referendum petition would suspend the operation of HB 1, and that its validity could not be confirmed until the certification process—including judicial review—was complete. *See Mo. Gen. Assembly v. von Glahn*, No. 4:25-cv-1535-ZMB, 2025 WL 3514277 (E.D. Mo. Dec. 8, 2025); *NAACP Mo. State Conf. v. Kehoe*, 734 S.W.3d 338, 341 n.4 (Mo. 2026) (en banc); *Maggard v. State*, 733 S.W.3d 411, 420 (Mo. 2026) (en banc). Knowing full well that HB 1’s legal status remained indeterminate while he waited to make a certification decision, the Secretary chose to conduct the primary under HB 1 anyway. The Attorney General publicly acknowledged the strategic benefit of delay: “As long as the status quo is the new maps, delay works in our favor.” App. 739a, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 4, 2026).

On September 3, 2026, the Missouri Supreme Court issued its opinion in *von Glahn v. Hoskins*, App. 42a–55a, unanimously holding that the Missouri Constitution authorizes referenda on the General Assembly’s adoption of congressional district maps. As the Missouri Supreme Court made clear, under Missouri law, HB 1 “is not the law and has never been the law.” App. 53a n.8. The court accordingly ordered the Secretary to “issue a certificate of sufficiency as to the referendum petition” and to

“take any and all additional steps necessary to place the referendum petition” on the November 2026 general election ballot “before September 8, 2026.” App. 54a. The Court further “restrained and enjoined” the Secretary of State “and all of those acting in concert with him” from using the HB 1 map for the November general election. *Id.*

The Secretary appealed to this Court, and on September 4, 2026, filed an Emergency Application for Stay. Emergency Appl. for Stay, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 4, 2026). Joined by Republican Party intervenors, the Secretary raised claims challenging the Missouri Supreme Court’s order under the Elections Clause, Article I, Section 2, and the Equal Protection Clause. *Id.* at 17–31. The Secretary represented to this Court that, “[t]o enable Missouri to comply with th[e] federal [UOCAVA] deadline,” the Court must “issue a decision *no later than September 14, 2026.*” *Id.* at 6.

On September 8, this Court denied the Secretary’s application for a stay. *See Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 8, 2026). After the denial, the Secretary’s office directed local election officials to implement the Missouri Supreme Court’s order and finalize ballots using the 2022 map. App. 56a.

II. A federal district grants the same relief this Court withheld, and this Court grants an emergency stay of that order.

On September 4, the same day the Secretary sought emergency relief in this Court, Plaintiffs Congressman Robert “Bob” Onder, Richard “Rick” Brattin, Patricia “Pat” Thomas, and Debra Havens filed a complaint and motion for temporary restraining order (“TRO”) in federal district court raising the exact same federal

claims. Compl., D. Ct. Doc. 1; Mot. for TRO, D. Ct. Doc. 2.² The next day, the Secretary consented to the TRO. Statement in Supp. Pls.’ Request for TRO & PI, D. Ct. Doc. 11. Applicants filed a motion to intervene and proposed motion to dismiss on September 6. Mot. to Intervene, D. Ct. Doc. 12; Proposed Mot. to Dismiss, D. Ct. Doc. 12-4. The motion to dismiss argued, among other things, that Plaintiffs’ claim required the convening of a three-judge court under 28 U.S.C. § 2284. Proposed Mot. to Dismiss at 15, D. Ct. Doc. 12-4. The district court granted Applicants’ intervention motion on September 8. Order, D. Ct. Doc. 32.

On September 8, after this Court entered its ruling denying the Secretary’s application to stay the Missouri Supreme Court order, Plaintiffs notified the district court of the stay denial. Notice of Denial of Stay, D. Ct. Doc. 34. Less than 15 minutes later, the district court granted Plaintiffs’ motion for a TRO, enjoining the Secretary—“as well as his officers, agents, employees, and attorneys—from implementing, using, publishing, distributing, or mandating the use of any congressional district map other than the HB 1 map for the November 3, 2026 general election.” App. 70a.

The TRO was remarkable for several reasons. On the merits, the district court rejected Plaintiffs’ Elections Clause claim, App. 64a, but found that Plaintiffs are likely to succeed on the merits of their claims under the Equal Protection Clause and Article I, Section 2, App. 66a–68a, citing no authority (from this Court or any other)

² Plaintiffs in the federal case are represented by the same counsel who represented the Republican National Committee as a party to both the Missouri Supreme Court proceedings and the September 4 emergency stay proceedings before this Court.

granting a similar claim on either of these grounds. On the equities, the district court “[a]dmitt[ed]” that “courts normally invoke the *Purcell* principle to caution against federal-court intervention in the election decisions of state legislatures,” but nevertheless found that the “public interest concerns that the *Purcell* principle invokes” “support issuing a TRO.” App. 69a. At no point in its discussion of either the merits or the equities did the district court mention—let alone explain its conflict with—the Missouri Supreme Court’s September 3 ruling and injunction. Nor did the district court attempt to reconcile its decision with this Court’s denial of a stay application making identical arguments *minutes* before the TRO was issued.

Immediately following the district court’s issuance of the TRO, the Secretary countermanded his prior directive to local election officials to use the 2022 map, advising them that “the federal court’s ruling, based on federal law, takes precedence over the Missouri Supreme Court’s order, which is based on state law,” App. 71a, and instructing them to use HB 1 for the November elections. That same day, Applicants sought an emergency stay before the Eighth Circuit, and the Missouri Supreme Court issued an Order directing the Secretary to “show cause, if any, why he should not be held in contempt for violating this Court’s injunction dated September 3, 2026.” App. 80a.

The next day, on September 9, the Eighth Circuit denied Applicants’ emergency application for a stay pending appeal, concluding that the court “either lack[ed] jurisdiction over the appeal” or “the stay factors ha[d] not been met.” App. 81a. Minutes after the Eighth Circuit’s denial, Applicants filed an emergency

application to stay the district court’s TRO in this Court. This Court stayed the TRO on September 10, with no noted dissents. *See People Not Politicians v. Onder*, No. 26A326 (U.S. Sep. 10, 2026).

Later that day, the Missouri Supreme Court held a contempt hearing and thereafter unanimously found Secretary Hoskins in contempt of its September 3 order and injunction. It held, however, that Secretary Hoskins purged his contempt shortly after the hearing by posting a public statement declaring that “[f]ollowing the United States Supreme Court’s stay, the only governing court order in effect is from the Missouri Supreme Court. In accordance with that order, my Office is directing local election authorities to use the 2022 congressional map,”³ and sending an email to local election officials instructing them to do so. App; 85a, 88a.

III. Missouri election officials rely on this Court’s stay of the TRO and print ballots under the 2022 Map.

On September 10, in response to Secretary Hoskins’ email, App. 88a, local election officials “immediately began the process of creating and printing ballots” using the 2022 Map. Mo. Ass’n of Cnty. Clerks & Election Auths. (“Missouri Clerks”) Amicus at 8–9;⁴ *see also, e.g.,* Steve Smith, *Decision Made: 2022 Missouri Congressional Map to be Used for November Elections*, KZRG News (Sep. 10, 2026), <https://perma.cc/JYA6-U2KW> (Jasper County Clerk Charlie Davis stating “we now

³ *Statement from Missouri Secretary of State Denny Hoskins*, Mo. Sec’y of State (Sep. 10, 2026), <https://www.sos.mo.gov/default.aspx?PageId=10670>.

⁴ Members of the MACCEA are elected county clerks and appointed directors of boards of elections from each of the 116 local election jurisdictions in Missouri. Missouri Clerks’ Amicus Br. at 5.

have clarity statewide” and “the decision is final and ballots in the state may now be printed”). The Secretary’s asserted deadline of September 14 came and went, and as of September 15, “most jurisdictions’ ballots are already in production, either by in-house ballot printers or vendors.” Missouri Clerks’ Amicus at 9. Under federal law, Missouri was required to send UOCAVA ballots to overseas voters by September 19, *see* 52 U.S.C. § 20302(a)(8); under Missouri state law, because September 19 was a Saturday, UOCAVA ballots were sent on Friday, September 18, *see* Mo. Rev. Stat. § 115.914.1.

Missouri law also dictates that September 22, 2026—*today*—is the date when voting commences. Specifically, today is the date by which election authorities must print and make available absentee ballots. Mo. Rev. Stat. § 115.281.1. It is also the date on which in-person absentee voting commences for voters with a qualifying excuse under Mo. Rev. Stat. § 115.277.3. *Id.* Pursuant to that provision, Applicant Richard von Glahn cast his ballot for the November general election earlier today, using a ballot issued under the 2022 map. App. 91a.

IV. The Eighth Circuit orders the district court to issue a permanent injunction granting the same relief this Court stayed.

On September 10—after this Court stayed the district court’s TRO, after the Missouri Supreme Court issued its contempt order, and after the Secretary instructed local election officials to use the 2022 Map in preparing ballots—the Eighth Circuit panel that had previously denied Applicants’ stay application issued an emergency briefing and hearing schedule on the matter. *See* Order (Sep. 10, 2026). The panel ordered simultaneous briefing from the parties due on September 15 and oral

argument on September 17. *Id.* The Secretary told the panel that the “U.S. Supreme Court granted a stay in this case, suggesting it believes the 2022 congressional map should govern Missouri’s 2026 General Election” and that he “is complying with that ruling.” Hoskins C.A. Br. at 30.

On September 21, 2026, the Eighth Circuit panel issued an order “affirming the district court[’s TRO] and remand[ing] for entry of a permanent injunction.” App. 3a. The panel first determined it had jurisdiction to review the TRO because it had the “practical effect” of a preliminary injunction. App. 11a–12a. It next rejected Applicants’ jurisdictional argument that a three-judge court was required, explaining that (a) Applicants had not filed a “stand-alone request” for a three-judge court or otherwise “affirmatively requested such a court,” App. 13a, and (b) “federal law allows the district court to ‘grant a temporary restraining order’ without referring the matter for convening of a three-judge court,” *id.* (quoting 28 U.S.C. § 2284(b)(3)).

After rejecting several other jurisdictional arguments advanced below by Applicants, App. 13a–17a, the panel asserted its belief that neither this Court’s stay of the TRO nor the Secretary’s subsequent implementation of the 2022 map rendered its review moot. App. 17a–21a. The panel noted that this Court’s stay order “merely stayed” the TRO, App. 17a–18a (“[T]he Supreme Court did not vacate or modify the temporary restraining order or rule on its validity”), but did not otherwise address the duration of this Court’s stay order. The panel further determined that its issuance of a final judgment on the merits “wholly removes the temporary restraining order’s expiration as a basis for mootness.” App. 18a. It then concluded that the

“availability” of UOCAVA waivers—regardless of “whether Missouri would receive such a waiver”—“demonstrates that UOCAVA ballot transmission on September 18, 2026, is not itself a jurisdictional point of no return and effectual relief remains available.” App. 19a. The panel recognized that, “[f]or all Missouri voters not covered by UOCAVA, absentee ballots may be requested and cast beginning on September 22, 2026,” App. 21a—*today*—but satisfied itself that since that deadline “ha[d] not yet arrived, and thus general absentee voting ha[d] not yet begun” as of the date it issued its order—*yesterday*—“the September 22, 2026, absentee ballot commencement date does not moot this case.” *Id.*

On the merits, the Eighth Circuit panel held that, “because Missouri used the 2025 map in the August 2026 primary election, using the 2022 map in the November 2026 general election violates Article I, Section 2.” App. 27a. It reasoned that “[c]hanging district lines between the primary and general election prevents an affected voter from participating in either district’s complete procedure of choice,” App. 26a, and denying “the ability to vote for the nominees that will appear on their November 2026 general election ballot deprives [affected] voters of their constitutional right of choice under Article I, Section 2,” App. 25a. In light of this holding, the panel found it “unnecessary” to reach Plaintiffs’ Equal Protection Clause and Elections Clause claims. App. 28a.

Finally, the panel rejected Applicants’ argument that the *Purcell* principle bars federal court interference in Missouri’s election machinery at this late date. App. 28a–32a. Although the panel previously stated that it was “not review[ing] the decision of

the Missouri Supreme Court,” which may be appealed to this Court, App. 22a, it ultimately concluded that “[r]efusing to correct an erroneous, ‘late-breaking’ state court decision based on the *Purcell* principle would ‘turn *Purcell* on its head.’” App. 29a (citation omitted); *see also* App. 30a (holding that the Missouri Supreme Court “upset” the status quo and it is the panel’s “duty, consistent with *Purcell*, to at least preserve the possibility of restoring it” (citation omitted)). According to the panel, “[a]llowing state courts to issue, *without any federal-court review*, last-minute decisions affecting the conduct of federal elections” would “potentially allow a handful of state judges to render decisions” that affect the outcome of federal elections. App. 29a (emphasis added).

The Eighth Circuit panel accordingly affirmed the district court’s TRO and remanded to the district court “for entry of a permanent injunction prohibiting” state election officials from using “any congressional district map other than the 2025 map for the November 3, 2026 general election.” App. 34a–35a. “To allow for appellate review,” however, the panel instructed the district court to “administratively stay its permanent injunction until September 28, 2026, at 5 p.m. Central Daylight Time.” App. 35a. According to the panel, “[i]f the Supreme Court has not stayed or otherwise altered the permanent injunction by that time, Secretary Hoskins and all others bound by this judgment must fully implement the 2025 map for the November 2026 general election.” App. 34a.

Less than an hour later, the district court issued the permanent injunction, as instructed by the Eighth Circuit panel. App. 41a. Later that evening, Applicants filed

a motion to stay and recall the mandate in the Eighth Circuit, informing the panel that they “intend to seek emergency relief from the United States Supreme Court following disposition of this Motion or upon close of business on September 22, 2026, whichever arrives first.” Emergency Mot. to Recall the Mandate & Stay the Court’s Order. Shortly before the filing of this Application, the Eighth Circuit issued a one-sentence order denying Applicants’ motion. App. 89a–90a.

ARGUMENT

This Court’s September 10 Order already stays the district court’s new injunction granting relief identical to that issued in its earlier TRO. This Court should confirm as much. If the Court concludes otherwise, it should stay both the Eighth Circuit’s order and the district court’s permanent injunction issued pursuant to that order and recall the mandate. *See Nken v. Holder*, 556 U.S. 418, 427 (2009). The Eighth Circuit cannot disrupt an imminent election after ballots have been cast by issuing relief that this Court has already foreclosed and that it lacked jurisdiction to grant, all based on a merits theory of the panel’s own invention.

I. The Eighth Circuit cannot nullify this Court’s stay by replacing the stayed injunction with a new injunction granting identical relief.

Once this Court has “executed [its] power in a cause,” a lower court may not “give any other or further relief” inconsistent with this Court’s disposition. *Sibbald v. United States*, 37 U.S. 488, 492 (1838). And when a lower court violates that rule, this Court is the proper forum for correcting that error. *See D.V.D.*, 145 S. Ct. at 2630 (“[A] claim that a lower court has failed to give effect to an order of this Court is properly addressed here.”).

That is what happened here. This Court stayed the district court’s earlier injunction barring Missouri from conducting the November election under any map other than HB 1 “pending the disposition of the appeal in the United States Court of Appeals for the Eighth Circuit *and disposition of a petition for a writ of certiorari in this Court*, if such a writ is timely sought.” *People Not Politicians v. Onder*, No. 26A326 (U.S. Sep. 10, 2026) (emphasis added). That stay remains in effect because, while the Eighth Circuit has dispensed with the appeal, this Court has not adjudicated a petition for certiorari and the time for seeking certiorari has not yet expired. Yet at the Eighth Circuit’s direction, the district court entered a replacement injunction granting the *precise relief* this Court stayed—this time in the form of a permanent injunction. *Compare* App. 70a (September 8 order enjoining Secretary Hoskins from implementing “**any congressional district map other than the HB 1 map for the November 3, 2026 general election**”), *with* App. 35a (September 21 order enjoining Secretary Hoskins from implementing “**any congressional district map other than the 2025 map for the November 3, 2026, general election**”). Applicants therefore respectfully move this Court to clarify that its September 10 order applies equally to the permanent injunction with identical terms.⁵

⁵ If this Court grants the motion, Applicants assume the Eighth Circuit and district court would “conform [their] order[s] to [this Court’s] previous stay” by withdrawing the mandate and the new injunction, in which case no further relief would be required. *D.V.D.*, 145 S. Ct. at 2630. If additional relief is nevertheless required even after this Court clarifies its Order, Applicants will seek it through mandamus. *See id.*

This Court’s decision in *D.V.D.* confirms that a lower court cannot evade a stay by granting the same relief through a different order. 145 S. Ct. at 2629. There, after this Court stayed a preliminary injunction, the district court declared that a separate remedial order enforcing that injunction remained “in full force and effect,” notwithstanding the stay. *Id.* at 2629. This Court granted the Government’s motion to clarify and rejected the attempted workaround: the remedial order “cannot now be used to enforce an injunction that our stay rendered unenforceable.” *Id.* at 2629–30; *see also id.* at 2630 (Kagan, J., concurring) (stating that she “continue[d] to believe” the earlier stay should not have been issued, but “d[id] not see how a district court can compel compliance with an order that this Court has stayed”).

This Court has enforced its stay even when a *different* court granted incompatible relief. In *Trump v. Boyle*, this Court held a request for injunctive relief was “squarely controlled” by an earlier stay order of materially indistinguishable relief in another case. 145 S. Ct. 2653, 2654 (2025). As the Court explained, although its “interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases.” *Id.*

The circumstances here are far more extreme. The Eighth Circuit’s order does not merely undermine this Court’s stay order; it requires the district court to issue a permanent injunction granting the *exact same relief* this Court stayed *in the exact same case*. *See* App. 35a (prohibiting Secretary Hoskins or his agents “from implementing, using, publishing, distributing, or mandating the use of any congressional district map other than the 2025 map for the November 3, 2026, general

election”); *see also* App. 70a. That action appears unprecedented. Applicants are aware of no case in which a federal court of appeals has ordered a district court to re-issue the same relief this Court had stayed through appellate and certiorari review.

To the contrary, courts of appeals confronting such stays have instead recognized that this Court—not the court of appeals—controls the interim posture. For example, when this Court stayed a preliminary injunction “pending the disposition of the appeal . . . and disposition of a petition for a writ of certiorari,” the en banc Fourth Circuit made clear that “no decision [it] issue[d] . . . ha[d] the power to change th[e] fact” that the injunction was not in effect. *Am. Fed’n of State, Cnty. & Mun. Emps. v. Soc. Sec. Admin.*, 172 F.4th 361, 374 (4th Cir. 2026) (en banc) (emphasis omitted). The injunction “w[ould] resume in force—if ever—only after events that would post-date [the Fourth Circuit’s] decision and over which [it] ha[d] no control.” *Id.* Likewise, the Second Circuit recognized that its merits decision affirming a preliminary injunction could not itself make the injunction operative because it “ha[d] already been stayed by the Supreme Court, not only through [the Second Circuit’s] disposition of the case, but also through the disposition of [the Government’s] petition for a writ of certiorari.” *New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 88 (2d Cir. 2020), *cert. denied*, 592 U.S. 1314 (2021).

Sheer logic reinforces that rule. If this Court’s stay order bars a court of appeals from making a stayed injunction operative by affirming it, it cannot accomplish the same result by packaging the same relief in a new injunction. This Court expressly determined that the district court’s HB 1 injunction would remain suspended through

the Eighth Circuit’s disposition *and this Court’s ensuing certiorari review*. “In light of” that order, “it is inconceivable” that the Eighth Circuit “was free to again” order the relief this Court had stayed. *Gen. Atomic Co. v. Felter*, 436 U.S. 493, 497 (1978) (per curiam). This Court should clarify that its September 10 stay precludes enforcement of the replacement injunction—or any additional federal court injunctions contrary to the stay order—so long as that stay remains in effect.

II. The Eighth Circuit had jurisdiction only to correct the district court’s failure to convene the three-judge court required by federal law.

If this Court concludes that its September 10 stay does not already resolve the matter, it should stay the replacement injunction pending appeal. To start, the Eighth Circuit’s judgment is likely to be reversed because it had no jurisdiction to enter it in the first place: Under federal law, this case should have been referred to a three-judge court, with appellate review by *this* Court—not the Eighth Circuit.

Federal law provides that “[a] district court of three judges shall be convened” when “an action is filed challenging the constitutionality of the apportionment of congressional districts.” 28 U.S.C. § 2284(a). Although a single judge may enter a temporary restraining order, he may not “hear and determine any application for a preliminary or permanent injunction.” *Id.* § 2284(b)(3).

A court of appeals may review a single district judge’s failure to refer a case to a three-judge court. *See Borden Co. v. Liddy*, 309 F.2d 871, 876 (8th Cir. 1962). But if a three-judge court was required, the court of appeals is precluded from reviewing the case on the merits. *See Stratton v. St. Louis Sw. Ry. Co.*, 282 U.S. 10, 16 (1930); *Borden Co.*, 309 F.2d at 876–77; *Page v. Bartels*, 248 F.3d 175, 182, 185 (3d Cir. 2001)

(finding that it had “no jurisdiction to grant interim injunctive relief” where the case should have been referred to a three-judge court). Otherwise, appellate review would “defeat the purpose of the statute by substituting a decree by a single judge and an appeal to the Circuit Court of Appeals for a decree by three judges and a direct appeal to” the Supreme Court. *Stratton*, 282 U.S. at 16.

The Eighth Circuit never denies outright that § 2284(a) applies. Nor could it: the Complaint asks the court to declare the use of Missouri’s only lawful congressional districts “unconstitutional” and to mandate use of HB 1—relief that falls squarely within the plain text of § 2284(a). *Compare* Compl. at 26 (seeking “declaratory relief stating that Defendants’ failure to use the HB[]1 Congressional maps—as ordered by *von Glahn*—is unconstitutional” and enjoining them from using any other map), *with* 28 U.S.C. § 2284(a) (requiring that a three-judge district court “shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts”).⁶

⁶ The Eighth Circuit expressed “doubt[] that this action contesting which map Missouri should use in the November 2026 election ‘challeng[es] the constitutionality of the apportionment of congressional districts,’” App. 13a, but it cites no authority to support that thinly-sliced distinction. And a recent federal court opinion explains why it fails. In *Hale v. Lee*, the district court held that a challenge to the *timing* of congressional reapportionment, and not to the apportionment itself, must be heard by a three-judge court: because “[t]he harm sought to be remedied” concerned the “apportionment of congressional districts,” there was “no basis” to conclude that three judges were unnecessary. No. 3:26-cv-00603, 2026 WL 1433312, at *3 (M.D. Tenn.

The Eighth Circuit justified its jurisdiction by another route, finding that the district court had no obligation to convene a three-judge court because none of the parties have ever requested one. App. 12a–13a. That argument stacks one unsupported premise atop another. Applicants did request a three-judge court, and the Eighth Circuit identified no authority suggesting that the form of that request was inadequate. App. 13a. More fundamentally, no federal court has held that a party must request a three-judge court before § 2284(a)’s mandatory jurisdictional rule applies.

First, the request: Applicants invoked the three-judge court requirement in their first filing in the district court—a proposed motion to dismiss appended to their intervention motion. Applicants asserted that the Complaint is defective because it seeks relief from a single judge rather than a three-judge court, as required by federal law. *See* Proposed Mot. to Dismiss at 15, D. Ct. Doc. 12-4. They explained that since the Complaint “unquestionably challenges the constitutionality of the apportionment of congressional districts,” a three-judge court is “mandatory,” and “[a] single judge cannot grant the relief Plaintiffs seek.” *Id.* (citing 28 U.S.C. § 2284(a)).

May 21, 2026). Chief Judge Sutton “agree[d] that a three-judge panel [wa]s warranted” and designated one for the remainder of the proceedings. *See* Order, *Hale v. Lee*, No. 2:2026-cv-00603, Dkt. No. 48 (May 22, 2026). The legislative history of the three-judge statute supports that conclusion: In enacting § 2284, “Congress was concerned less with the *source* of the law on which an apportionment challenge was based than on the unique importance of apportionment cases generally.” *Page*, 248 F.3d at 190; *see also* S. Rep. No. 94-204, at 9 (1976) (retaining three-judge courts for congressional reapportionment because such cases “are of such importance that they ought to be heard by a three-judge court”).

The Eighth Circuit determined that Applicants’ clear invocation of the rule was insufficient because Applicants “did not file a stand-alone request for a three-judge court” or make an “affirmative[] request” for one. App. 13a. But the court cited no authority holding that an express invocation of § 2284(a)’s mandatory requirement is insufficient merely because it was stated as a legal requirement rather than phrased as a question. Nor does anything suggest a separate motion is required. Indeed, the Eighth Circuit’s prior practice confirms the opposite. In *Simpson v. Hutchinson*, for example, the “request” for a three-judge court appeared in the complaint, not in a separate motion, and the Chief Judge of the Eighth Circuit designated the panel. *See* Compl., No. 4:22-cv-213-JM-DRS-DPM (E.D. Ark. Mar. 7, 2022), Dkt. No. 1; Order, No. 4:22-cv-213-JM-DRS-DPM (E.D. Ark. Mar. 29, 2022), Dkt. No. 9. No authority supports a different disposition here. Indeed, Applicants are aware of no case other than this one in which a single district judge within the Eighth Circuit has adjudicated the merits of a constitutional challenge to congressional or statewide legislative apportionment covered by § 2284(a).

In any event, prior to the Eighth Circuit’s order, every circuit that has considered the question has held that § 2284(a) is jurisdictional and thus applies whether a request is made or not. As the Second Circuit explained, although § 2284(a) does contemplate a “request,” the statute “uses typically jurisdictional language,” stating that “a three-judge court ‘shall’ be convened, a word that generally connotes a rule that it is both mandatory and jurisdictional.” *Kalson v. Paterson*, 542 F.3d 281, 287 (2d Cir. 2008); *accord LULAC of Tex. v. Texas*, 318 F. App’x 261, 264 (5th Cir.

2009) (per curiam) (“We agree with our sister circuits that the term ‘shall’ in § 2284 is mandatory and jurisdictional.”); *Armour v. Ohio*, 925 F.2d 987, 989 (6th Cir. 1991) (holding that § 2284(a) is jurisdictional, notwithstanding its reference to a “request”).

Without acknowledging those cases, the panel created a new circuit split in an emergency posture based solely on this Court’s decision in *Shapiro v. McManus*, 577 U.S. 39 (2015). *See* App. 12a–13a. But *Shapiro* supports the opposite conclusion. There, this Court held that § 2284(a) “could not be clearer” and “admits of no exception”: a three-judge court “*shall be convened*” whenever an action “is filed” challenging the constitutionality of congressional apportionment. 577 U.S. at 43 (quoting 28 U.S.C. § 2284(a)). And the Court expressly rejected an effort to derive an exception from subsection (b)(1)’s procedural instructions on how the court should be convened. That provision—the same provision that contemplates a “request”—is merely an “administrative detail” governing how the three-judge court is convened once § 2284(a) applies. *Id.* at 43–44. The Eighth Circuit thus uses *Shapiro*’s discussion of an “administrative detail” to justify the very exception *Shapiro* said § 2284(a) does not permit.

The panel’s alternative holding only confirms that it lacked jurisdiction to decide this case. The panel reasoned that, even if a three-judge court were required, the single judge could issue the challenged order because § 2284(b)(3) permits a single judge to issue a temporary restraining order. App. 13a. But an order *styled* as a TRO is construed as a preliminary injunction when it functions as one, particularly where the order has a “serious, perhaps irreparable, consequence.” *Carson v. Am. Brands*,

Inc., 450 U.S. 79, 83–84 (1981) (citation omitted); *Sampson v. Murray*, 415 U.S. 61, 86–88 & n.58 (1974). The Eighth Circuit was well-aware of this rule: Just one page earlier, the panel secured its own jurisdiction by concluding that the challenged order was *not* a true TRO. App. 11–12 (“The district court’s [TRO] effectively requiring use of the 2025 map in the November 2026 general election would have governed ballot printing and mailing of absentee ballots, which is ‘in practical effect a preliminary injunction.’” (quoting *La Belle Dairy v. Sharpe Holdings, Inc.*, 183 F.4th 606, 612 (8th Cir. 2026))). The Eighth Circuit reasoned that although TROs are ordinarily not appealable, it had appellate jurisdiction because the TRO was functionally a preliminary injunction. *Id.* It then immediately reversed that same conclusion in the following section when it no longer supported the court’s jurisdiction.

The panel cannot have it both ways. If the district court’s order was truly a TRO, § 2284 may have permitted the district court to enter it⁷—but the Eighth Circuit lacked jurisdiction to review it. *Edudata Corp. v. Sci. Computs., Inc.*, 746 F.2d 429, 430 (8th Cir. 1984) (per curiam). If the order had the “practical effect” of a preliminary injunction sufficient to support appellate jurisdiction, App. 11a, then § 2284(b)(3) prohibited the single district judge from granting it, and review belonged in this Court—not the Eighth Circuit. The panel cannot manufacture jurisdiction by

⁷ Here, even a true TRO was improper given the district court’s failure to refer the case to a three-judge court, even after an explicit request in Applicants’ motion to dismiss. *See Simon v. DeWine*, 98 F.4th 661, 666 (6th Cir. 2024) (holding that “the district court lacked jurisdiction as a single judge to adjudicate any other pending motion,” including a TRO, “because it was required to convene a three-judge court under 28 U.S.C. § 2284”).

treating the same order as a preliminary injunction on one page and a TRO on the next.

Nor can the panel use § 2284(b)(3)’s narrow TRO exception to accomplish what that same provision forbids. Whatever the status of the original order, the statute is unequivocal: a single judge “shall not . . . hear and determine any application for a preliminary or permanent injunction” or “enter judgment on the merits.” 28 U.S.C. § 2284(b)(3). Yet having invoked the TRO exception to justify the district court’s authority to act, the panel directed that same court to issue a permanent injunction. App. 34a–35a. Section 2284 does not permit its narrow exception for temporary relief to serve as a vehicle for entering the final relief Congress expressly reserved to a three-judge court. *See Shapiro*, 577 U.S. at 44 (“It would be an odd interpretation that allowed a district judge to do under § 2284(b)(1) what he is forbidden to do under § 2284(b)(3). More likely that Congress intended a three-judge court, and not a single district judge, to enter all final judgments in cases satisfying the criteria of § 2284(a).”). The Eighth Circuit’s judgment—and the permanent injunction entered at its direction—should be stayed.

III. *Purcell* bars a federal court from demanding impossible relief that guarantees confusion in an election that is already underway.

Election officials from all 116 local Missouri jurisdictions agree: “At this point, it is . . . impossible to revert to the HB 1 map.” Missouri Clerks’ Amicus Br. at 12. Absentee voting under the 2022 map began today, September 22—one day after the Eighth Circuit ordered the district court to require a different map. *Id.* at 10; *see* App.

21a.⁸ Ballots using the 2022 map have been printed and mailed, and voters have already begun returning them.⁹ In-person absentee voting began today as well, also under the 2022 map. Mo. Rev. Stat. § 115.277.3. And thousands of ballots using the 2022 map have already been mailed to military and overseas voters, some of whom have already used them to vote.¹⁰ Those votes cannot now be undone. As one county clerk explained, once an absentee ballot has been cast, “You cannot pull a voted ballot back out of a tabulator and redo it.”¹¹

Under *Purcell*, that should be the end of the matter. To avoid a stay, late-breaking judicial intervention must be “at least feasible *before* the election without significant cost, confusion, or hardship.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (emphasis added). But the Eighth Circuit’s new injunction cannot be implemented “before” the election at all; the election is no longer “merely ‘close,’ or even ‘imminent’—it is happening right now.” *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 227 (4th Cir. 2024) (citation modified). And election officials statewide confirm that reverting to HB 1—which would require proofing new

⁸ Because the Eighth Circuit ordered the district court to stay its injunction until September 28 to allow for this Court’s review, officials were not required to immediately comply with it. App. 35a. By that time, thousands more votes under the 2022 map will already have been cast.

⁹ See Mark Maxwell, *Missouri’s First Ballots Are in the Mail as Federal Court Weighs Congressional Map; 3 Have Already Come Back in St. Louis County*, KSDK (Sep. 20, 2026), <https://tinyurl.com/y33b4dun>; see also Mo. Rev. Stat. § 115.281.1 (setting deadline for printing absentee ballots).

¹⁰ See Rudi Keller, *Missouri Election Officials Begin Mailing Ballots as They Await Ruling on Congressional Map*, Mo. Indep. (Sep. 19, 2026) (“*Missouri election officials*”), <https://tinyurl.com/3brft9au>; Rosenbaum, *supra* note 1.

¹¹ Keller, *Missouri Election Officials*.

ballots, loading them onto tabulators, and issuing them to voters, all while voting is already underway—would be “impossible.” Missouri Clerks’ Amicus Br. 6–9, 12. This Court has required a stay even where plaintiffs have a “fair prospect” of success on the merits when “state and local election officials do not have sufficient time to reasonably implement the rule before the elections.” *U.S. Postal Serv. v. California*, No. 26A305, 2026 WL 2687160, at *1 (U.S. Sep. 14, 2026) (Kavanaugh, J., concurring). That rule forecloses the impossible task the Eighth Circuit imposes here.

Instead of crediting local election officials’ own assessment that they cannot switch maps at this late hour, the Eighth Circuit deemed the changes “feasible” based entirely on its own speculation. App. 31a. For example, despite conceding that the court did not know “how many jurisdictions would need to change ballots” to implement HB 1, how “much cost would be incurred to change the maps,” and how much “time . . . it would take to implement” a new congressional map, *id.*, the panel concluded, without citation, that “[p]resumably, local election authorities needed only a few days” in which to do so. App. 31a. But the officials themselves say otherwise, and the panel was not entitled to ignore the undisputed record. *See* Missouri Clerks’ Amicus Br. at 12.

In any event, the Eighth Circuit’s feasibility analysis misses the point. *Purcell* protects against “election administrator confusion” and safeguards the State’s interest in “running an orderly, efficient election.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1043 (2020) (Kavanaugh, J., concurring). That concern is at its apex once voting has begun. *See id.* (applying *Purcell* where the

district court intervened to change a ballot deadline “after absentee voting had already begun”). And here, confusion is guaranteed. The district court’s TRO already left Missourians “baffled and frustrated by this whole process.”¹² and further changes would prove even more “chaotic.” Even if the changes were possible, “redo[ing] the election and reprint[ing] the ballots would cost hundreds of thousands of dollars” and place a “substantial hardship on Missouri’s local jurisdictions,” which, in many cases, would be left to foot the bill. Missouri Clerks’ Amicus Br. at 11. And as one elections official explained, implementing a new map now that votes have already been cast “is the stuff of nightmares for election administrators.”¹³

Indeed, the Eighth Circuit’s proposed solutions would only deepen chaos here. For example, the panel theorizes that implementation remains “feasible” even though ballots have already been sent to military and overseas voters because officials could simply reprint and redistribute new ballots under the HB 1 map. Order at 20. But that runs headlong into *Purcell*’s confusion concern. See *Walen v. Burgum*, No. 1:22-cv-31, 2022 WL 1688746, at *5 (D.N.D. 2022) (“We would be hard pressed to think of a situation more confusing to a voter than receiving a second ballot with instructions

¹² Keller, *Missouri Election Officials*.

¹³ Rosenbaum, *supra* note 1.

to vote again.”). That demands a stay whether the changes are theoretically feasible or not.¹⁴

The panel protests that “other courts have ordered ballot changes that delayed the commencement of absentee voting because ballots had to be reprinted.” Order at 21 n. 17. But its cases do not support *federal* intervention here. Both cases the panel cites were state court decisions. *See id.* (citing *Kennedy v. N. Carolina State Bd. of Elections*, 905 S.E.2d 55, 58 (N.C. 2024), and *Holloway v. Byrne*, 874 A.2d 504, 505 (N.J. 2005)). And “States are free to decide for themselves whether last-minute changes to an election are in their best interests.” *Allen v. Milligan*, 608 U.S. 511, 514 (2026) (per curiam) (citation omitted). “It is one thing for a State on its own to toy with its election laws close to a State’s elections. But it is quite another thing for a federal court to swoop in and re-do a State’s election laws in the period close to an election.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in the grant of a stay).

The chaos the replacement injunction guarantees will extend even beyond the election itself, casting doubt on its results and exposing officials to separate consequences under state law. The Missouri Supreme Court held, as a matter of Missouri law, that “[t]here is only one valid congressional redistricting in effect—the

¹⁴ Changing the map would also all but ensure that Missouri violates UOCAVA. The Eighth Circuit attempted to skirt this fact by citing the hardship waiver provision in UOCAVA, *see* Op. at App. 18a–19a (citing 52 U.S.C. § 20302(g)(2)(B)(ii)), but it failed to even inquire as to whether such a waiver has been sought, nor evaluate whether, if sought, such a waiver was likely to be granted. It is not. As the Missouri Republican State Committee argued in their brief before the Missouri Supreme Court almost four weeks ago, “it is entirely fanciful to think that the state could obtain a waiver at this juncture.” Intervenor-Respondents’ Missouri Republican State Committee, et al., *von Glahn v. Hoskins*, No. SC101805 (Mo. Sup. Ct. Aug. 27, 2026).

congressional redistricting the General Assembly established in 2022.” App. 53a n.8. On that basis, the court enjoined the Secretary from “implementing, using, or mandating the use of” HB 1 until the voters approve it. App. 54a. And when the Secretary attempted to enforce the HB 1 map pursuant to the first federal TRO, the Missouri Supreme Court held him in contempt. App. 82a–86a.

The Eighth Circuit claims the Supremacy Clause solves that problem. App. 33a. But that ignores the balance federalism requires. The Eighth Circuit has no authority to review a decision by the Missouri Supreme Court, much less override it. *See D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983) (stating that lower federal courts have “no authority to review final judgments of a state court in judicial proceedings,” and such review “may be had only in this Court”). Even if it could, its sole basis for relief—Article I, section II of the U.S. Constitution—concerns only the constitutionality of using the 2022 map when HB 1 was used during the primary. App. 22a–26a. It thus cannot disrupt the Missouri Supreme Court’s central finding under state law: that “**HB 1 is not the law and has never been the law.**” App. 53a n.8 (emphasis added).

The replacement injunction thus bars officials from using any map other than one that is legally invalid under state law. It therefore requires officials to violate not only state law, but also federal law. For one, 2 U.S.C. § 2a(c) ensures that representatives are elected from districts “prescribed by the law” of the State. HB 1 fails this test; it is flatly *proscribed* by Missouri law. App. 53a. Moreover, the Eighth Circuit entirely glossed over the due process concerns that accompany its converting

a TRO—issued three days after the complaint was filed, without a hearing, without a ruling on Applicants’ motion to dismiss, and without discovery—into a permanent injunction. *See, e.g., Univ. of Texas v. Camenisch*, 451 U.S. 390, 396 (1981) (holding the issuance of “a permanent injunction [presupposes] the parties will already have had their trial on the merits” and finding it “inappropriate” to enter final judgment at an interim stage); *Corp. Synergies Grp., LLC v. Andrews*, 775 F. App’x 54, 60 (3d Cir. 2019) (finding “the entry or continuation of an injunction requires a hearing”) (citation omitted).

The uncertainty created by these multiple, overlapping conflicts independently demands emergency relief. *See Bost v. Ill. State Board of Elections*, 607 U.S. 71, 80 (2026) (“Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires.” (quoting *Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (Scalia, J., concurring in grant of stay))).

That is the electoral disorder *Purcell* exists to prevent—on steroids. And this Court has prescribed the response when “a lower court intervenes and alters the election rules so close to the election date”—the Court “should correct that error.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 425 (2020) (per curiam). Last week, this Court did exactly that when it stayed the district court’s first injunction. It must now stay the district court’s replacement injunction and the Eighth Circuit’s order requiring it.

IV. The remaining equitable factors demand relief.

Both Applicants and the public interest would suffer irreparable harm absent a stay. The harm Applicants face is immediate, concrete, and irreversible. The stay destroys Applicants’ (as well as the public’s) referendum right. Under the Missouri Constitution, a valid referendum petition has two effects: (i) it suspends the implementation of the law in question; and (ii) submits the law to a statewide vote. *See* Mo. Const. art. III, § 52(b) (providing that “[a]ny measure referred to the people shall take effect when approved by a majority of the votes cast thereon, *and not otherwise*” (emphasis added)). If HB 1 is used for the November election, the first right granted by the Missouri Constitution is irreversibly extinguished. Voters would be asked to approve or disapprove of HB 1 in an election during which they are forced to vote under its districts, despite the Missouri Supreme Court holding that HB 1 “is not the law and has never been the law” in Missouri. App. 53a n.8; *see also Eggers v. Evnen*, 48 F.4th 561, 566–67 (8th Cir. 2022) (finding that a federal injunction “barring [a] State from conducting this year’s elections pursuant to a valid provision in its constitution” causes “serious[] and irreparabl[e] harm” (alterations in original) (internal quotation marks omitted)).¹⁵

¹⁵ The concurrence misunderstood the rights provided by the Missouri Constitution when it determined that Applicants lacked standing to challenge the TRO before the district court. While it correctly credited Applicants’ concrete interest in having HB 1 submitted to a referendum, App. 37a, it ignored the equally weighty interest that

Missouri voters who have already cast their ballots under Missouri law—including Applicant Richard von Glahn—and those who continue to vote through September 28 will also be irreparably harmed absent a stay. At best, their already-cast votes would get thrown out and they would be forced to cast another ballot in the November general election under new district lines. At worst, those voters will be precluded from voting *at all* in the general election. *See* Mo. Rev. Stat. 115.297 (providing that election officials “shall not allow any person who has voted an absentee ballot in the election to vote at the polls on election day”). Nothing in the Eighth Circuit’s order or the district court’s permanent injunction requires that voters who already cast ballots before September 28 be allowed to cast replacement ballots thereafter.

By contrast, the Eighth Circuit also erred in determining that Plaintiffs would suffer irreparable injury by voting and campaigning under the 2022 map—the only lawful district map in the state. The Eighth Circuit’s conclusion was based on its

Applicants have in postponing the implementation of HB 1 until after, and pending the outcome of, the referendum election. *See* Mo. Const. art. III, § 52(b). As this Court made clear in *Hollingsworth v. Perry*, referendum proponents have standing to challenge the failure to properly implement a referendum, because as proponents, they have a “unique, special, and distinct” role in the process, which remains unique, special and distinct until “the . . . enact[ment] [of] the law.” 570 U.S. 693, 706 (2013) (internal quotation marks and citation omitted). In Missouri, that process includes delaying the effectiveness of HB 1 until the referendum vote. Because the Eighth Circuit’s and district court’s orders denied Applicants that right by precluding the implementation of any map other than HB 1 for the November elections, the concurrence erred in determining that Applicants suffered no concrete and tangible harm from the decisions. That HB 1 will be on the ballot in November does not protect Applicants’ state constitutional right to delay the implementation of HB 1 until after the election.

erroneous determination that voters face constitutional injury when they vote in different districts in November than they did in August. App. 30a. This claim has no basis in law. *See infra* § V. Plaintiffs have no protectable interest in voting or campaigning in districts created by an unlawful map.

If that were not enough, the equities here alone warrant a stay. A “strong equitable presumption against the grant of a stay” exists when emergency relief results from a litigant’s own delay. *Hill v. McDonough*, 547 U.S. 573, 584–85 (2006). The timing crisis here was manufactured by the Secretary’s strategic delay, and Plaintiffs waited until September 4 to file suit—knowing since December 2025 that HB 1 would not be in effect if the referendum petition was sufficient. If Plaintiffs were concerned about the prospect of using different maps for the August primary and the November general election, they should have filed suit months ago, when the Missouri Supreme Court made clear that a legally sufficient referendum petition means that HB 1 shall not take effect unless and until it is approved by a majority of voters. *Maggard*, 733 S.W.3d at 420. Plaintiffs can hardly claim surprise that, on September 3, the Missouri Supreme Court confirmed that state law means what it says.

V. Plaintiffs have no likelihood of success on the merits of their federal claims, which this Court has already twice considered.

The merits are no stronger than when this Court considered them 12 days ago. The Eighth Circuit granted relief on just one claim: that holding the general election under a different map than the primary election violates Article I, Section 2 of the U.S. Constitution. App. 22a–28a. That decision is incompatible with this Court’s precedents. Nothing in the Constitution entitles voters to vote for the same candidates within the same constituency at successive stages of an election—especially when state law requires otherwise.

The Eighth Circuit purports to “begin[] with the constitutional text.” App. 22a. But beyond quoting Article I, Section 2, the panel never engages with what that text actually says: that “[t]he House of Representatives shall be composed of Members” who are chosen “by the People.” U.S. Const. art. I, § 2. Nothing in that language supports the panel’s theory—nor does the panel explain how it could. All qualified Missouri voters had an equal opportunity to participate in the August 4 primary, and “[a]ll qualified voters [will] have an equal opportunity to select a district representative in the general election,” *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 10–12 (1982). That satisfies the plain text of Article I, Section 2.

The real problem, the panel explains, is that “if the 2022 map is used in the November 2026 general election, some Missouri voters will have more say than others on who represents them in Congress” because they did not select the candidates who appear on their general election ballots. App. 24a. And because “Missouri has made its primary ‘an integral part of the general election laws of the state’” for

congressional elections, primary voters are entitled “to have th[eir] vote[s] counted as cast.” App. 23a (quoting *Klein v. United States*, 176 F.2d 184, 187 (8th Cir. 1949)).

That reasoning confuses the right to participate in a primary and the consequences that flow from that participation. This Court has emphasized the distinction between the two. In *Classic*, the Court explained that when state law makes a primary “an integral part of the election machinery,” the Constitution protects the right to vote in it and to have that vote counted. *United States v. Classic*, 313 U.S. 299, 318 (1941). But the Court treated that right to *participate* as independent from its consequences: the “right of participation is protected” regardless of “whether the voter exercises his right in a party primary which invariably, sometimes or never determines the ultimate choice of the representative.” *Id.* at 318–19.

Critically, *Classic* looked to state law to determine the role the primary plays in the electoral process and the rights that follow from that role. *See id.* The Eighth Circuit recognizes this—and indeed devotes substantial discussion to Missouri law in defining the rights it attributes to primary voters. Order at 21–24. But the panel abandons its state-law analysis precisely where it begins to undermine its conclusion. Although Missouri law provides that congressional candidates are selected through a primary, *see* Mo. Rev. Stat. §§ 115.339, 115.343, it does *not* guarantee that the winner of the primary invariably must appear on the general election ballot. For instance, Missouri law provides that a primary winner’s name must appear on the general election ballot “unless he is removed or replaced as provided by law.” Mo. Rev.

Stat. § 115.343; *see also id.* § 115.363(3) (authorizing a party committee to replace a nominee who “dies, is disqualified, or withdraws”). It also permits challenges to primary nominees within a statutory time period. Mo. Rev. Stat. §§ 115.527, 115.531.¹⁶ And as relevant here, Missouri law establishes a referendum process that precludes the use of a congressional map once a “legal, sufficient and timely” referendum petition challenging that map is filed, unless and until the map is approved by voters. *Maggard*, 733 S.W.3d at 418 (citation omitted); *see* Mo. Const. art. III, § 52(b) (providing that once legislation has been “referred to the people,” it “shall take effect when approved by a majority of the votes cast thereon, *and not otherwise*” (emphasis added)).

The panel’s selective analysis of state law overlooks the central state-law fact in this case: it is *Missouri law* that prohibits the use of HB 1. The Missouri Supreme Court concluded that HB 1 “is not the law and has never been the law” based on its interpretation of Missouri’s own referendum guarantees. App. 53a n.8. The panel thus derives from Missouri law a federal right to preserve the consequences of a primary conducted under a map that Missouri law itself does not permit the State to use. Missouri law grants the right to vote in its primaries; it does not guarantee the right to vote in a particular district under a map that is invalid under the Missouri

¹⁶ The Eighth Circuit observes that “some Missouri voters and unsuccessful primary candidates have challenged Secretary Hoskins’ certification of the August 2026 primary election results for the Fifth Congressional District.” App. 24a n. 18. That state-law procedure both underscores that primary results are not absolute under Missouri law and confirms that state law provides a path for anyone aggrieved by the circumstances presented here to seek relief, without resort to the sort of late-breaking federal intervention *Purcell* forbids. *See infra* § III.

Constitution simply because the map was erroneously used during the primary election.¹⁷

Nor does the federal Constitution guarantee every voter an opportunity to participate personally in every electoral step that ultimately determines who represents them. In *Rodriguez v. Popular Democratic Party*, this Court considered a statute permitting a political party to fill a legislative vacancy by appointment rather than by election. 457 U.S. at 10–12. The challengers argued that the scheme unfairly disadvantaged voters in districts with vacancies by “den[ying] the[m] the opportunity to be represented by an elected legislator.” *Id.* at 10 n.10. The Court held otherwise: The appointment procedure did “not restrict access to the electoral process or afford unequal treatment to different classes of voters or political parties.” *Id.* at 10. As the Court observed, “[a]ll qualified voters have an equal opportunity to select a district representative in the general election,” and any changes in representation due to the interim appointment provision “applies uniformly to all legislative vacancies.” *Id.* The same is true here: the 2022 map “applies uniformly” to all Missouri voters, notwithstanding any uneven consequences that flow from it.

¹⁷ The Secretary’s conduct makes the federal court’s displacement of state law even more acute. The Secretary chose to conduct the primary under HB 1 despite “clear guidance” from both the Missouri Supreme Court and a federal court that HB 1’s legal status could not be determined until the referendum-certification process—including judicial review—was complete. *See* App. 53a n.8 (citing *Mo. Gen. Assembly*, 2025 WL 3514277, at *2; *Maggard*, 733 S.W.3d at 419–20; *NAACP*, 734 S.W. 3d at 341 n.4). And rather than seek resolution before the primary, the Secretary “chose to delay his certification until the last possible day”—August 4, when the primary was already underway, preventing earlier judicial review. *Id.* The Eighth Circuit now permits the Secretary to turn his disregard for state law into a federal-law basis to entrench the use of a map that Missouri law does not authorize.

Applying *Rodriguez*, federal courts have likewise rejected the premise that temporary representational discontinuities that can accompany redistricting transitions violate the Constitution. In *Donatelli v. Mitchell*, reapportionment placed voters in a newly created state-senate district, represented for the remainder of the pending term by a senator whom those voters had not elected. 2 F.3d 508, 514–15 (3d Cir. 1993). Citing *Rodriguez*, the Third Circuit found “no constitutional basis” for the claim that voters’ “right to vote for a state senator” was “infringed because they [were] ‘assigned’ a senator who was not elected by their district, or any significant portion of it.” *Id.* at 516. Similarly, in *Republican Party of Oregon v. Keisling*, the Ninth Circuit rejected a challenge arising from the combined consequences of reapportionment and staggered senate terms, which caused some voters to wait six years between opportunities to vote for a state senator. 959 F.2d 144, 144–46 (9th Cir. 1992) (per curiam) (“Appellants’ challenge to the methods chosen by appellee for regulating elections, in this case after reapportionment, has been roundly rejected by the Supreme Court.”), *cert. denied*, 504 U.S. 914 (1992).

Rodriguez likewise controls this case. If the Constitution permits some voters to be represented by a legislator they had no opportunity to elect *at all*, it cannot be read to forbid the narrower and far more speculative injury alleged here.

No authority supports the Eighth Circuit’s new rule: that Article I, Section 2 guarantees a particular consequence from a primary election, even when that consequence would violate state law. The panel purports to locate that newly discovered right in *Wesberry v. Sanders*, which forbids states from drawing

congressional districts in a manner that “give[s] some voters a greater voice in choosing a Congressman than others.” App. 25a (quoting 376 U.S. 1, 14 (1964)). But *Wesberry* addressed a different circumstance entirely. There, Georgia had drawn congressional districts with dramatically different populations, such that one district’s congressman “ha[d] to represent from two to three times as many people as d[id] Congressmen from . . . other Georgia districts.” 376 U.S. at 2. Consequently, votes cast in certain districts had significantly less weight than votes cast in others. *Id.* at 2–3. Nothing comparable happened here. The primary votes were counted, and those votes determined what candidates will appear on the general election ballot. Conducting the general election under different district lines does not nullify those votes or grant any of them different weight.

Here, voters face the same sort of representational shifts regularly produced by candidate replacement, changes in district boundaries, and vacancies filled by appointment. Those uneven electoral consequences are routine. As one three-judge court observed, “[i]t is impossible, where Senate district boundaries are changed, to avoid having some voters represented by a Senator for whom they had no opportunity to support or oppose.” *Ferrell v. Oklahoma ex rel. Hall*, 339 F. Supp. 73, 82 (W.D. Okla. 1972), *aff’d sub nom. Ferrell v. Hall*, 406 U.S. 939 (1972). The Eighth Circuit’s theory would bar the ordinary consequences of redistricting, vacancies, and candidate substitution that this Court and other federal courts have consistently treated as permissible features of election administration.

CONCLUSION

The Motion to Clarify should be granted. In the alternative, this Court should grant the Application for a Stay of the district court's injunction and the Eighth Circuit's order requiring its entry and recall and stay the mandate to the extent necessary to preserve the status quo, which is implementation of the 2022 map for Missouri's November 2026 elections.

Respectfully submitted,

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