

**In the
Supreme Court of the United States**

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN,
Applicants,
v.

CONGRESSMAN ROBERT ONDER, RICHARD BRATTIN, PATRICIA THOMAS, AND DEBRA
HAVENS,
Respondents,

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

APPENDIX TO THE OPPOSITION TO APPLICATION FOR STAY

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Respondents,

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

Respondents.

**DECLARATION OF DENNY HOSKINS IN OPPOSITION TO APPLICATION
FOR STAY**

I, Denny Hoskins, declare as follows:

1. I am Missouri’s Secretary of State. That means I am the State’s chief elections officer and responsible for overseeing safe and secure elections in Missouri, including the State’s federal elections. *See* Mo. Const. art. IV, § 14.

2. Missouri’s 2026 General Elections are scheduled for November 3, 2026. *See* Mo. Rev. Stat. § 115.121.1.

3. The date of Missouri’s General Election is mandated by federal law. *See Foster v. Love*, 522 U.S. 67, 73–74 (1997) (holding that State may not run federal general election in conflict with federal timing of 2 U.S.C. § 7).

4. Candidates for Missouri’s eight congressional districts filed for office under the federal congressional map, Missouri House Bill 1 (2025) (“HB 1”).

5. In preparation for the 2026 General Election, Missouri ran its primary to select federal congressional candidates on August 4, 2026. *See* Mo. Rev. Stat. § 115.121.2. This election was held based on HB 1, that was in place at the time of the election, and the results have been certified. *See* Official Results, State of Missouri – Primary Election, August 04, 2026.¹

6. On September 3, 2026, the Missouri Supreme Court held that the HB 1 congressional map used in the primary is subject to a referendum vote. The court further enjoined the State “from implementing, using, or mandating the use of the congressional redistricting in HB 1 for the November 2026 general election.” *von Glahn v. Hoskins*, No. SC101805, at slip op. 13 (Mo. banc Sept. 3, 2026).

7. I sought a stay of the Missouri Supreme Court’s decision from the U.S. Supreme Court. My application was denied without reasoning. *See* Application for Stay, *Hoskins v. von Glahn*, No. 26A304 (U.S., filed Sept. 8, 2026) (Kavanaugh, J., in chambers).

8. Also, after the Missouri Supreme Court’s decision, I was sued by plaintiffs in this case. Plaintiffs are concerned that the Missouri Supreme Court’s order will violate their federal constitutional rights, and I share these concerns.

9. On September 8, 2026, the U.S. District Court for the Eastern District of Missouri issued a temporary restraining order enjoining me “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.” Doc. 35.

¹ <https://enr.sos.mo.gov/>.

10. This Court stayed the District Court’s order “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.” *People Not Politicians v. Onder*, --- S. Ct. ---, 2026 WL 2659767, at *1 (Sept. 10, 2026).

11. On remand, the U.S. Court of Appeals ruled that “[o]nly use of the 2025 map complies with the Constitution and federal law” and ordered the District Court enter a permanent injunction prohibiting the use of any congressional map other than the 2025 map for the November 3 general election. *Onder v. Von Glahn*, No. 26-2797, slip op. at 3 (8th Cir. Sept. 17, 2026) (per curiam). The court further directed the District Court to stay its order until September 28, 2026 at 5:00pm “[t]o allow for appellate review.” *Id.* at 35. The District Court entered the order so directed. Doc. 57.

12. No matter what this Court decides in this pending stay application, the Missouri Secretary of State and the local election authorities will comply—as we have always done—with the governing court order, whether that be from federal or state courts.

13. And no matter which congressional map is in effect for the November General Election, running an orderly General Election in 2026 will be difficult. Local election authorities have faced an extremely difficult task of changing district boundaries and preparing their respective jurisdictions’ ballots. Indeed, Missouri’s congressional map has changed four times in the last month, starting with the Missouri Supreme Court’s injunction on September 3, 2026. There has been

widespread anger and confusion from voters following the Missouri Supreme Court's order to switch congressional maps after the Primary Election.

14. Before the Eighth Circuit's most recent opinion, at least some local election authorities were able to timely change their district boundaries to the congressional map imposed by the Missouri Supreme Court. This allowed counties to send out ballots in compliance with the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). *See, e.g.*, 52 U.S.C. § 20302(a)(8).

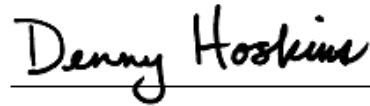
15. If the Eighth Circuit's order goes into effect, Missouri will apply for a UOCAVA hardship waiver to ensure that all military and overseas voters have a fair opportunity to vote. *See, e.g.*, 52 U.S.C. § 20302(g)(2)(B)(ii).

16. On the whole, it is my judgment that the public interest is best served by using the congressional map that governed the 2026 Primary Election.

17. Ultimately, the Missouri Secretary of State and the local election authorities will follow this Court's order and will do everything in our power to run Missouri's federal election smoothly—no matter which congressional map is in effect.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of September, 2026


Secretary of State

**In the United States Court of Appeals
For the Eighth Circuit**

CONGRESSMAN ROBERT “BOB” ONDER, *et al.*,

Plaintiffs-Appellees / Cross-Appellants,

v.

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

Defendants,

RICHARD VON GLAHN, and PEOPLE NOT POLITICIANS,

Intervenors-Defendants-Appellants / Cross-Appellees.

Appeal from the U.S. District Court for the Eastern District of Missouri
(4:26-cv-01424-SRC)

**BRIEF OF DEFENDANTS STATE OF MISSOURI AND MISSOURI
SECRETARY OF STATE**

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SUMMARY OF THE CASE

The Court has already scheduled oral argument in this case, which raises several questions of exceptional importance that are worthy of the Court's close attention. The Court's resolution of these questions will impact elections throughout the Eighth Circuit for decades to come.

First, this case implicates whether a referendum petition—signed by just 3.3% of a State's electorate—can suspend a duly-enacted congressional map enacted by the state legislature. The Elections Clause 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.” U.S. Const. art. I, § 4 (emphasis added). To the extent that means *anything*, it certainly militates against suspension of a law based on a referendum petition signed by a small fraction of voters.

Second and third, this case raises important questions about whether state law can mandate switching the congressional districts of hundreds of thousands of voters between a primary and a general election. As the District Court held, both Article I, Section 2 of the U.S. Constitution and the Equal Protection Clause forbid that maneuver. This Court should clarify those points in this appeal.

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JURISDICTIONAL STATEMENT

Under 28 U.S.C. § 1292(a), the Court possesses jurisdiction over the parties’ cross appeals of the District Court’s temporary restraining order requiring enforcement of the House Bill 1 (“HB 1”) map for the 2026 General Election. Defs.’ App. 168–80, R. Doc. 35.

To be sure, this Court “ordinarily lack[s] jurisdiction to hear an interlocutory appeal from [a] district court’s grant or denial of a TRO.” *In re Rutledge*, 956 F.3d 1018, 1026 (8th Cir. 2020). But the Court recognizes exceptions to this rule, including when the lower court’s order “has the ‘practical effect’ of granting an injunction.” *La Belle Dairy, LLC v. Sharpe Holdings, Inc.*, 183 F.4th 606, 611 (8th Cir. 2026) (quoting *Abbott v. Perez*, 585 U.S. 579, 594 (2018)).

This appeal clearly falls under a relevant exception because the U.S. Supreme Court assumed jurisdiction over this appeal when it stayed the District Court’s original temporary restraining order. *See People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767, at *1 (U.S. Sept. 10, 2026). Because the Supreme Court assumed jurisdiction over this appeal, it is appropriate for this Court to do so as well.

STATEMENT OF ISSUES

- I. Whether permitting a referendum *petition*—signed by just 3.3% of Missouri’s electorate—to suspend a duly-enacted congressional map violates the U.S. Constitution’s Elections Clause.**
- U.S. Const. art. I, § 4
 - *Moore v. Harper*, 600 U.S. 1 (2023)
 - *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787 (2015)
 - *Ohio ex rel. Davis v. Hildebrandt*, 241 U.S. 565 (1916)
- II. Whether changing a congressional map between a primary and general election—and forcing the primary nominees to run in the new districts—violates Article I, Section 2 of the U.S. Constitution.**
- U.S. Const. art. I, § 2
 - *United States v. Classic*, 313 U.S. 299 (1941)
 - *Klein v. United States*, 176 F.2d 184 (8th Cir. 1949)
 - *Montano v. Lefkowitz*, 575 F.2d 378 (2d Cir. 1978)
- III. Whether changing a congressional map between a primary and general election—and forcing the primary nominees to run in the new districts—violates the Equal Protection Clause.**
- U.S. Const. amend. XIV, § 1
 - *Gray v. Sanders*, 372 U.S. 368 (1963)
 - *Reynolds v. Sims*, 377 U.S. 533 (1964)
 - *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982)

INTRODUCTION

This fall, hundreds of thousands of Missouri voters will consider a slate of congressional candidates in the 2026 General Election that they never had the opportunity to consider in the Primary. *See* App. 44, 69, R. Doc. 1-2 at 4, 29. How, and why, Missouri ended up here merits careful consideration. Under Missouri law, a referendum petition—signed by just “five percent of the legal voters in each of two-thirds of [Missouri’s] congressional districts” (approximately 3.3% of the State’s electorate)—can unilaterally suspend a duly-enacted congressional map. Mo. Const. art. III, §§ 52(a), 52(b). On September 3, the Missouri Supreme Court held—for the first time—that referenda may proceed against federal congressional maps, and that the congressional map Missouri used for the Primary Election must be switched for the General Election. *See von Glahn v. Hoskins*, No. SC101805, 2026 WL 2628846 (Mo. Sept. 3, 2026).

In state-court litigation about Missouri’s 2026 congressional map, the Secretary cautioned that changing a congressional map between the Primary and General Elections would violate Article I, Section 2 and the Equal Protection Clause of the U.S. Constitution. *See* Respondent’s Br. at 56–60, *von Glahn v. Hoskins*, No. SC101805 (Mo., filed Aug. 27, 2026).

The Secretary also cautioned that divesting the General Assembly of redistricting authority based on a referendum petition—signed by just 3.3% of the State’s electorate—would violate the U.S. Constitution’s Elections Clause. *Id.* at 49–52. But the Missouri Supreme Court held that state procedural rules prevented the Secretary from raising any argument about the federal constitutional implications of suspending Missouri’s congressional map. *See von Glahn*, 2026 WL 2628846, at *2 n.5. That court also held that it would render an impermissible “advisory opinion” if the court considered the federal implications of its decision and its resulting injunction. *Id.*

The Secretary attempted to prevent these federal constitutional harms by applying for a stay of the Missouri Supreme Court’s injunction in the U.S. Supreme Court. *Hoskins v. von Glahn*, No. 26A304, 2026 WL 2647016, at *1 (U.S. Sept. 8, 2026). But that application was denied without reasoning. *Id.* Then, when two candidates and Missouri voters (“Plaintiffs”) sued the Secretary in federal District Court, the Secretary noted his agreement with their arguments—while also not opposing intervention by People Not Politicians and Richard von Glahn (“Intervenors”). Defs.’ App. 123–24, R. Doc. 19 at 14–15. The District

Court agreed that Plaintiffs faced a “palpably notable” threat to their voting rights, so it entered a TRO “on federal law grounds.” Defs.’ App. 172, 180, R. Doc. 35 at 5, 13. The TRO:

[E]njoin[ed], on federal law grounds, Secretary of State Hoskins—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.

Id. at 13. On appeal, this Court declined to stay the District Court’s TRO. *Onder v. People Not Politicians*, No. 26-2797, 2026 WL 2661912, at *1 (8th Cir. Sept. 9, 2026). However, the Supreme Court disagreed and granted a stay. *See People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767, at *1 (U.S. Sept. 10, 2026).

While the federal TRO was in effect, the Secretary attempted to comply and directed local election authorities to implement the HB 1 map. Yet the Secretary reversed course—and complied with the Missouri Supreme Court’s injunction—once the U.S. Supreme Court stayed the federal TRO. Even still, the Missouri Supreme Court held the Secretary in contempt of court last Thursday, September 10, 2026, because the Secretary violated the Missouri Supreme Court’s injunction while the

federal TRO was in effect. *See* Judgment of Civil Contempt, *von Glahn v. Hoskins*, No. SC101805 (Mo. Sept. 10, 2026).

The Secretary has attempted to defend the voting rights of Missourians—and the prerogatives of Missouri’s General Assembly—at every step of the seesaw of injunctions over the last couple weeks. But the Secretary’s attempts at compliance with a federal TRO has led to him being held in contempt by the Missouri Supreme Court. *See id.* Meanwhile, voters across Missouri have wondered which congressional map they will vote on for the November General Election. Indeed, the legally-required map changed three times in a week—the 2022 map on September 3, *von Glahn v. Hoskins*, 2026 WL 2628846, at *7; to the HB 1 map on September 8, *see* Defs.’ App. 180, R. Doc. 35 at 13; to the 2022 map on September 10, *People Not Politicians*, 2026 WL 2659767, at *1.

More than anything, Missourians need clarity about the map that they will vote under in the November General Election. Because the Supreme Court has already granted a stay forcing Missouri to use the 2022 congressional map for the 2026 General Election, the Secretary is complying with that ruling.

Even so, the Court should assess Plaintiffs' likelihood of success on the merits, which is the "most significant" factor in the preliminary-injunction analysis. *See Schmitt v. Rebertus*, 148 F.4th 958, 966 (8th Cir. 2025) (quoting *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013)). This case may involve the first attempt in American history to suspend a congressional map based on a referendum petition signed by a small minority of voters. But it certainly will not be the last. The Secretary anticipates that small fractions of Missouri's electorate will attempt to suspend duly-enacted congressional redistricting plans every time the State redistricts in the future.

Thus, in light of the Court's jurisdiction to assess Plaintiffs' likelihood of success on the merits, *Schmitt*, 148 F.4th at 966, the Court can and should hold that the origin of this drama—a referendum petition suspending a congressional map—is unconstitutional under the Elections Clause. The Court should also hold that changing a congressional map between a Primary and General Election—as the Missouri Supreme Court did here—violates Article I, Section 2 and the Equal Protection Clause of the U.S. Constitution. Such clarity would be

extremely beneficial for Secretary Hoskins, for future Missouri Secretaries of State, and for other States inside and outside this Circuit.

STATEMENT OF THE CASE

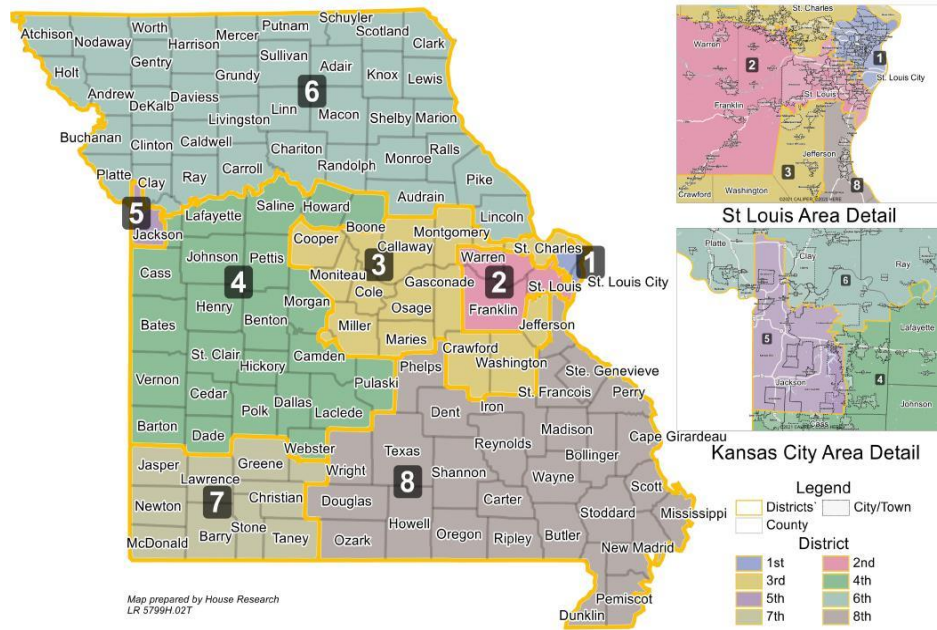
I. The enactment of the HB 1 map and subsequent failed challenges to it.

On September 12, 2025, the Missouri General Assembly passed House Bill 1 (“HB 1”), which redistricted the boundaries of Missouri’s eight congressional districts. HB 1 abrogated Missouri’s previous congressional map enacted in 2022. These two maps are quite different, as these reproductions demonstrate:

Missouri’s 2025 Congressional Map



21a
Missouri's 2022 Congressional Map



In response, Intervenor initiated the referendum campaign at issue in this case. Their public statements have long emphasized that they wanted a statewide vote on the HB 1 map. *See, e.g., Jen Rice, Missouri court upholds GOP’s gerrymandered map for midterms, other legal challenges continue*, Democracy Docket (Mar. 12, 2026).¹ But they also acknowledged a less democratic goal: suspending the State’s congressional map merely by submitting a referendum *petition* signed by “five percent of the legal voters in each of two-thirds of the congressional districts in the state” (approximately 3.3% of Missouri’s voters).

¹ <https://archive.is/QeQPj>.

Mo. Const. art. III, §§ 52(a), 52(b); *see also* Jason Rosenbaum, *Missouri's stack of redistricting lawsuits expected to grow over whether new map is in effect*, St. Louis Public Radio (Dec. 16, 2025).²

Intervenors' latter goal put Missouri in a quandary that led to this case. No court had ever addressed whether a small minority of voters could void a congressional map by submitting signatures, and the concept seemed implausible to state officials. The State tried to obtain guidance from a federal district court in October 2025—arguing that a referendum was not permitted under state law and would violate the Elections Clause. *See Mo. Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *1 (E.D. Mo. Dec. 8, 2025). But that court dismissed on ripeness grounds and abstained so the Missouri Supreme Court could potentially avoid the federal constitutional question. *Id.* at *1, *4 n.4 (citing Mo. Rev. Stat. § 116.120).

After the federal court's decision, Intervenors submitted their referendum petition. *See Maggard v. Missouri*, 733 S.W.3d 411, 412–13 (Mo. 2026). The Secretary strictly complied with his state-law duties in processing Intervenors' referendum petition. *See* Mo. Rev. Stat.

² <https://archive.is/m00Zy>.

§§ 116.120–116.150. Within two weeks of the petition’s submission, the Secretary forwarded Intervenors’ referendum petition to Missouri’s 116 local election authorities so that they could begin reviewing the signatures on Intervenors’ petition to verify validity. *See id.* § 116.130.1. That process takes a long time, which is why state law gave local election officials until July 28 and the Secretary until August 4, 2026—the day of the Primary Election—to finish the process. *See id.* §§ 116.130.2, 116.150.3.

While county officials processed signatures, substantial state-law litigation against the map ensued. The Missouri Supreme Court rejected all four challenges to the map it considered. *See Luther v. Hoskins*, 730 S.W.3d 567 (Mo. 2026); *Healey v. Missouri*, 732 S.W.3d 827 (Mo. 2026); *Maggard*, 733 S.W.3d 411; *NAACP v. Kehoe*, 734 S.W.3d 338 (Mo. 2026). In one of those cases—*Maggard*—the Missouri Supreme Court held that the Secretary of State could enforce HB 1 despite a referendum petition being *submitted*, but the court suggested in dictum that a certified referendum would result in the law being retroactively deemed void. 733 S.W.3d at 420. The court also, however, expressly reserved the question whether federal congressional maps are subject to referenda under state

law at all. *Id.* at 414 n.7. And the court did not address the State’s argument that—under the state-law equivalent of the *Purcell* principle, it was *already* too late to change maps in 2026. *See Hadley v. Junior Coll. Dist. of Metro. Kan. City*, 460 S.W.2d 1, 2–3 (Mo. 1970). Even though the State invoked *Hadley* in all four cases, the Missouri Supreme Court never indicated that it would order last-minute changes to the HB 1 map.

When the Missouri Supreme Court issued its *Maggard* decision in May 2025, the Secretary faced an imminent Primary Election. *Cf. Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (staying order affecting congressional map much further in advance of upcoming primary election). Candidate filing had closed in March 2026 under the HB 1 map, and campaigns had already long relied on the HB 1 map. Mo. Rev. Stat. § 115.349.1. Under those circumstances, the Secretary issued a certificate rejecting the referendum petition on the final day permitted by the state-law deadline—the same day as the 2026 Primary Election. *Id.* § 116.150.3. He did not dispute that Intervenor had obtained enough signatures. But he expressed his view that Missouri law does not authorize referenda on congressional maps, that the U.S. Constitution’s Elections Clause prohibits suspending maps before statewide

referendum votes, and that switching maps between the Primary and General Elections would violate the U.S. Constitution and federal statutes. *See* Add. 1–8, Mo. Sec’y of State, Certificate of Insufficiency of Referendum Petition 2026-R004 (Aug. 4, 2026); *see also von Glahn*, 2026 WL 2628846, at *2 n.5.

That same day, Missouri held its Primary Election. About 1.2 million Missourians voted in the elections. Defs.’ App. at 43–44, R. Doc. 1-2 at 3–4. The State did so following the Missouri Supreme Court’s repeated upholding of the HB 1 and the Attorney General’s issuance of an opinion letter on May 13, 2026, explaining why the 2026 Primary Election must occur under the HB 1 map. *See* Mo. Att’y Gen., Op. Letter 03-2026 (May 13, 2026). No court ever suggested that Missouri could not use the HB 1 map for the Primary Election.

II. The *von Glahn* state-court litigation.

Intervenor von Glahn promptly sued in state court the day of the Primary Election—represented by the same lawyers who now represent him in this litigation. His complaint sought an injunction “reversing Defendant Hoskins’ certification decision,” and an injunction “[r]estrain[ing]” the Secretary “and those acting in concert with him from

taking any further steps to implement or mandate the use of HB 1.” *See* Pet. at 8, *von Glahn v. Hoskins*, No. 26AC-CC00440 (Mo. Cole Cnty. Cir. Ct., filed Aug. 4, 2026).

The state trial court rejected Intervenor’s requests on several grounds, holding that both the Missouri and U.S. Constitutions prohibit referenda on Missouri’s congressional map. App. 46–62, R. Doc. 1-2 at 6–22. It also held that the U.S. Constitution’s Elections Clause forbids changing Missouri’s congressional map based on a referendum petition signed by just “five percent of the legal voters in each of two-thirds of the congressional districts in the state.” *Id.* at 23–24; Mo. Const. art. III, §§ 52(a), 52(b). The court further held that changing Missouri’s congressional map between the Primary and General Elections would violate Article I, Section 2 of the U.S. Constitution and the Equal Protection Clause. App. 67–70, R. Doc. 1-2 at 27–30. Finally, the trial court held that it would not change the HB 1 map before the 2026 election in light of *Hadley*—which is Missouri’s version of the *Purcell* principle. *Id.* at 31–36 (citing *Hadley*, 460 S.W.2d 1).

The state trial court supported its holdings with several factual findings—none of which were subsequently contested (or mentioned) by

the Missouri Supreme Court. The trial court found that “changing the maps at this late juncture is not just ‘impractical,’ it is impossible.” *Id.* at 36. It also found that, “Candidate filing closed months ago. Over 1.2 million Missourians voted in the August 4 Primary. Nominees have been selected. Campaigns for the general election are underway.” *Id.* at 34. Also, the trial court found that “revert[ing] Missouri to the plan the General Assembly repealed in HB 1 ... would move hundreds of thousands of voters into different districts for the imminent 2026 general election compared to the districts in which they cast their ballots in the August primary elections[.]” *Id.* at 4. The court also held that “[t]hose voters would possess materially less voting power than voters whose district remained the same.” *Id.* at 29.

The state trial court further emphasized that “Plaintiff has not demonstrated how State officials could reverse course and implement some entirely new map, how nominees selected by voters in one set of districts would campaign in different ones, or how voters would make sense of a last-minute overhaul of the districts they just voted in.” *Id.* at 34. In light of these findings, the trial court “decline[d] to order an unprecedented remedy that is impossible to implement.” *Id.* at 36.

Surprisingly, the Missouri Supreme Court reversed and directly issued an injunction prohibiting the Secretary—“and all those acting in concert with him”—“from implementing, using, or mandating the use of the congressional redistricting in HB 1.” *See von Glahn*, 2026 WL 2628846, at *7. Although the court provided no detail on *how* Missouri is to comply with its order, a footnote in the court’s opinion stated that Missouri must use “the congressional redistricting [plan] the General Assembly established in 2022.” *Id.* at *6 n.8. That court justified this injunction by concluding that, under the Missouri Constitution, just 3.3% of the State’s voters can unilaterally override the state legislature and impose their preferred congressional map for an entire election cycle. *See id.* at *2 n.5, *5–7 & n.8 (citing Mo. Const. art. III, §§ 52(a), 52(b)). That court also explicitly eschewed any consideration of the “confusion, expense, and practical difficulties” that “may result” from its injunction. *Id.* at *6 n.8. And it did so while never questioning or discussing the trial court’s finding that “changing the maps at this late juncture is not just ‘impractical,’ it is impossible.” *See* App. 76, R. Doc. 1-2 at 36.

The Missouri Supreme Court also refused to address the Secretary’s federal defenses. The court stated in a footnote that it deemed these

arguments waived because the Secretary did not raise these points in his certificate of insufficiency, 2026 WL 2628846, at *2 n.5—even though the certificate expressly incorporated by reference an attached Attorney General opinion specifically prepared to address these arguments, *see* Add. 1–8, Mo. Sec’y of State, Certificate of Insufficiency of Referendum Petition 2026-R004 (Aug. 4, 2026).

One day after the decision, the Secretary asked the U.S. Supreme Court for an emergency stay. In opposing the stay, Intervenor von Glahn argued—among other things—that the Missouri Supreme Court’s decision was supported by an adequate and independent state-law ground and that Secretary Hoskins could not invoke equitable principles as the applicant. Respondent’s Br. at 14–17, 35–37, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sept. 7, 2026). On September 8, Justice Kavanaugh denied the application without comment. *See Hoskins v. von Glahn*, No. 26A304, 2026 WL 2647016 (U.S. Sept. 8, 2026).

III. The *Onder* lawsuit.

On September 4, two congressional candidates and two voters who were moved to new congressional districts by the Missouri Supreme Court’s order sued Secretary Hoskins and the State of Missouri itself

(hereafter, the “Secretary”).³ The Secretary argued that Missouri would—because of the Missouri Supreme Court’s order—imminently violate the Plaintiffs’ federal constitutional rights by changing congressional maps. Of course, the Secretary was adverse to Plaintiffs because he lacked the power to voluntarily give them the relief they sought due to the Missouri Supreme Court’s order. Yet, the Secretary informed the District Court that he agreed with Plaintiffs’ argument that the Missouri Supreme Court’s order would force the State to violate the U.S. Constitution, and the Secretary argued that the equities favored maintaining the congressional map that governed the Primary Election. *See* App. 110–141, R. Doc. 19; *cf. Hollingsworth v. Perry*, 570 U.S. 693, 708–09 (2013); *Nat’l Republican Senatorial Comm. v. FEC*, 146 S. Ct. 2404, 2413 (2026) (federal government declining to defend unconstitutional statute). To be clear, the Secretary did not enter a consent decree with Plaintiffs.

³ The State of Missouri has moved to dismiss Plaintiffs’ claims based on sovereign immunity under the Eleventh Amendment. App. 142–43, R. Doc. 28. The Secretary, however, “acknowledge[s] that Plaintiffs’ constitutional claims for equitable relief may proceed against [a] state officer Defendant.” *Id.* at 2 (citing *Ex parte Young*, 209 U.S. 123, 159–60 (1908)). The State of Missouri’s motion to dismiss under the Eleventh Amendment remains pending in the District Court.

Intervenors promptly moved to intervene—and were granted intervention without opposition by the Secretary. Defs.’ App. 146–47, R. Doc. 32; Defs.’ App. 124, R. Doc. 19 at 15. Intervenors moved to dismiss on several procedural grounds. Defs.’ App. 148–167, R. Doc. 33. The District Court also ordered all parties to address the Court’s own questions, about whether abstention doctrines applied, the applicability of the *Rooker-Feldman* doctrine, and how the Supreme Court’s anticipated stay decision in the *von Glahn* case would affect the case before it. Defs.’ App. 108, R. Doc. 13.

After the stay denial in *von Glahn*, the District Court granted Plaintiffs’ request for a TRO and ordered the State to use the HB 1 map for the General Election. Defs.’ App. 168–80, R. Doc. 35. On the merits, the District Court found Plaintiffs have a “high probability of success” because the State was poised to “disenfranchise voters of their votes in the primary election, in clear violation of Article I, Section 2” of the U.S. Constitution. *Id.* at 8–9. The District Court also found a “high probability of success” on Plaintiffs’ Equal Protection Clause claim. *Id.* at 9–11. The court reasoned that: “Using any map other than HB 1’s for the general election creates two classes of voters: those who happen to

stay in their HB 1 congressional districts, and those who do not. Likewise, it divides candidates between those who retain the same electorate, and those who do not. In both situations, those who ‘do not’ are divested of their fundamental electoral rights.” *Id.* at 10. Finally, the District Court rejected an argument under the Elections Clause that the U.S. Constitution requires—but the Missouri Constitution lacks—a clear statement authorizing referenda against congressional maps. *Id.* at 6–7. The District Court did not respond to a separate argument that the Missouri Constitution violates the Elections Clause by permitting 3.3% of registered voters to void a governing congressional map *before* a statewide vote. Defs.’ App. 133, 135–37, R. Doc. 19 at 24, 26–28.

The District Court also analyzed the other TRO factors. The District Court found Plaintiffs would be irreparably harmed absent relief because voters “would have to cast their general-election votes for candidates whom they had no role in nominating” and candidates had “campaign[ed] and raise[d] money in the HB 1 districts that Missouri’s highest election authority presented to them.” Defs.’ App. 171–17, R. Doc. 35 at 4–5.

On the equities, the District Court cited the Supreme Court’s decision in *Malliotakis v. Williams*, 146 S. Ct. 809 (2026), and reasoned that the *Purcell* principle supports—or at least does not foreclose—relief to prevent chaos in Missouri’s imminent federal election. App. 178–79, R. Doc. 35 at 11–12. And Missouri being forced to use “a different map for the general election would wreak havoc on the fairness and orderliness of Missouri’s congressional elections, calling into question the candidacy of those nominated in the primaries and the votes of those who voted in the primaries.” *Id.* at 12. The court also noted that “[w]idespread voter confusion would inevitably follow.” *Id.* The court thus ordered the Secretary to use the HB 1 map for the 2026 General Election. *See id.* at 13.

Following the District Court’s decision, Missouri’s state-law deadline for altering the ballot for the 2026 General Election passed. Mo. Rev. Stat. § 115.125.2. Accordingly, in accordance with the District Court’s order, the Secretary instructed county election officials to comply promptly with the Court’s order. With the deadline to send out military and absentee ballots just eleven days away at that time, 52 U.S.C.

§ 20302(a)(8), local election officials needed confirmation so that they could begin preparing absentee ballots.

Intervenors took two quick steps in response to the District Court’s TRO. First, a couple hours after the District Court rendered its order, Intervenor von Glahn filed a motion on the Missouri Supreme Court’s *von Glahn* docket and asked that court to hold Secretary Hoskins in contempt and to issue an order barring him from complying with the federal court’s order. *See* Emergency Mot. for Contempt, *von Glahn v. Hoskins*, No. SC101805 (Mo., filed Sept. 8, 2026). The motion was signed, submitted, and argued for by Charles Hatfield, *id.* at 4—who also represents Intervenors as their lead counsel in this appeal. Specifically, Intervenor von Glahn asked the Missouri Supreme Court to “make clear that regardless of other orders (except from the United States Supreme Court) the Missouri Secretary of State must comply with this court’s injunction.” *Id.* The Missouri Supreme Court promptly issued a show-cause order that noted the District Court’s decision but suggested it was issued in violation of the *Rooker-Feldman* doctrine (an argument Intervenors later

dropped in the U.S. Supreme Court).⁴ See Order to Show Cause, *von Glahn v. Hoskins*, No. SC101805 (Mo., filed Sept. 8, 2026).

Second, Intervenor asked this Court for a stay of the District Court’s injunction pending appeal. On September 9, this Court rejected the stay application without waiting for Plaintiffs or the Secretary to respond. *Onder v. People Not Politicians*, No. 26-2797, 2026 WL 2661912, at *1 (8th Cir. Sept. 9, 2026). Intervenor then sought a stay from the U.S. Supreme Court, which that Court granted in an unreasoned order. See *People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767, at *1 (U.S. Sept. 10, 2026).

Shortly thereafter, this Court, “[o]n [its] own motion,” directed the clerk to issue an “expedited schedule for briefing and arguing the merits of this appeal.” Order, *Onder v. von Glahn*, No. 26-2797 (8th Cir., filed Sept. 10, 2026); see also Order, *Onder v. Missouri*, No. 26-2827 (8th Cir.,

⁴ The *Rooker-Feldman* doctrine does not bar *non-parties* from bringing federal claims. See *Lance v. Dennis*, 546 U.S. 459, 465–66 (2006) (per curiam). This is doubly true here, where the Missouri Supreme Court expressly declined to consider any federal questions counseling against its injunction. See *von Glahn*, 2026 WL 2628846, at *2 n.5. The District Court addressed *Rooker-Feldman* and Intervenor’s other erroneous jurisdictional arguments in its order denying a stay of the TRO. See App. 181–88, Add. 22–29, R. Doc. 49.

filed Sept. 11, 2026). Under the Court’s order, this case will be argued in two days, on Thursday, September 17, 2026.

IV. The Missouri Supreme Court holds the Secretary of State in contempt of court.

Meanwhile, on September 10, 2026, the Missouri Supreme Court held the Secretary in contempt of court for failing to comply with the state-court injunction while the federal TRO was in effect. *See* Judgment of Civil Contempt, *von Glahn v. Hoskins*, No. SC101805 (Mo. Sept. 10, 2026).

The Missouri Supreme Court’s contempt order noted that, “On September 3,” after the court’s opinion in *von Glahn*, “Missouri Secretary of State Denny Hoskins complied with the Court’s September 3 injunction by sending notice to local election authorities to use the 2022 congressional district map.” *Id.* at 2. However, “on September 8, the secretary reversed course. The secretary sent an e-mail to the same local election authorities directing them to utilize the HB 1 congressional district map pursuant to a temporary restraining order entered by the United States District Court for the Eastern District of Missouri.” *Id.*

As a reminder, the District Court’s TRO provided, in relevant part:

[T]he Court grants Plaintiffs’ motion for a temporary restraining order and enjoins, on federal law grounds, Secretary of State Hoskins—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.

Defs.’ App. 180, R. Doc. 35, at 13. Acknowledging the existence of this order, the Missouri Supreme Court still found the Secretary in contempt and concluded “any assertion that [the Secretary] was not attempting to defy this Court’s order but merely trying to comply with a federal court order is disingenuous.” Judgment of Civil Contempt at 3 n.2, *von Glahn v. Hoskins*, No. SC101805 (Mo. Sept. 10, 2026). That court faulted the Secretary for “consent[ing] to the request for a temporary restraining order from the federal district court and advocat[ing] for the federal district court’s intervention in spite of th[e] Court’s clear directive enjoining him from implementing, using, or mandating the use of the congressional redistricting in HB 1 for the November 2026 general election.” *Id.*

Additionally, the Missouri Supreme Court’s contempt order reasoned that the District Court’s TRO allowed the Secretary to simply do *nothing*—which seemingly meant freezing the 2022 map at the state-law statutory deadline despite the District Court’s order. *Id.* at 3–4;

Mo. Rev. Stat. § 115.125.2. The Missouri Supreme Court held that the “language” of the federal TRO “did not require [the Secretary] to order local election authorities to implement the HB 1 map for the 2026 general election.” Judgment of Civil Contempt at 3–4, *von Glahn v. Hoskins*, No. SC101805 (Mo. Sept. 10, 2026). “In fact,” the court continued, “the temporary restraining order did not require the secretary to affirmatively act at all. Rather, it simply enjoined him 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.” *Id.* at 4. According to the court, “[t]he secretary offer[ed] no explanation as to why he could not comply with both this Court’s order and the federal district court’s temporary restraining order by simply telling the local election authorities to take no action until further clarification was received from the courts.” *Id.*

The Missouri Supreme Court then found that “Missouri Secretary of State Denny Hoskins was in civil contempt and, pursuant to section 476.120, RSMo 2016, he could be subject to punishment.” *Id.* The court continued, “however, that the secretary ha[d] purged himself of said contempt” by implementing the 2022 map after the U.S. Supreme Court’s

stay. *Id.* Thus, the court “enter[ed] no order of commitment and impose[d] no fine in relation to its contempt finding.” *Id.*

STANDARD OF REVIEW

Last Thursday, the U.S. Supreme Court vacated the District Court’s TRO in an unreasoned order. *See People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767, at *1 (U.S. Sept. 10, 2026). Thus, in seeking re-imposition of a preliminary injunction or TRO, Plaintiffs seek “judicial intervention that has [previously] been withheld.” *See Nken v. Holder*, 556 U.S. 418, 429 (2009) (quoting *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers)). The burden is therefore on Plaintiffs to make “a clear showing” that they are “entitled to such relief.” *Hotchkiss v. Cedar Rapids Cmty. Sch. Dist.*, 115 F.4th 889, 892 (8th Cir. 2024) (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008)).

This Court assess four factors in determining whether to grant preliminary injunctive relief:

(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.

Id. at 893 (quoting *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc)). A preliminary injunction is “a matter of equitable discretion,” and “a preliminary injunction does not follow as a

matter of course from a plaintiff's showing of a likelihood of success on the merits.” *Id.* at 894 (quoting *Benisek v. Lamone*, 585 U.S. 155, 158 (2018)). “Rather, a court must also consider whether the movant has shown that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 894 (quoting *Benisek*, 585 U.S. at 158). Accordingly, a court can deny preliminary injunctive relief on the equities alone, even if the movant is likely to succeed on the merits. *See id.*

This is especially true in the elections context, where courts regularly deny injunctive relief based on the equities—including the proximity of a judicial order to an upcoming election. *See Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring in grant of applications for stays) (“[T]he *Purcell* principle is probably best understood as a sensible refinement of ordinary stay principles for the election context—a principle that is not absolute but instead simply heightens the showing necessary for a plaintiff to overcome the State’s extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures.”).

SUMMARY OF THE ARGUMENT

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. *See People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767, at *1 (U.S. Sept. 10, 2026) (staying TRO without reasoning); *see also Hoskins v. Von Glahn*, No. 26A304, 2026 WL 2647016, at *1 (U.S. Sept. 8, 2026) (denying application of stay of the Missouri Supreme Court’s injunction without reasoning). The Secretary is complying with that ruling.

Even so, Plaintiffs’ likelihood of success on the merits of their constitutional claims has not changed. At the threshold, Intervenor should never have been able to force Missouri into this extraordinary situation. The underlying premise of their legal campaign is that, under the Missouri Constitution, about 3.3% of voters can void a governing congressional map merely by submitting *a petition*—and that the State must use *their* preferred congressional map before any statewide vote. If the U.S. Constitution’s Elections Clause means anything, it surely prevents activists from unilaterally voiding a congressional map by submitting a bunch of signatures. *See* U.S. Const. art. I, § 4 (“The Times,

Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the *Legislature* thereof ...” (emphasis added)).

Even if the Court disagrees, Plaintiffs are likely correct that Missouri will imminently violate the U.S. Constitution by conducting the General Election under a dramatically different congressional map than it used during the Primary Election. This unprecedented act violates Article I, § 2 by disenfranchising scores of Missourians who voted in the Primary Election. It also violates the Equal Protection Clause by disadvantaging voters moved to new congressional districts—while giving many other voters the chance to choose candidates in the Primary Election.

ARGUMENT**I. The Secretary acknowledges the U.S. Supreme Court’s stay order.**

Although it contained no reasoning, the U.S. Supreme Court’s September 10, 2026 order staying the District Court’s TRO strongly suggests that the Justices have made up their minds that the 2022 congressional map should be used in the 2026 General Election. *See People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767, at *1 (U.S. Sept. 10, 2026). The Secretary is complying with their stay order.

If this Court were to enter preliminary-injunctive relief requiring the use of the HB 1 map, the Secretary would face difficulties because he would be subject to conflicting orders again. The Missouri Supreme Court has made clear that—regardless of any order issued by this Court or a federal district court—it expects the Secretary to comply with its injunction issued under state law. *See Judgment of Civil Contempt, von Glahn v. Hoskins*, No. SC101805 (Mo. Sept. 10, 2026).

Undoubtedly, the Supremacy Clause instructs that federal law controls—and the Secretary agrees that he is ultimately bound by federal law. *See* U.S. Const. art. VI (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the

supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”). That is why the Secretary attempted to comply with the District Court’s TRO order. But he was punished for that attempt. *See* Judgment of Civil Contempt, *von Glahn v. Hoskins*, No. SC101805 (Mo. Sept. 10, 2026).

If the Court subjects the Secretary to conflicting orders, the Secretary would appreciate direct guidance on what effect a federal injunction—issued on federal legal grounds—has on a conflicting state-law injunction issued on state-law grounds. The Missouri Supreme Court has indicated that *only* the U.S. Supreme Court—and not a federal district court or this Court—can excuse the Secretary from complying with their order. *See id.* at 1, 3. The Secretary would thus also request any federal order necessary to ensure that the Secretary can comply with a federal injunction, *see* 28 U.S.C. § 1651—without threat of contempt, confinement, or other punishment by the Missouri Supreme Court.

II. The Court should clarify the merits questions at issue in this appeal, even if it denies preliminary relief on the equities.

The Secretary continues to believe that—under the U.S. Constitution—Plaintiffs are likely correct on the merits. Even if the

Court denies relief on equitable grounds, that need not stop this Court from analyzing likelihood of success on the merits, which is the “most significant” factor in the preliminary-injunction analysis. *See Schmitt*, 148 F.4th at 966 (quoting *Home Instead*, 721 F.3d at 497).

The Secretary maintains that the Missouri Supreme Court’s injunction is federally unconstitutional—for all the reasons that he attempted to explain to the Missouri Supreme Court. That court, of course, explicitly declined to address the Secretary’s “claimed federal law violations and whether”—under federal law—“the congressional redistricting in HB 1 should or must remain in place through the 2026 election cycle.” *von Glahn*, 2026 WL 2628846, at *2 n.5. Instead, the Missouri Supreme Court held that analysis of such federal questions would constitute “an advisory opinion, which [the] [c]ourt lacks the authority to issue.” *Id.* Thus, this Court operates on a blank slate in assessing questions under the Elections Clause; Article I, Section 2; and the Equal Protection Clause of the U.S. Constitution.

For the below reasons, Plaintiffs are likely to succeed on all these claims.

A. The Elections Clause

The Elections Clause prohibits suspending a state legislature’s duly-enacted congressional map based on a referendum petition signed by just 3.3% of the State’s voters. *See* U.S. Const. art. I, § 4.⁵

Missourians’ elected representatives passed the HB 1 map by strong margins—21 to 11 in the Senate and 90 to 65 in the House of Representatives. *See* App. 41, R. Doc. 1-2 at 1. Nevertheless, the Missouri Supreme Court concluded that—under state law—approximately 3.3% of registered voters unilaterally suspended the HB 1 map merely by submitting a valid referendum petition. *See von Glahn*, 2026 WL 2628846, at *6 n.8 (citing Mo. Const. art. III, § 52(b)); *see also* Mo. Const. art. III, § 52(a). However, neither this Court nor the U.S.

⁵ To be sure, the Plaintiffs appear to make a slightly different point. They contend that the Elections Clause forbids divesting a state legislature of redistricting authority absent a clear statement in state law. Defs.’ App. 18–27, R. Doc. 1 ¶¶ 50–73; Defs.’ App. 99–101, R. Doc. 2-1 at 5–7. The Secretary agrees with that position (and has briefed it before), but he focuses on a different point here—that a referendum proponent cannot divest the Missouri General Assembly of its redistricting authority merely by submitting a referendum petition signed by just 3.3% of the State’s electorate. Defs.’ App. 133, 135–37, R. Doc. 19 at 24, 26–28. The Secretary preserved that argument below, *id.*, and this Court can address any argument supported by the record, *Gonzales-Perez v. Harper*, 241 F.3d 633, 638 n.6 (8th Cir. 2001).

Supreme Court has *ever* sanctioned such a profoundly anti-democratic arrangement, and the Elections Clause forbids permitting a small fraction of a State’s voters from suspending a congressional map—and imposing a new map—before a statewide vote. *Cf. Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay) (“The Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules.” (citing U.S. Const. art. I, § 4)).

The Elections Clause 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.” U.S. Const. art. I, § 4 (emphasis added). The term “Legislature” was “not . . . of uncertain meaning when incorporated into the Constitution”: It referred to “the representative body which made the laws of the people.” *Hawke v. Smith*, 253 U.S. 221, 227 (1920).

“[T]he Elections Clause expressly vests power to carry out its provisions in ‘the Legislature’ of each State, a deliberate choice that this Court must respect.” *Moore v. Harper*, 600 U.S. 1, 34 (2023). Of course,

the Supreme Court has held that the Elections Clause does not mean that *only* a state legislature can set rules for federal elections. *See id.* The Supreme Court has primarily employed a history-and-tradition-based approach in this context, *cf. N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 79 (2022) (Kavanaugh, J., concurring), observing that gubernatorial vetoes and ordinary judicial review have coexisted with state legislative authority since the founding, *see Moore*, 600 U.S. at 24–25; *Smiley v. Holm*, 285 U.S. 355, 368 (1932). More controversially, the Supreme Court has also rejected challenges to using state-legislative redistricting commissions and statewide popular votes to set aside redistricting plans. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n (“AIRC”)*, 576 U.S. 787, 824 (2015).

But the Supreme Court has *never* sanctioned the Missouri Supreme Court’s bizarre and profoundly anti-democratic holding. According to the Missouri Supreme Court, a tiny minority of the State’s registered voters can unilaterally void a redistricting map passed by the state legislature and signed by the governor *merely* by submitting a valid referendum petition. *See von Glahn*, 2026 WL 2628846, at *5–7 & n.8. No statewide vote. Just a petition signed by about 3.3% of the voters. As far as

Missouri is aware, no State has ever been forced to use a different congressional map for an election cycle merely because a small minority of voters submitted a petition. And it certainly has never been done after a completed primary election. Here, as in other contexts, “[p]erhaps the most telling indication of the severe constitutional problem” present here is that Respondent has not “located any historical analogues for this novel” arrangement. *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 505–06 (2010) (internal quotation omitted).

Moreover, the Missouri Supreme Court’s holding would annihilate the Missouri General Assembly’s authority over redistricting. *Contra Moore*, 600 U.S. at 34 (reaffirming importance of Elections Clause’s delegation of authority to state legislature). Just consider how redistricting will play out going forward in Missouri. *Every* time Missouri redistricts in a way that favors the majority political party, the minority political party will obviously be incentivized to submit a referendum petition freezing the new map. Such a step is easy; a campaign merely needs to gather signatures from “five percent of the legal voters in each of two-thirds of [Missouri’s] congressional districts.” *See* Mo. Const. art. III, § 52(a). Here, Intervenors gathered those signatures in about a

month. *See People Not Politicians v. Hoskins*, No. SC101801, 2026 WL 2628848, at *1 (Mo. Sept. 3, 2026) (per curiam). Even groups with far less funding than Intervenors routinely put measures on Missouri’s statewide ballot. *See, e.g.,* Kurt Erickson, *Unions move to block ‘right to work’ law in Missouri*, ST. LOUIS POST-DISPATCH (Aug. 18, 2017).⁶ Thus, political parties (and many other entities) have the resources and incentive to use Intervenors’ maneuver—especially as that could give them one or more congressional seats for at least two years (as would be true here). And imagine if this happens after a decennial Census, in which Missouri gains or loses a congressional seat. Under the Missouri Supreme Court’s approach, state law would seemingly require Missouri to use an old congressional map with the wrong number of seats. In all events, the General Assembly’s authority over redistricting would be destroyed.

Intervenors will likely invoke *Ohio ex rel. Davis v. Hildebrandt*, 241 U.S. 565 (1916), but that argument fails. Although *Hildebrandt* seemingly sanctioned statewide votes disapproving congressional maps as consistent with the Elections Clause, *but see AIRC*, 576 U.S. at 824–

⁶ <https://archive.is/MDr6z>.

50 (Roberts, C.J., dissenting), it certainly did not sanction the Missouri Supreme Court’s unprecedented approach. *Hildebrandt* merely recognized the ability to *veto* redistricting legislation via a statewide referendum vote. *AIRC*, 576 U.S. at 840 (Roberts, C.J., dissenting) (discussing *Hildebrandt*). “The result of the decision was to send *the Ohio Legislature* back to the drawing board to do the redistricting.” *Id.* (emphasis in original). *Hildebrandt* never suggested that just 3.3% of registered voters could force a State to use their preferred map for an entire election cycle even *before* a statewide vote. If *that* is permissible, little will be left of the Elections Clause.

Nor does the Supreme Court’s closely divided decision in *AIRC*, 576 U.S. 787, help Intervenors. In rejecting an Elections Clause challenge to independent redistricting commissions, the majority relied in substantial part on its belief that independent redistricting commissions could enhance democracy. *See AIRC*, 576 U.S. at 797–98; *id.* at 816–17; *id.* at 822–24. Those considerations *cannot* support the Missouri Supreme Court’s ruling, which undermines democracy by giving small political minorities unstoppable political power over the majority. *See von Glahn*, 2026 WL 2628846, at *5–7 n.8. Inherent in a healthy approach to *stare*

decisis is respecting the logical limits of decisions. *See, e.g., Louisiana v. Callais*, 146 S. Ct. 1131, 1163 (2026) (“Respect for precedent cannot be a one-way street.”). That wisdom counsels against extending *AIRC*—contrary to its own reasoning—to this markedly new context.

B. Article I, Section 2

Intervenors have never contested that—if Missouri’s congressional map changes—over one million Missourians will vote for representatives in the General Election that they never had the opportunity to consider in the Primary Election. Nor could Intervenors contest this. This is exactly what they demanded. This is also required now by Missouri law, which provides that the names of the August primary nominees must be printed on the General Election ballot—even if a vacancy arises through death or disqualification less than eight weeks before the election. *See* Mo. Rev. Stat. § 115.379.

Missouri held a Primary Election on the HB 1 map over a month ago. *See* App. 43–44, R. Doc. 1-2 at 3–4. At that time, about 1.2 million Missourians, including Plaintiffs, voted under the map. *Id.* Yet, on September 3, 2026, when the Missouri Supreme Court ordered the certification of Intervenors’ referendum petition, the map was suspended

under state law. *Glahn*, 2026 WL 2628846, at *5–7. And, in light of this suspension, many Missourians will be forced to vote for a slate of candidates in the General Election that they never had an opportunity to consider in the Primary. App. 43–44, 69, R. Doc. 1-2 at 3–4, 29; App. 168–72, 175–79, R. Doc. 35 at 1–5, 8–12. As the District Court found, this plainly violates Article I, Section 2 of the U.S. Constitution because it disenfranchises Missourians from a fundamental aspect of choosing *their* representative. App. 175–76, R. Doc. 35 at 8–9.

Article I, Section 2 provides, “The 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, cl. 1 (emphasis added). This language protects the right to vote and prohibits States from nullifying votes cast in federal congressional elections. *See id.* Additionally, the Supreme Court has recognized that the Constitution protects a fundamental right to vote. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 (2008) (plurality op.). If that right protects *anything*, surely it prohibits forcing voters to choose between General-Election candidates that they had no role in nominating in the Primary Election. *See United States v. Mosley*, 238 U.S. 383, 386 (1915)

(recognizing that the constitutional right to vote includes “right to have one’s vote counted”).

Indeed, a host of federal and state judges have recognized that “[p]rimary elections for offices chosen by the electorate in separate geographical districts obviously make no sense unless the districts are the same for the ensuing general election as for the primary.” *Terrazas v. Slagle*, 821 F. Supp. 1154, 1159 (W.D. Tex. 1992) (rejecting Texas’s attempt to change a state legislative map between a primary and general election); *see also Covington v. North Carolina*, 316 F.R.D. 117, 176–77 (M.D.N.C. 2016) (allowing General Election “to proceed as scheduled under the challenged plans” despite being determined unconstitutional after the Primary); *Page v. Va. State Bd. of Elections*, 58 F. Supp. 3d 533, 554 (E.D. Va. 2014) (same), *vacated on other grounds sub nom., Cantor v. Personhuballah*, 135 S. Ct. 1699 (2015); *Vera v. Richards*, 861 F. Supp. 1304, 1310, 1351 (S.D. Tex. 1994), *aff’d sub nom., Bush v. Vera*, 517 U.S. 952 (1996); *In re Rose*, No. 26-0916, 2026 WL 2672098, at *4 (Tex. Sept. 11, 2026) (requiring Galveston County to use its precinct maps from “the March 2026 primary election in the forthcoming November general

election and to conduct a general election only for offices for which a primary election was held”).

Nor does the fact that, as applied here, the Missouri Constitution nullifies a Primary Election—as opposed to a General Election—change anything. Article I, Section 2 “applies to the entire process by which federal legislators are chosen.” *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 227 (1986). “Where the state law has made the Primary an integral part of the procedure of choice ... the right of the elector to have his ballot counted at the Primary, is likewise included in the right protected by” the Constitution’s right to vote. *United States v. Classic*, 313 U.S. 299, 318–19 (1941). And that is obviously true in Missouri, which has long recognized that congressional primaries are “an integral part of the electoral process” in the State. *Pollard v. Bd. of Police Comm’rs*, 665 S.W.2d 333, 340 (Mo. 1984) (citing *Classic*, 313 U.S. 299; *Smith v. Allwright*, 321 U.S. 649 (1944)).

Indeed, in 1949, this Court held that Missouri’s primary election system—which provided that “no one can be elected to office without receiving nomination at a primary election”—was “an integral part of the general election laws of the state for the election of public officers,

including Members of Congress.” *Klein v. United States*, 176 F.2d 184, 187 (8th Cir. 1949). Missouri’s Primary Elections are just as integral today. Missouri law still provides that “all candidates for elective office shall be nominated at a primary election.” Mo. Rev. Stat. §§ 115.339, 115.343. And the Primary “exclud[es] from the ballot on the general election the names of candidates rejected at the primary” such that it “impose[s] restrictions upon the choice of candidates by the voters save by voting at the primary election.” *Classic*, 313 U.S. at 313; *see* Mo. Rev. Stat. § 115.343.

Like Louisiana’s election laws in *Classic*, and like Missouri’s election law in *Klein*, Missouri’s law today makes the Primary Election an “integral” part of choosing representatives in Missouri. *Classic*, 313 U.S. at 314–19; *Klein*, 176 F.2d at 187. Therefore, Article I, Section 2 of the U.S. Constitution preempts any state-law suspension of a congressional map to the extent that it deprives voters of the ability to vote for their representatives in the Primary Election.

Intervenors have suggested throughout this litigation that, so long as Missourians had a right to vote in *a* Primary, that is *good enough* to satisfy their right to have their ballots counted. But Missourians are

deprived of their right to “cho[o]se” *their* representative when they are cut off from an integral aspect of Missouri’s process for selecting representatives. U.S. Const. art. I, § 2; *see Mosley*, 238 U.S. at 386. “It is simply inconsistent with the concept of election of Representatives by districts that a candidate should be chosen in part by persons outside the district elected to these posts as such.” *Montano v. Lefkowitz*, 575 F.2d 378, 385 (2d Cir. 1978) (Friendly, J.). As Judge Friendly aptly put it, “[i]f the state provides a primary election to select party candidates for the House of Representatives, the voters in each district are entitled to participate in it on the same basis both of equality and of independence from other districts having possibly divergent interests that they enjoy in the election itself.” *Id.* at 385–86. Intervenors ask this Court to simply “close [its] eyes to [this] fact.” *See Classic*, 313 U.S. at 319.

Because Article I, Section 2 prohibits cutting off voters from the right to “choose” their representative, U.S. Const. art. I, § 2, Plaintiffs are likely to succeed on the merits.

C. The Equal Protection Clause

The Missouri Supreme Court’s application of state law to Missouri’s congressional map violates the Equal Protection Clause by transferring

hundreds of thousands of voters to new districts, but leaving other voters in the same district. This November, most Missourians will consider a slate of candidates that they had the opportunity to vote on in the Primary Election. However, hundreds of thousands of other Missourians—including Plaintiffs—will be denied that opportunity solely because their residence changed districts between the Primary and General Elections. *See* App. 44, 69, R. Doc. 1-2 at 4, 29. That violates the Equal Protection Clause. U.S. Const. amend. XIV, § 1.

The Equal Protection Clause requires “all who participate in [an] election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and *wherever their home may be.*” *Gray v. Sanders*, 372 U.S. 368, 379 (1963) (emphasis added); *Reynolds v. Sims*, 377 U.S. 533, 576 (1964) (holding that voters have a right to their “vote[s]” being “weighted equally with those of all other citizens”). “And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds*, 377 U.S. at 555. The Supreme Court’s precedents are also clear that if a State grants some voters a privilege and “den[ies] the privilege to other classes of otherwise

qualified voters in similar circumstances, without affording a comparable alternative means to vote,” the State engages in “arbitrary discrimination violative of the Equal Protection Clause.” *Am. Party of Tex. v. White*, 415 U.S. 767, 795 (1974).

Changing the congressional map between the Primary and General Elections violates these standards because it deprives hundreds of thousands of Missourians of the chance to choose their representative in the Primary. *See* App. 44, 69, R. Doc. 1-2 at 4, 29. All the while, most other Missourians will be able to choose their representative through both the Primary and General Elections. Here, the District Court found that “[s]witching maps now would deprive many Missourians of their equal vote in the primaries and ‘impair the voters’ ability to express their political preferences’ by foisting new candidates on them on the eve of the election.” App. 177, R. Doc. 35 at 10 (quoting *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)); *see also* App. 44, 69, R. Doc. 1-2 at 4, 29.

Intervenors have never tried to dispute this disparate treatment of voters—which materially affects voters’ abilities to select their representatives. *See Gray*, 372 U.S. at 379–80. Instead, they have

argued that *Gray* and its progeny have never been applied to a scenario where discrimination occurred by virtue of categorically depriving some voters from participating in a Primary for their representative, while allowing other voters to participate. However, it is “a judicial decision’s reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.” *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020). And here, the Missouri Supreme Court’s injunction would disenfranchise some voters from the right to participate in selecting their representative solely based on where they live. That is an Equal Protection Clause violation. *See Gray*, 372 U.S. at 379–80; *Reynolds*, 377 U.S. at 576; *White*, 415 U.S. at 795.

Intervenors have also cited the Supreme Court’s decision in *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982). But *Rodriguez* helps—rather than harms—the Secretary’s position. That case concerned Puerto Rico’s procedure for “filling interim vacancies” in its legislature. 457 U.S. at 5. Specifically, the late incumbent’s party would appoint a replacement “without the necessity of a full-scale special election.” *Id.* The Supreme Court rejected a claim that Puerto Rico’s failure to host a special election resulted in an equal protection violation

because it advantaged the late incumbent’s political party. *Id.* at 12. However, the Court carefully noted that nothing in its opinion should be understood to apply to elections:

To be sure, *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.’ However, the Puerto Rico statute at issue here does not restrict access to the electoral process or afford unequal treatment to different classes of voters or political parties. *All qualified voters have an equal opportunity to select a district representative in the general election.*

Id. at 10 (emphasis added) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)). Thus, *Rodriguez* explicitly affirms that the Equal Protection Clause applies here—where all “qualified voters” in Missouri will *not* “have an equal opportunity to select a district representative in the general election”—because voters moved by the court’s order are disadvantaged compared to those not moved. *Id.*

In light of applicable precedent and the obvious disparate treatment of Missouri voters, Plaintiffs are likely to succeed on the merits.

CONCLUSION

This Court should hold that Plaintiffs are likely to succeed on the merits of their claims. Such a holding would help ensure Missouri does not again face the election-administration disaster it is currently facing.

September 15, 2026

Respectfully submitted,

CATHERINE L. HANAWAY
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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limits of Fed. R. App. P. 32(a)(7)(B)(i) in that it contains 9,965 words excluding the parts exempted by Fed. R. App. P. 32(f). I further certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) in that this document has been prepared in a proportionally spaced typeface using Microsoft Word (size 14 Century Schoolbook font).

/s/ Louis J. Capozzi, III

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2026, the foregoing was filed electronically via the Court's electronic filing system and was served by operation of the CM-ECF system on all counsel of record.

/s/ Louis J. Capozzi, III

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

CONGRESSMAN ROBERT “BOB”	)	
ONDER, RICHARD “RICK”	)	
BRATTIN, PATRICIA “PAT”	)	
THOMAS, and DEBRA HAVENS,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. _____
	)	
STATE OF MISSOURI and DENNY	)	
HOSKINS, in his official Capacity	)	
as Missouri Secretary of State,	)	
	)	
Defendants.	)	

COMPLAINT

Plaintiffs Congressman Bob Onder, Rick Brattin, Pat Thomas, and Debra Havens for their Complaint against the State of Missouri and Denny Hoskins, in his official capacity as Missouri Secretary of State, allege as follows.

Parties and Background

1. Plaintiff Robert “Bob” Onder is the duly elected United States Representative in Congress for Missouri’s third Congressional district. He is a

resident of St. Charles County, Missouri and is a registered voter in St. Charles County and the State of Missouri.

2. Congressman Onder is the Republican Nominee for congress in the Third Congressional District as adopted by the Missouri General Assembly in House Bill 1 (“HB 1”) in 2025.

3. Congressman Onder has an interest in a fair and accurate election process. *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 77 (2026).

4. Plaintiff Richard “Rick” Brattin is the Republican Nominee for congress in the Fifth Congressional district as adopted in HB 1.

5. Plaintiff Brattin is a resident of Cass County and is a registered voter in the State of Missouri.

6. Brattin has an interest in a fair and accurate election process. *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 77 (2026).

7. Plaintiff Patricia “Pat” Thomas is a registered Missouri voter living in Cole County, Missouri.

8. Thomas has an interest in a fair and accurate election process. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

9. Plaintiff Debra Havens is a registered Missouri voter living in Maries County, Missouri.

10. Havens has an interest in a fair and accurate election process. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

11. Defendant State of Missouri is a sovereign State of the United States of America.

12. Defendant Denny Hoskins is the Missouri Secretary of State.

13. Defendant Secretary of State is charged with administering Missouri's elections process, as well as approving or rejecting referendum petitions submitted to him (including the referendum petition at issue here).

14. Plaintiffs bring this action to prevent Defendants from unconstitutionally usurping the General Assembly's vested authority to reapportion the State of Missouri's congressional districting plan.

Background

15. On September 12, 2025, the Missouri General Assembly convened in a special session and passed HB 1, which redraws Missouri's eight Congressional districts.

16. Missouri's prior Congressional district map was enacted by the General Assembly in 2022.

17. Under those 2022 districts, Thomas and Havens would cast a congressional vote in the Third Congressional district. Under the new map established by HB1, Thomas and Havens would cast a vote in the Fifth Congressional district.

18. On December 9, 2025, a group called People Not Politicians,

through its executive director Richard von Glahn, submitted a referendum petition on HB1 to Defendant Secretary of State. The petition sought to suspend the effectiveness of HB1 until it was subject to a statewide public vote.

19. On May 13, 2026, the Missouri Supreme Court issued its unanimous decision in *Maggard v. State*. That Court held that mere submission of the referendum petition to the Secretary did not suspend HB 1 or preclude the State from implementing the congressional plan it enacted

20. The statutory deadline for the Secretary of State to issue a certificate of sufficiency or insufficiency on the referendum petition was August 4, 2026, the same date as the Congressional primary elections.

21. The August 4, 2026 Congressional primaries were held using the HB1 map.

22. 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.

23. Congressman Onder stood for and won the Republican nomination for the third Congressional district from voters casting ballots under the HB1 map.

24. Thomas and Havens both voted in the August 4 primary for candidates in the Fifth Congressional district.

25. Also on August 4, Defendant Secretary of State issued his

certificate of insufficiency, finding that “the referendum petition is insufficient under the Missouri Constitution because the Missouri Constitution does not authorize a referendum on congressional redistricting plans passed by the General Assembly.”

26. People Not Politicians and von Glahn challenged Defendant Secretary of State’s decision in state court.

27. The affidavit of Tammy Brown, Missouri election official, explains that implementing a new congressional map requires local election officials to transfer hundreds of thousands of individual voters in the MCVR system. See Exhibit 1.

28. Further, that is a meticulous process involving careful analysis of printed maps and multiple rounds of proofreading. *Id.*

29. The MCVR system locks shortly before absentee ballots are distributed and remains locked until an election is certified two weeks after election day. *Id.*

30. Even the state trial court found this evidence to be compelling. See, *von Glahn v. Hoskins*, No. 26AC-CC00440 (Cole County, Missouri), Final Judgment, Exhibit 2.

31. The MCVR system will remain locked until at least mid-November because of an ongoing Jackson County special election.

32. The state trial court concluded, therefore, that it would be

“impossible” for election officials to administer the 2026 congressional general election under any plan other than the HB 1 plan.

33. On September 3, 2026, the Missouri Supreme Court nonetheless ordered Defendants to use the 2022 Congressional district map instead of the HB 1 map for the November 3, 2026 general election. *von Glahn v. Hoskins*, No. --- S.W.3d --- (Mo. banc Sep. 3, 2026).

34. The Missouri Supreme Court did not address, much less overturn, the state trial court’s finding that it is “impossible” for election officials to administer the general election other than under the HB 1 plan.

35. As a result of the Missouri Supreme Court’s decision in *von Glahn*, the State must now do the “impossible” and administer Missouri’s November 3 general election using different maps than the maps used in the primary elections for the same offices.

36. Also, as a result of *von Glahn*, hundreds of thousands of registered voters who voted in the August 4 primary in the districts under HB 1 will be moved into different districts for the November 3 general election under the decision in *Von Glahn*.

37. Likewise, Congressman Onder and Rick Brattin won nominations by advocating to a particular set of voters in their respective HB1-designated districts. Under *von Glahn*, they must now run in the general election in districts which include many voters to whom they did not campaign in the

primary.

38. Thomas and Havens wish to vote in the general election in the Fifth Congressional district as they did in the primary but must now educate themselves about new candidates and issues because they are forced to vote in the general election for the Third Congressional district and for nominees whom they was not given a chance to vote for or against.

39. Cole and Maries Counties are in the Fifth Congressional District under HB 1 but are in the Third Congressional District under the 2022 plan.

40. Voters in Cole and Maries Counties voted in the Fifth Congressional District in the August 4 primary election but, under *Von Glahn*, will now vote in the Third Congressional District in the November 3 general election.

41. Thomas and Havens face the prospect of losing their fundamental right to vote in upcoming elections, including but not limited to the November 3, 2026 general election, if Defendants continue in the course of action ordered by *von Glahn*.

42. The entire State of Missouri has now been plunged into legal and electoral uncertainty over which Congressional maps govern Missouri's 2026 general election and which candidates represent whom. This Court should issue all appropriate relief without haste to ensure free and fair elections in November.

43. On September 3, 2026, the Attorney General applied to the Missouri Supreme Court for a stay of its decision in *von Glahn*.

44. On September 4, 2026, the Supreme Court denied that Application for Stay.

Jurisdiction and Venue

45. This Court has subject matter jurisdiction over the federal claims under 28 U.S.C. § 1331 because a provision of the U.S. Constitution and 42 U.S.C. § 1983 govern the disposition of this case.

46. This Court has supplemental jurisdiction over the state-constitutional claim under 28 U.S.C. § 1367.

47. This Court has the authority to issue the requested declaratory relief under 28 U.S.C. §§ 2201-2202 and this Court's inherent equitable authority.

48. This Court has personal jurisdiction over Defendants because each is either a state agency or sued in their official capacity as a state official, and the violations complained of concern their conduct in such capacities.

49. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) respecting Defendant State of Missouri because Plaintiffs allege said Defendant has undertaken efforts to carry out an unlawful Congressional election within this District and Division and moreover Congressman Onder is

a resident of St. Charles County and Havens is a resident of Maries County both of which are in this judicial district.

CAUSES OF ACTION

Violation of the Elections Clause

U.S. CONST. Art. I, § 4, cl. 1

50. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

51. An actual controversy exists within this Court's jurisdiction that would be resolved by a declaration of the rights and other legal relations of the parties in this action – namely, that *von Glahn*'s suspension of the General Assembly's duly enacted HB 1 plan and authorization of a referendum seeking to overturn HB 1 violates the Elections Clause of the U.S. Constitution.

52. The Constitution delegates and conveys the authority to prescribe the times, places, and manner of congressional elections only to "the Legislature" of "each State." U.S. CONST. art. I, § 4, cl. 1. Yet in Missouri, Defendants have been ordered not to use the General Assembly's duly enacted HB 1 for the ongoing 2026 general election. This unprecedented act violates both the U.S. and Missouri Constitutions.

53. Just two years ago, the U.S. Supreme Court reaffirmed the core

authority of state legislatures to draw congressional districts for the U.S. House of Representatives. The court emphasized how other state-governmental actors “do not have free rein” to transgress state legislatures’ authority to apportion congressional districts. *Moore v. Harper*, 600 U.S. 1, 34 (2023).

54. Despite that constitutional language, some state constitutions have expressly transferred authority over federal redistricting from state legislatures to other entities – like independent redistricting commissions. *See, e.g., Arizona State Legislature v. Arizona Independent Redistricting Comm’n*, 576 U.S. 787, 796–98 (2015). Jurists have disagreed on whether such delegations are constitutional. *See id.* at 826 (Roberts, C.J., dissenting).

55. This case does not require this Court to revisit that debate. Where the U.S. Constitution expressly vests authority in a particular actor, that authority cannot be taken away without a clear and express statement. *See Moore*, 600 U.S. at 34–36. In *Arizona State Legislature*, for example, the Arizona Constitution did “directly and immediately” transfer the Arizona’s Legislature’s authority over redistricting to another entity. 576 U.S. at 801. And in *State of Ohio ex rel. Davis v. Hildebrandt*, concluded that state law “ma[de] it clear” that the legislature had been partially divested of its authority over federal redistricting. 241 U.S. 565, 567-68 (1916) (holding it was “obvious” that state law was “conclusive” on that point).

56. The U.S. Constitution forecloses the holding of *von Glahn*. By vesting authority in the state legislature, the Elections Clause made a “compromise” that ensures a measure of deliberation, but in a representative body close to the people. *Ariz. State Leg.* at 837 (Roberts, C.J., dissenting).

57. The U.S. Constitution does not provide for a citizen veto of the legislature’s approved map. “*Hildebrant* in no way suggested that the state legislature could be displaced from the redistricting process, and *Hildebrant* certainly did not hold—as the majority today contends—that “the word [‘Legislature’ in the Elections Clause] encompassed a veto power lodged in the people.” *Ante*, at 2666. *Hildebrant* simply approved a State's decision to employ a referendum *in addition to* redistricting by the Legislature. See 241 U.S., at 569, 36 S. Ct. 708. The result of the decision was to send *the Ohio Legislature* back to the drawing board to do the redistricting.” *Ariz. State Leg.* at 840 (J. Roberts Dissent)

58. In choosing to specifically entrust state legislatures with authority over federal congressional redistricting, the Framers of the U.S. Constitution ensured that such power would be exercised by officials “accountable by the people for the rules they write or fail to write.” *Democratic Nat’l Comm. v. Wis. State Leg.*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay). They also ensured that redistricting decisions would reflect “the collective wisdom of the whole people” – as expressed

through the people’s elected representatives. *Id.*

59. Nor does the Elections Clause leave dissatisfied individuals without recourse. They are free to take their concerns to Congress itself, which can reset the reapportionment rules under the Elections Clause. *See Wise v. Circosta*, 978 F.3d 93, 112 (4th Cir. 2020) (en banc) (Wilkinson and Agee, JJ., dissenting) (emphasizing “the brilliance” of giving Congress the authority to check state legislatures).

60. Absent a clear statement in the Missouri Constitution transferring the apportionment power from the General Assembly to a ballot referendum, Defendants cannot proceed as directed by *von Glahn*. The General Assembly’s “vested authority is not just the typical legislative power exercised pursuant to a state constitution. Rather, when a state legislature enacts statutes governing [federal] elections, it operates ‘by virtue of a direct grant of authority’ under the United States Constitution.” *Carson v. Simon*, 978 F.3d 1051, 1060 (8th Cir. 2020) (per curiam).

61. While the U.S. Supreme Court has recognized that express state constitutional amendments can divest legislatures of their apportionment power, the court has never held that a general referendum provision can curtail the legislature’s exercise of that authority. *See Ariz. State Leg.*, 576 U.S. at 814 (holding that a State can adopt an express constitutional provision transferring the legislature’s apportionment authority to an independent

commission).

62. Because the Framers of the Federal Constitution made “a deliberate choice” to vest reapportionment power in state legislatures, other state actors cannot use the vagaries of state law to transfer that power elsewhere. *Moore*, 600 U.S. at 34. Hence, state law must plainly delineate the legislature’s federal congressional-apportionment authority. *Cf. id.* at 34–36 (holding that state “courts do not have free rein” to intrude upon the legislature’s apportionment power absent “a fair reading” of state law limiting the power); *Carson*, 978 F.3d at 1060 (discussing how state officials cannot “override” the state legislature’s exercise of power under the Elections Clause).

63. Moreover, serious constitutional doubt persists about whether state-ballot initiatives can ever divest state legislatures of their congressional-apportionment authority. The “text, structure, or history of the Constitution” plainly show that Article I, Section 4 deliberately vests “the ‘Legislature,’” not “the people” with the power to reapportion congressional representation. *Ariz. State Leg.*, 576 U.S. at 825 (Roberts, C.J., dissenting). “Direct lawmaking by the people was ‘virtually unknown when the Constitution of 1787 was drafted.’” *Id.* at 793 (majority opinion). And the U.S. Supreme Court has never upheld the use of a ballot referendum to nullify a legislature’s congressional reapportionment against an Elections Clause challenge. *See id.* at 840 (Roberts, C.J., dissenting) (explaining how the only instance where the

Supreme Court considered the use of such a referendum did not involve Elections Clause challenge to state law in *Hildebrandt*).

64. Such clear-statement rules are fixtures of American constitutional law because they ensure that the relevant governmental actors actually intended to push the boundaries and potentially upset the careful balances struck by the U.S. Constitution's Framers. *See West Virginia v. EPA*, 597 U.S. 697, 736-37 (2022) (Gorsuch, J., concurring); Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 166–67 (2010). For example, even though the Constitution vests legislative power in Congress, courts allow Congress to delegate major policy decisions to the Executive Branch – but only if Congress provides a clear statement of authority. *West Virginia*, 597 U.S. at 723; *id.* at 746–49 (Gorsuch, J., concurring); *Paul v. United States*, 140 S. Ct. 342, 342 (2019) (statement of Kavanaugh, J., respecting denial of certiorari). Similarly, courts demand a clear statement before assuming Congress intended to legislate in areas of traditional state authority – to protect the U.S. Constitution's commitment to federalism. *See Sackett v. EPA*, 598 U.S. 651, 679-80 (2023); *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

65. Given its novelty and lack of textual support, *von Glahn* contravenes the United States Constitution's vesting of redistricting authority in the General Assembly. The Missouri Constitution's referendum provision does not expressly say that a referendum can overturn the exercise of the

General Assembly’s federal redistricting decisions, and “state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Moore*, 600 U.S. at 36.

66. To the contrary, the Missouri Constitution specifically recognizes the General Assembly’s power to divide the State into congressional districts. *See* MO. CONST. art. III, § 45 (stating General Assembly “shall” perform this function). Given these provisions, Missouri has not made a deliberate and clear choice to override the Elections Clause’s vesting the General Assembly with congressional apportionment authority. *See Ariz. State Leg.*, 576 U.S. at 817 (emphasizing how the State had made the deliberate choice of reallocating that authority to an independent commission).

67. And Missouri should have a chance to make that knowing choice before this unprecedented effort proceeds. Subjecting Missouri’s congressional redistricting to ballot referenda will invite chaos. If opponents of a Congressional map succeed in using the referendum, every apportionment decision going forward could now become subject to a referendum. In effect, this could create apportionment paralysis – where the General Assembly is unable to implement a congressional map because successive referendum efforts nullify them. This threatens to wreak havoc on the General Assembly’s basic obligations to reapportion congressional districts after each census.

68. The problem runs even deeper than that. Under *von Glahn*, nothing would stop a voter from proposing the federal congressional map in the first instance – thus entirely cutting the General Assembly out of the redistricting process. The provision of the Missouri Constitution governing citizen-proposed statutory initiatives is worded – in all material respects – identically to the referendum provision. *See* MO. CONST. art. III, §§ 49–53. That provision just generally refers to “laws” – without any specific reference to federal redistricting bills. *See id.* So, under the logic of *von Glahn*, voters can wield an absolute veto over the General Assembly’s duties under the Elections Clause.

69. Finally, no history in Missouri supports a reading like *von Glahn*. While a closely divided Missouri Supreme Court upheld the use of referenda for apportionment of seats in the General Assembly, *see State ex rel. Gordon v. Becker*, 49 S.W.2d 146, 149 (Mo. 1932), that case is inapt. In 1945, the Framers of Missouri’s current Constitution specifically overrode *Gordon*. *See* MO. CONST. art. III, § 7(h). The Missouri Constitution now provides in unqualified terms that “[n]o redistricting plan shall be subject to the referendum.” *Id.*; *see also id.* art. III, § 3(i).

70. Additionally, *Gordon* addressed federal and state legislative apportionment, which are governed by separate provisions in the Missouri Constitution. MO. CONST. art. IV, §7(Constitution of 1875); *see* MO. CONST. art.

III, §§ 3, 7, 10 (state legislative) and MO. CONST. art. III, § 45 (congressional). *Gordon* never considered whether, per the Elections Clause, the General Assembly retained sole authority to apportion congressional districts. Because the authority to set federal congressional districts is a power delegated by the U.S. Constitution, federal congressional reapportionment implicates uniquely federal interests not reflected in state-legislative reapportionment. *See Moore*, 600 U.S. at 34 (“As in other areas where the exercise of federal authority or the vindication of federal rights implicates questions of state law, we have an obligation to ensure that state court interpretations of that law do not evade federal law.”); *Carson*, 978 F.3d at 1060 (emphasizing how setting federal elections occurs “by virtue of a direct grant of authority’ under the United States Constitution”).

71. If anything, *Gordon* casts further doubt on Defendants’ legal theory. Chief Justice Atwood, in dissent, carefully analyzed Missouri constitutional history and concluded that the Missouri Constitution was not originally understood to extend the referendum even to state legislative apportionment. *See Gordon*, 49 S.W.2d at 152–57 (Atwood, C.J., dissenting) (contending that construction of prior Missouri constitutional provisions did not support the practice). And if such doubt exists for state legislative districting, it is hard to see how Defendants could satisfy the U.S. Constitution’s clear-statement rule applicable to federal congressional

redistricting efforts.

72. Defendants cannot identify any language that “makes it clear” that the Missouri Constitution transfers authority over federal redistricting away from the General Assembly. *Hildebrandt*, 241 U.S. at 568. While Missouri has chosen to allow voters to revisit legislation passed by the General Assembly, nothing in the Missouri Constitution expressly says that federal congressional reapportionment may be subjected to a referendum. See MO. CONST. art. III, §§ 49, 52(a). In other words, the people of Missouri have never made the conscious choice to undermine the Framers’ decision to vest this State’s legislature with the reapportionment authority.

73. With no express authority bestowed on the referendum process to overturn federal congressional apportionments, Defendants’ efforts – compelled by *von Glahn* – to revisit the General Assembly’s exercise of its authority under the Elections Clause are unlawful. Plaintiffs are entitled to a judgment declaring Defendants’ actions unlawful under the Elections Clause of the U.S. Constitution. The Court should grant appropriate declaratory and injunctive relief.

Violation of Article I, Section 2

42 U.S.C. § 1983; U.S. CONST. Art. I, § 2

74. Plaintiffs incorporate by reference all preceding paragraphs as if

fully set forth herein.

75. 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.

76. 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.

77. The Supreme 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).

78. 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. 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.

79. *Von Glahn* ignores those votes, stripping the nominees of the mandate in their respective districts which their voters conferred.

80. Article I, Section 2 forbids this result.

81. Changing the congressional map reassigns hundreds of thousands of voters to entirely different districts, with different boundaries, different candidates, and different opponents—none of whom those voters ever had the chance to evaluate in the primary.

82. It is the wholesale dismantling of the election those voters already participated in.

83. *Von Glahn* does not even attempt to explain how State and local officials could reverse course and implement some entirely new map, how nominees selected by voters in one set of districts would campaign in different ones, or how voters would make sense of a last-minute overhaul of the districts they just voted in.

84. The Supreme Court has long recognized that primary and general elections are not separate events but a unified process.

85. 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).

86. Because the primary and general election constitute a “single instrumentality for choice of officers,” *id.*, then 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)

(describing the primary as “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”).

Violation of the Equal Protection Clause

42 U.S.C. § 1983; U.S. CONST. amend. XIV, § 1

87. Holding a general election under a different congressional map than the one used in the primary would violate the Equal Protection Clause. U.S. Const. amend. XIV, § 1.

88. The Supreme 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).

89. The Supreme 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). Defendants are and have been acting under color of law.

90. By requiring Thomas and Havens to vote in a general election without allowing them to cast a ballot for the candidates in a primary for such election, *von Glahn* commands Defendants to violate Thomas’s and Havens’s

fundamental right to equal protection under the law.

91. The congressional map change in *Von Glahn* between the primary and general elections, forces hundreds of thousands of Missourians to vote in a district different from the one in which they cast their primary ballots.

92. Those voters would possess materially less voting power than voters whose district 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.

93. They would thus be denied the right to choose their own representative through the integrated primary and general elections.

94. Meanwhile, voters who happened to remain in the same district would retain the full benefit of their primary vote.

95. The order in *Von Glahn* which changes the congressional map 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.

96. Thomas and Havens face the prospect of losing their fundamental right to vote in upcoming elections, including but not limited to the November 3, 2026 general election, if Defendants continue in the course of action ordered by *von Glahn*.

97. At the time *von Glahn* was decided, Missouri election officials,

candidates, political parties, and other advocates had already begun preparing for the general election under the HB1 Congressional map. Early voting and absentee-ballot distribution are imminent.

98. The order in *von Glahn* constitutes a judicial alteration of state election law “in the period close to an election.” *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

99. As the Supreme Court has repeatedly recognized, “[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring).

100. It is well-established that states have less say in regulating federal elections than “statewide and local elections.” *See Anderson*, 460 U.S. at 789.

101. The standard four-factor stay test does not govern this Court’s review of the order in *von Glahn*. Where, as here, the Missouri Supreme Court has ordered a change to state election law “close to an election,” the “traditional test for a stay does not apply (at least not in the same way) in election cases when a lower court has issued an injunction of a state’s election law in the period close to an election.” *Merrill*, 142 S. Ct. at 880; *La Union*, 119 F.4th at 408.

102. Chief among those considerations is the potential for a last-minute order “to confuse voters, unduly burden election administrators, or otherwise

sow chaos or distrust in the electoral process.” *Robinson v. Ardoin*, 37 F.4th 208, 228 (5th Cir. 2022).

103. Congressional redistricting is among the most complex and disruptive election changes a court can order. Implementing new district boundaries between the primary and general elections requires, at minimum: publishing new district maps; updated the Missouri Consolidated Voter Registration system in 117 separate local election authorities, re-notifying all affected voters of changed district assignments; reprinting and redistributing ballots statewide; and retraining election officials across dozens of counties – all within a window of 15 days before military ballots go out and 18 days before absentee voting begins.

104. Altering voters’ choices mid-election further harms the interests of the voters themselves, especially those such as Thomas and Havens, who were not permitted to vote in the primary: “It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues.” *Lubin v. Panish*, 415 U.S. 709, 716 (1974).

105. The redistricting mandate in *von Glahn* is incredibly complex and disruptive, and cannot constitutionally be implemented between the primary and general elections (if ever).

106. First, the underlying merits were not “entirely clearcut” in favor of

the party seeking a new map. The Missouri Supreme Court’s own prior decision in *Maggard* acknowledged that it was “impossible” to determine with certainty whether the HB1 map had gone into effect. Legal questions that the state’s highest court itself found irresolvable cannot satisfy the “entirely clearcut” standard.

107. Second, irreparable harm will result from *von Glahn*. Congressional candidates who prevailed in primary elections under the existing district boundaries face substantial harm – including disruption of campaign infrastructure, wasted resources, and educating and advocating to new voters in a truncated post-primary period – if those boundaries are altered before the general election.

108. Third, implementing a full congressional remap between the primary and general elections is not feasible without significant cost, confusion, and hardship to voters, candidates, and election administrators alike – as the scale of administrative disruption described above makes plain.

109. Because none of the conditions identified in *Merrill* are satisfied, the order in *von Glahn* compels Defendants to violate Plaintiffs’ rights under the United States Constitution.

PRAYER FOR RELIEF

Brattin, Congressman Onder, Thomas, and Havens pray that this Court:

A. Declare, adjudge, and decree that the actions detailed herein are unlawful under Article I, § 4, cl. 1, Article I, § 2, and Amend. XIV, § 1 of the U.S. Constitution;

B. Issue declaratory relief stating that Defendants' failure to use the HB1 Congressional maps – as ordered by *von Glahn* – is unconstitutional;

C. Issue temporary, preliminary, and permanent injunctive relief to prevent Defendants from using any Congressional map other than the HB1 map until amended by the Missouri General Assembly; and

D. Award all other relief this Court deems equitable and just.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

CONGRESSMAN ROBERT “BOB”	)	
ONDER, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:26-cv-01424
	)	
STATE OF MISSOURI <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF PROPOSED
INTERVENOR-DEFENDANTS' MOTION TO INTERVENE**

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This Court needs an intervenor to fully defend the state law about which Plaintiffs complain and these Intervenorers have the right to do that. A few days ago, in *von Glahn v. Hoskins*, No. SC101805 (Mo. banc Sept. 3, 2026), the Missouri Supreme Court was called upon to interpret Missouri law and unanimously held that the Missouri Constitution authorizes a referendum on House Bill 1 (“HB 1”), the congressional redistricting bill, and ordered the Secretary of State to place the referendum on the November 2026 ballot. The Court said: “HB 1 is not the law and has never been the law. There is only one valid congressional redistricting in effect—the congressional redistricting the General Assembly established in 2022.” *Von Glahn v. Hoskins*, No. SC101805, slip op. at 12 n.8 (Mo. banc Sept. 3, 2026).

Given this, the Court ordered Defendant Hoskins and all those acting in concert with him to refrain from implementing the HB 1 map for the general election. The Court also pointed out that it had much earlier advised the Secretary of State that the HB 1 districts might not be the law. “In two separate cases in May, this Court stated it could not determine whether the congressional redistricting in HB 1 was in effect until the secretary issued his certification and the judicial review authorized by the General Assembly was complete. *Maggard*, 733 S.W.3d at 419-20; *NAACP*, 734 S.W.3d at 341 n.4.” *von Glahn* at 12. This action asks this federal district court to override those rulings of the Missouri Supreme Court.

Proposed Intervenorers von Glahn and PNP are the parties who obtained the judgment now under attack. PNP organized the referendum petition and collected over 300,000 signatures. von Glahn, PNP’s executive director, filed the petition with the Secretary of State, challenged the Secretary’s certificate of insufficiency, and prevailed

before the Missouri Supreme Court as the named plaintiff. No non-party has a more direct interest in defending that judgment.

And it should be clear that the existing defendants will not do so. The Secretary of State is currently asking the United States Supreme Court to stay the very ruling he would nominally defend here. *See Hoskins v. von Glahn*, No. 26A304 (U.S.). His filings with the Supreme Court call the Missouri ruling “bizarre” and “profoundly anti-democratic.” Hoskins Emergency Application for Stay and Administrative Stay Pending Appeal at 12. And his position is deep-rooted. The Defendant State of Missouri and Hoskins previously sued to prevent Proposed Intervenors from even delivering the referendum petition to Defendant Hoskins. *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535 (E.D. Mo. Oct. 15, 2025). As detailed below and in Proposed Intervenors’ Motion to Dismiss, the circumstances of this case raise serious questions about whether a genuine adversarial proceeding exists. As presently constituted, no party before this Court will present a defense of the Missouri Supreme Court’s judgment or the requirements of Missouri law—a deficiency that implicates both the adequacy of representation and Article III’s case-or-controversy requirement. Intervention should be granted as of right or, in the alternative, by permission of the Court.

BACKGROUND

On September 12, 2025, the Missouri General Assembly passed HB 1 in a special session, redrawing Missouri’s eight congressional districts. (*See* Compl. ¶ 15.) Governor Kehoe signed HB 1 into law on September 28, 2025. (*See* Compl., Ex. 2 at 1.) On December 9, 2025, PNP, through its executive director Richard von Glahn, submitted a referendum petition on HB 1 to the Secretary of State, seeking to suspend HB 1’s

effectiveness and place it before Missouri voters for approval or rejection. *See* Compl., Ex. 3 at 2.)

The State of Missouri itself has recognized that PNP and von Glahn are the real parties in interest in any dispute over the referendum on HB 1. On October 15, 2025, the Missouri General Assembly, Secretary of State Hoskins, and the State of Missouri filed suit in this Court naming von Glahn and PNP as the sole defendants, seeking to enjoin them from pursuing the referendum. *See Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB (E.D. Mo.). In that action, the State alleged that “Defendants Richard von Glahn and People Not Politicians[] have initiated a referendum process that would strip the General Assembly of its authority over redistricting” and sought “to prevent Defendants from unconstitutionally usurping the General Assembly’s vested authority.” (Compl. ¶¶ 1, 11, *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535 (E.D. Mo. Oct. 15, 2025).)

The State simultaneously moved for a preliminary injunction targeting von Glahn and PNP specifically, arguing that “Defendants are attempting to transfer the General Assembly’s authority over federal redistricting to a referendum vote.” (Mem. in Supp. of Mot. for Prelim. Inj. at 1, *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535 (E.D. Mo. Oct. 15, 2025).) The State’s own prior pleadings establish that PNP and von Glahn are the indispensable parties to any litigation over the referendum on HB 1. The federal district court dismissed that action on ripeness and abstention grounds in December 2025, and the State and Hoskins chose not to appeal.

On November 24, 2025, Plaintiffs’ current counsel filed an amicus brief in the 2025 federal action on behalf of the Missouri Republican State Committee, supporting the Defendant State of Missouri’s motion for a preliminary injunction against von Glahn

and PNP. (See Amicus Br. of Mo. Republican State Comm., *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB (E.D. Mo. Nov. 24, 2025).) The same counsel then represented the Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee as intervenors-respondents before the Missouri Supreme Court in *von Glahn v. Hoskins*.

On August 4, 2026—the date of Missouri’s congressional primary elections, and the statutory deadline for the Secretary’s certification decision, see § 116.150.3, RSMo—Secretary of State Denny Hoskins issued a certificate of insufficiency, finding “the referendum petition is insufficient under the Missouri Constitution because the Missouri Constitution does not authorize a referendum on congressional redistricting plans passed by the General Assembly.” (Compl., Ex. 3 at 1-2.); (see also Compl. ¶ 25.) Von Glahn challenged that certification the same day in the Circuit Court of Cole County, Missouri, under § 116.200.1, RSMo. (See Compl., Ex. 3 at 1-2.) The circuit court upheld the Secretary’s certification. (See Compl., Ex. 3.)

On appeal, the Missouri Supreme Court reversed. In its unanimous September 3, 2026 decision in *von Glahn v. Hoskins*, No. SC101805 (Mo. banc Sept. 3, 2026), the Court held that Article III, Section 49 of the Missouri Constitution authorizes a referendum on “any act of the general assembly,” including congressional redistricting legislation, and that “no exception applies.” (Compl. Ex 3 at 1.) The Court noted that the U.S. Supreme Court “has held on multiple occasions the United States Constitution permits a state to authorize a referendum as to legislation drawing new congressional districts,” citing, *inter alia*, *Ohio ex rel. Davis v. Hildebrandt*, 241 U.S. 565, 569 (1916). (*Id.* at 5.) The Court ordered the Secretary to issue a certificate of sufficiency, to place the referendum on the November 2026 ballot, and to refrain from implementing or

mandating the use of the HB 1 map for the November 3, 2026 general election “unless and until HB1 is approved by the voters.” (*Id.* at 12–13.)

On September 3, 2026, the Attorney General applied to the Missouri Supreme Court for a stay of its decision. The Missouri Supreme Court denied the stay application on September 4, 2026. (*See* Compl. ¶¶ 43–44.) The Secretary of State has now filed an emergency application for a stay with the United States Supreme Court. *See Hoskins v. von Glahn*, No. 26A304 (U.S.). The Intervenor-Respondents—the Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee—have filed a brief supporting the Secretary’s stay application. *See id.*

Plaintiffs filed this action on September 4, 2026—within hours of the Missouri Supreme Court’s denial of the stay—seeking a temporary restraining order and preliminary injunction requiring the Secretary to use the HB 1 map for the November 2026 general election. (*See* Compl. ¶¶ 50–93; Mot. for TRO & Prelim. Inj.) Plaintiffs do not appear to allege that the Secretary actually intends to use the HB 1 maps (i.e. that he will drop his request to the United States Supreme Court) or that he will take any other action that will injure them. Plaintiffs’ claims directly challenge the Missouri Supreme Court’s decision in *von Glahn*, alleging it violates the Elections Clause, U.S. Const. art. I, § 4, cl. 1, Article I, Section 2, and the Equal Protection Clause of the U.S. Constitution. (*See* Compl. ¶¶ 50–93.)

There’s good reason for that. Plaintiffs appear to be fully aligned with Intervenor-Respondents in *von Glahn*. Plaintiff Pat Thomas is a former official with the Missouri Republican Party, delegate to the 2016 Republican National Convention, and current

staff member to a Missouri state senator.¹ Plaintiff Debra Havens is also intimately involved in Missouri Republican Party operations. She currently serves as the chair of the Maries County Republican Party.² And goes without saying that Plaintiffs Onder and Brattin’s interests are aligned with Defendants. They are current Republican candidates for Congress.

ARGUMENT

I. THE COURT SHOULD GRANT INTERVENTION AS OF RIGHT UNDER RULE 24(a)(2).

Federal Rule of Civil Procedure 24(a)(2) permits intervention by anyone who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” The Eighth Circuit applies a four-factor test: (1) timeliness, (2) a recognized interest in the subject matter, (3) the possibility that the interest may be impaired, and (4) inadequate representation by existing parties. *South Dakota ex rel. Barnett v. U.S. Dep’t of Interior*, 317 F.3d 783, 785 (8th Cir. 2003). Rule 24 is to be construed liberally, and doubts resolved in favor of the proposed intervenor. *Turn Key Gaming, Inc. v. Ogallala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1999); *see also Nat’l Parks Conservation Ass’n v. U.S. E.P.A.*, 759 F.3d 969, 975 (8th Cir. 2014). This liberal construction applies with particular force in redistricting cases. In addition to the

¹ See <https://showme.missouri.edu/2023/mizzou-alumni-association-recognizes-luetkemeyer-and-thomas-with-geyer-award/>; <https://www.newstribune.com/news/2023/jan/09/jefferson-city-woman-embraces-jobs-ability-to/>; https://ballotpedia.org/Pat_Thomas; <https://missouriindependent.com/2021/11/04/missouri-redistricting-panels-feature-party-leaders-political-pros-activists/>.

² <https://missouri.gop/your-local-gop/>.

normal liberal construction, the Western District of Missouri has recognized, “redistricting cases seem typically to follow the exception rather than the general rule” regarding presumptions of adequate representation by state defendants, because intervention in such cases is “necessary as a check on the possible intrusion of partisan interests.” *Nash v. Blunt*, 140 F.R.D. 400, 402 (W.D. Mo. 1992). Each factor favors intervention here.

A. This Motion Is Timely.

This Motion is timely. Timeliness is determined by considering “all of the circumstances,” with particular attention to: (1) how far the proceedings have progressed; (2) the proposed intervenor’s reason for delay in seeking intervention; and (3) the possible prejudice to the parties already in the proceedings if the court allows intervention. *Jenkins v. Missouri*, 78 F.3d 1270, 1273–74 (8th Cir. 1996). Courts also consider the prospective intervenor’s knowledge of the litigation. *ACLU of Minnesota v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1094 (8th Cir. 2011). All three factors are easily met here.

First, the proceedings have barely begun: Plaintiffs filed their Complaint on September 4, 2026. This Motion is being filed the next day, before any responsive pleading is due and before any ruling on Plaintiffs’ emergency motion. Second, there has been no delay whatsoever; Proposed Intervenors are seeking intervention at the earliest possible stage. Third, no party can claim prejudice from intervention at this stage. The knowledge-of-the-litigation consideration also supports timeliness because Proposed Intervenors acted immediately upon learning of this action. *See United States v. Union Elec. Co.*, 64 F.3d 1152, 1158–59 (8th Cir. 1995) (timeliness assessed in light of totality of circumstances).

B. Proposed Intervenorors Have a Direct, Legally Protectable Interest.

PNP and von Glahn have a direct, legally protectable interest in this litigation. They organized and collected over 300,000 signatures in support of the referendum petition on HB 1. von Glahn filed the petition with the Secretary of State, challenged the Secretary's certificate of insufficiency in state court, and personally prevailed before the Missouri Supreme Court in the very decision that Plaintiffs now ask this Court to effectively nullify. There was no dispute that he had standing to obtain that judgment.

A "direct, substantial, legally protectable interest" satisfies the Rule 24(a)(2) standard. *Barnett*, 317 F.3d at 785. Courts routinely grant intervention in redistricting cases to parties with direct stakes in the outcome. *See Berry v. Ashcroft*, No. 4:22-CV-00465-JAR, 2022 WL 1540287 (E.D. Mo. May 16, 2022) (granting intervention to proposed intervenors who had pursued parallel state court redistricting proceedings and had direct interests in the redistricting outcome). The interest here is beyond dispute: Proposed Intervenorors are the very parties who prosecuted the underlying state court action, obtained the judgment now under attack, and whose constitutional rights under the Missouri Constitution—including the right to a referendum on legislative acts—are at stake.

The State of Missouri has itself confirmed the centrality of Proposed Intervenorors' interest. In October 2025, the State sued von Glahn and PNP in this Court as the sole defendants in a case challenging the referendum—identifying them as the parties whose actions were "unconstitutionally usurping the General Assembly's vested authority." (Compl. ¶ 11, *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535 (E.D. Mo. Oct. 15, 2025).) Having named PNP and von Glahn as the indispensable defendants when

the State wanted to stop the referendum, the State can hardly deny that PNP and von Glahn have a legally protectable interest when the shoe is on the other foot.

C. Disposition of This Action May Impair Proposed Intervenor's Interests.

The threshold for demonstrating impairment under Rule 24(a)(2) is not onerous. Rule 24 requires only that disposition of the action “may as a practical matter impair” the proposed intervenors’ interests. *United States v. Union Elec. Co.*, 64 F.3d 1152, 1162 (8th Cir. 1995). Moreover, “[i]t is enough under Rule 24(a) that [the proposed intervenors] could be prejudiced by an unfavorable resolution in later litigation.” *Turn Key Gaming, Inc. v. Ogallala Sioux Tribe*, 164 F.3d 1080, 1082 (8th Cir. 1999).

If Plaintiffs succeed in obtaining an injunction requiring use of the HB 1 map for the November 2026 general election, the practical effect would be to nullify the Missouri Supreme Court’s judgment in *von Glahn v. Hoskins* and prevent the referendum Proposed-Intervenors sponsored and defended from having any meaningful effect. The referendum would become moot as a practical matter—even if voters rejected HB 1, the election would already have been conducted under the HB 1 map which is “not the law and has never been the law.” Under Missouri law, it “shall take effect when approved by a majority of the votes cast thereon, and not otherwise.” Mo. Const. Art. III Sec. 52(b).

This impairment is direct and substantial. “The requirement of [Rule 24(a)(2)] is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Proposed Intervenor's certainly clear this bar.

D. Existing Defendants Cannot Adequately Represent Proposed Intervenor's Interests.

The record speaks for itself. The same day that Plaintiffs sued Defendants, State of Missouri and Secretary of State Hoskins in this Court, their counsel was joining the Defendants at the Supreme Court of the United States seeking a stay of the judgment they challenge in this Court. At every stage of the related prior state and federal proceedings, these defendants have opposed the referendum and the positions Proposed Intervenor would defend here.

The Secretary of State *opposed* PNP's referendum petition and issued a certificate of insufficiency on August 4, 2026, finding that the Missouri Constitution does not authorize a referendum on congressional redistricting. The Secretary vigorously defended his certification at the trial court and Missouri Supreme Court.

Then Attorney General filed an application for a stay of the Missouri Supreme Court's decision with the Missouri Supreme Court on September 3, 2026—the same day the decision was issued—which was denied on September 4, 2026. The Secretary is now asking the United States Supreme Court to vacate the judgment he would nominally defend in this proceeding. The Secretary has filed an emergency stay application in *Hoskins v. von Glahn*, No. 26A304, seeking to block the Missouri Supreme Court's ruling. The Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee, represented by the same counsel as Plaintiffs here, have filed a brief supporting the Secretary's application. A party who is simultaneously asking a higher court to vacate a judgment cannot be expected to defend that judgment in this Court.

The record here raises substantial questions about whether this lawsuit presents the “honest and actual antagonistic assertion of rights” upon which judicial power depends. *United States v. Johnson*, 319 U.S. 302, 305 (1943); *see also Lord v. Veazie*, 49

U.S. (8 How.) 251, 255 (1850); *Hunt v. Roth*, 648 F.2d 1148, 1153 (8th Cir. 1981). The federal Complaint advances the same Elections Clause, Article I § 2, Equal Protection, and *Purcell* arguments that Plaintiffs’ counsel raised—and that the Missouri Supreme Court unanimously rejected—as intervenors-respondents in *von Glahn*. Intervenor-Respondents there were the Missouri Republican Party, the Republican National Committee, and Republican Congressional Campaign Committee. They are fully aligned with Plaintiffs here— two of which are current and former Missouri Republican Party officials and two are current Republican candidates for Congress.

That counsel now represents new plaintiffs in federal court, against a defendant who has taken the same position as the plaintiffs. Indeed, on the same evening this Complaint was filed, Plaintiffs’ counsel filed a brief at the United States Supreme Court in *Hoskins v. von Glahn*, No. 26A-304, captioned “Intervenors-Respondents’ Brief in Support of Applicant’s Emergency Application for Stay”—expressly supporting the Secretary’s position. Counsel cannot credibly claim adversity to a party they are simultaneously supporting in another tribunal.

Meanwhile, the Attorney General’s office, which is obligated to defend this lawsuit on behalf of the Secretary, and the Secretary himself, are before the Supreme Court seeking the identical relief Plaintiffs request here. The “Defendant” and his counsel at the Attorney General’s office. should here defend against the Plaintiffs’ attack and present the Court with the arguments it needs to consider whether to enjoin Missouri law. But that defendant, represented by the Attorney General, simultaneously argues to this nation’s highest court that the unanimous Missouri Supreme Court Ruling is “bizarre” and “anti-democratic.” They have asked the United States Supreme Court to enjoin enforcement of the law they should be defending here.

This structural conflict—where the nominal defendant’s own counsel is aligned with the plaintiffs’ objectives—further underscores the absence of genuine adversity. *See Nash v. Blunt*, 140 F.R.D. 400, 402 (W.D. Mo. 1992) (finding intervention “necessary to insure this court’s jurisdiction” where parties “necessarily agreed on a wide variety of factual and legal issues,” thereby “depriving the court of ‘opposing parties representing adverse interests’ as required by Article III”). These circumstances are detailed more fully in Proposed Intervenor’s contemporaneously filed Motion to Dismiss. Regardless of the disposition of that motion, the absence of genuine adversity independently compels intervention: if neither Defendant will present a defense, Proposed Intervenor are the only parties who can ensure the adversarial presentation that Article III requires.

The October 2025 litigation reinforces the point. When the State sought to challenge the referendum, it sued von Glahn and PNP directly as the sole defendants, identifying them as the indispensable parties. *See Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535 (E.D. Mo.). Now, in the wake of an adverse ruling, new plaintiffs have filed suit against the Secretary as a nominal defendant—while the parties the State itself identified as the real adversaries are absent. And the proper federal avenue for reviewing the Missouri Supreme Court’s judgment—28 U.S.C. § 1257 certiorari review by the Supreme Court—is already being actively pursued. *See Hoskins v. von Glahn*, No. 26A-304 (U.S.). Without Proposed Intervenor, no party will present a genuine defense of the Missouri Supreme Court’s judgment in this parallel proceeding.

The existing defendants’ interests are aligned with Plaintiffs’ interests, not with Proposed Intervenor’s. Where the government’s interest diverges from that of a proposed intervenor, the inadequacy burden is easily met. *Trbovich*, 404 U.S. at 538 n.10. “[W]hen the party seeking intervention has the same ultimate objective as a party

to the suit, a party is adequately represented *only if* there is no showing of adversity of interest, collusion, or nonfeasance.” *Barnett*, 317 F.3d at 787 (emphasis added). That showing is made here. The existing defendants’ interests are different from Proposed Intervenor’s, and the harms Proposed Intervenor’s face are unique. Intervention as of right must be granted. *See Turn Key Gaming, Inc.*, 164 F.3d at 1082 (reversing denial of intervention).

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION UNDER RULE 24(b).

Even if the Court were to conclude that Proposed Intervenor’s are not entitled to intervention as of right, permissive intervention is warranted under Rule 24(b)(1)(B). That provision allows intervention when a party “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). The Court considers whether intervention will unduly delay or prejudice the adjudication of the original parties’ rights. Fed. R. Civ. P. 24(b)(3). Permissive intervention is committed to the Court’s sound discretion. *Bush v. Viterna*, 740 F.2d 350, 359 (8th Cir. 1984).

Proposed Intervenor’s satisfy this standard. The core question in this case is whether the Missouri Supreme Court’s decision in *von Glahn v. Hoskins* comports with the United States Constitution. Proposed Intervenor’s were the prevailing parties in that decision and have colorable defenses that go to the heart of the case:

The U.S. Supreme Court has repeatedly held that referenda on congressional redistricting are permissible under the Elections Clause. *Ohio ex rel. Davis v. Hildebrandt*, 241 U.S. 565 (1916); *Moore v. Harper*, 600 U.S. 1, 25–26 (2023); *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787 (2015).

The Missouri Constitution’s referendum provision, Article III, Section 49, authorizes a referendum on “any act of the general assembly.” The Missouri Supreme Court unanimously held this includes congressional redistricting legislation—a straightforward application of the constitutional text.

Intervention will not delay or prejudice the existing parties. To the contrary, Proposed Intervenor’s participation will assist the Court in fully and fairly resolving the constitutional questions presented. PNP and von Glahn possess unique knowledge of the referendum petition process, the state court proceedings, and the practical implications of the relief Plaintiffs seek. Without their participation, the Court would lack the perspective of the parties most directly affected by the outcome.

III. THE COURT SHOULD GRANT THIS MOTION ON AN EXPEDITED BASIS.

The posture of this case supports expedited resolution of this Motion. Plaintiffs have filed a motion for a temporary restraining order and preliminary injunction and a motion to expedite.

Proposed Intervenor—as the prevailing parties in the underlying state court decision—should be heard before this Court rules on any request for emergency injunctive relief. A federal district court likely lacks the authority to enjoin a state supreme court’s unanimous judgment, and it certainly should not do so without hearing from the parties who obtained it. Without Proposed Intervenor, the present parties are unlikely to have any adversity between them. Profound jurisprudential and practical concerns should require the Court to permit intervention before resolving Plaintiffs’ request for extraordinary relief—overriding a state supreme court ruling on the eve of an election.

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendants People Not Politicians and Richard von Glahn respectfully request that this Court grant their Motion to Intervene as Defendants and permit them to participate in these proceedings, including any hearings on Plaintiffs' motion for a temporary restraining order and preliminary injunction.

Respectfully submitted,

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*Attorneys for Proposed Intervenor-Defendants
People Not Politicians and Richard von Glahn*

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2026, I electronically filed the foregoing using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Charles W. Hatfield

Charles W. Hatfield

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CONGRESSMAN ROBERT “BOB”
ONDER et al.,

Plaintiffs,

v.

STATE OF MISSOURI and DENNY
HOSKINS,

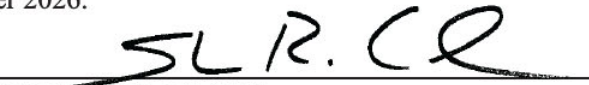
Defendants.

Case No. 4:26-cv-01424-SRC

Amended Permanent Injunction

On September 21, 2026, the Eighth Circuit issued its disposition in *Onder v. von Glahn*, No. 26-2797 (8th Cir. Sep. 21, 2026). In accord with the Eighth Circuit’s order, the Court enters a permanent injunction prohibiting Secretary of State Hoskins—as well as Secretary Hoskins’s officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with Secretary of State Hoskins or his officers, agents, servants, employees, or attorneys—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. In further accord with the Eighth Circuit’s order, to allow for appellate review, the Court administratively stays its permanent injunction until the earlier of September 28, 2026, at 5 p.m. Central Daylight Time, or the issuance of rulings from superior federal appellate courts affecting the timing and efficacy of this permanent injunction.

So ordered this 22nd day of September 2026.


STEPHEN R. CLARK

CHIEF UNITED STATES DISTRICT JUDGE



STATE OF MISSOURI

Office of Secretary of State

CERTIFICATE OF INSUFFICIENCY OF PETITION

STATE OF MISSOURI

ss.

SECRETARY OF STATE

I, Denny L. Hoskins, Secretary of State of Missouri, do hereby certify that my office has examined for compliance with the Missouri Constitution and Chapter 116, RSMo, Referendum Petition 2026-R004 submitted by Richard Von Glahn and People Not Politicians. I find the referendum petition is insufficient under the Missouri Constitution because the Missouri Constitution does not authorize a referendum on congressional redistricting plans passed by the General Assembly. The grounds for insufficiency are more fully articulated in the attached opinion by Missouri Attorney General Catherine Hanaway, which is incorporated by reference into this certificate. For the reasons more fully discussed in the attached opinion, Referendum Petition 2026-R004 shall not be placed on the ballot at the November 3, 2026 General Election.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of my office in the City of Jefferson, State of Missouri, on this 4th day of August 2026.



Denny Hoskins
Secretary of State

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ATTORNEY GENERAL OF MISSOURI
CATHERINE L. HANAWAY

August 4, 2026

Honorable Denny Hoskins, CPA
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Hoskins:

To assist in your determination about the sufficiency of People Not Politicians's ("PNP") referendum petition, you asked whether the Missouri Constitution permits referenda of congressional maps. You also asked whether the U.S. Constitution allows a referendum petition to void a congressional map until the referendum vote. The answer, to both questions, is "no."

Especially when read to avoid conflicts with the U.S. Constitution, the Missouri Constitution does not allow referenda against congressional redistricting plans. Also, allowing a small minority of Missouri voters to void a duly enacted congressional map—before a majority vote disapproving a map—would violate the U.S. Constitution. Federal law also requires Missouri to use the House Bill 1 ("HB 1") map during the November 2026 General Election.

I.

PNP's referendum petition challenging HB 1 is insufficient because the Missouri Constitution does not authorize referenda on congressional maps. In order to authorize such referenda, the Missouri Constitution would need to speak through a clear statement divesting the legislature of its authority under the U.S. Constitution's Election Clause. But the Missouri Constitution includes no such clear statement. *See* Mo. Const. art. III, §§ 49, 52(a), 52(b).

A.

The Elections Clause of the U.S. Constitution 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." U.S. Const. art. I, § 4 (emphasis

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added). Thus, U.S. Constitution seems to prohibit divesting the General Assembly of its federal redistricting authority. See *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 824–27 (2015) (Roberts, C.J., dissenting). If the Missouri Constitution permitted a referendum on congressional redistricting plans passed by the General Assembly, the Missouri Constitution would likely be preempted by the U.S. Constitution on that point.

However, I need not reach that question because the Missouri Constitution itself cannot be read to authorize a referendum on congressional redistricting plans passed by the General Assembly. The U.S. Constitution informs this analysis. Federal law makes clear that the Missouri Constitution cannot be interpreted to strip the General Assembly of its authority over redistricting absent a clear statement. See *United States v. Gradwell*, 243 U.S. 476, 485 (1917).

Courts have long looked for a clear statement before finding a state legislature's redistricting authority abrogated under the Elections Clause. For example, if Congress wishes to displace state legislative authority, it must "do[] so by positive and clear statutes." *Gradwell*, 243 U.S. at 485. If Congress—the body with textual authority to override state legislatures under the Elections Clause—must act with clear statements, then so too must other actors. The purpose of a clear statement rule is to ensure lawmakers made the intentional choice to depart from the default rules set by the U.S. Constitution. See *Gregory v. Ashcroft*, 501 U.S. 452, 460–61 (1991). If Missouri is going to make the radical choice to subject congressional redistricting plans to referenda, there must be evidence that Missourians *knowingly* made this choice. It is not enough to point to broad, vague language that might *accidentally* depart from the U.S. Constitution's design.

The U.S. Constitution's framers made a deliberate choice to vest redistricting power in state legislatures. The vagaries of broad language in state law cannot transfer that power in ways that the framers of state law did not intend.

B.

Although the Elections Clause requires a clear statement to divest the General Assembly of its redistricting authority, no such clear statement exists in the Missouri Constitution. "Article III, section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting." *Luther v. Hoskins*, 730 S.W.3d 567, 571 (Mo. banc 2026). And Article III, Section 45 contemplates only that "the *general assembly* shall by law divide the state into [congressional] districts." Mo. Const. art. III, § 45 (emphasis added). Article III, Section 45 makes no mention of redistricting by initiative or referendum. The Missouri Constitution also contains three referendum provisions, Mo. Const. art. III, §§ 49, 52(a), 52(b), and not one of these provisions mentions congressional redistricting.

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The lack of a clear statement is illustrated by the statutory procedures that the General Assembly enacted in Chapter 116, RSMo. As the Missouri Supreme Court has recognized, Chapter 116 is the General Assembly's "framework for exercising the right of referendum" in Missouri. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 487 (Mo. banc 2022). But Chapter 116 is not designed for referenda on congressional maps—which reinforces the lack of a clear statement in the Missouri Constitution. This is observed in at least three ways.

First, Chapter 116 limits a referendum's summary statement in a manner that makes it impossible to meaningfully apprise voters about the referendum's effect. "Electoral districting is a most difficult subject for legislatures," *Miller v. Johnson*, 515 U.S. 900, 915 (1995), and it involves "a number of sensitive considerations" that are extremely complex, *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012). Chapter 116, however, requires referendum summary statements to contain just 50 words, § 116.334, RSMo, and there is no provision for photographs to accompany summary statements, *id.* Thus, Chapter 116 is obviously not designed for referenda on congressional maps. Indeed, under Chapter 116, many voters would vote on competing congressional maps without even viewing the maps themselves. The fifty-word limit would also produce impossibly vague summary statements—as seen in the summary statement that the Western District Court of Appeals recently approved for PNP's referendum here:

Do the people of the state of Missouri approve the act of the General Assembly entitled "House Bill No. 1 (2025 Second Extraordinary Session)," which repeals Missouri's existing congressional plan, and replaces it with new congressional boundaries that keep more counties intact?

People Not Politicians v. Hoskins, 736 S.W.3d 518, 535 (Mo. App. W.D. 2026). No voter can make an adequately informed decision based on so little language.

Second, Chapter 116's timeline for the review of referendum petitions makes little sense in the context of a congressional map. Chapter 116 dictates that the Secretary must complete review of a referendum petition for sufficiency or insufficiency no later than "the thirteenth Tuesday prior to the general election." § 116.150.3, RSMo. But that deadline is on the same day as primary day for congressional candidates in Missouri. § 115.121.1–2, RSMo. If the General Assembly believed that referenda could apply to congressional maps, it would not set the deadline for certification under Chapter 116 on the same day as primary day.

Third, the suspension of legislation upon the filing of a referendum petition makes no sense in the context of congressional redistricting. The General Assembly must redistrict Missouri's congressional map at least every ten years. Mo. Const. art. III, § 45. The prior decade's map is discarded, and Article III, Section 45 requires the General Assembly to enact a new map in its place. *Luther*, 730 S.W.3d at 571. A

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referendum is especially ill-suited to this context. Indeed, if a referendum can freeze duly enacted law on a certification of sufficiency for the referendum, *see Maggard v. State*, 733 S.W.3d 411, 420 (Mo. banc 2026), then that means that Missouri elections might have *no* lawful congressional map. The prior decade's map would be unlawful, Mo. Const. art. III, § 45, and the new congressional map would be suspended through the filing of an adequate referendum petition, *Maggard*, 733 S.W.3d at 420. Neither the framers of the Missouri Constitution nor the drafters of Chapter 116 ever envisioned this result.

Moreover, if a referendum petition can suspend a congressional map for an election cycle, then Missouri's operative congressional map will *not* be decided according to democratic principles. Rather, each time a congressional map is enacted by the General Assembly, a small, well-funded group with signatures from a small fraction of Missouri's voters could suspend Missouri's congressional map for an entire election. In this age of out-of-state, dark-money donors, one could easily expect this to happen every time the General Assembly passes a congressional map. That is not self-government; it is tyranny of the minority. Neither the Missouri Constitution's framers nor the General Assembly anticipated this bizarre result. That all goes to the lack of a clear statement in Missouri law.

II.

Even without considering the U.S. Constitution's requirements, the Missouri Constitution does not subject congressional redistricting to the referendum. The Missouri Supreme Court has never addressed this question directly. Yet in *Maggard v. State*, the Supreme Court carefully noted that its decision should *not* be read to permit referenda of congressional maps. *See* 733 S.W.3d at 414 n.7.

The Missouri Supreme Court was right to reserve that question: Congressional maps are not subject to the referendum under Sections 49, 52(a), and 52(b) of Article III. If it were otherwise, fulfilling the General Assembly's duties under Article III, Section 45 would be impossible. "Article III, section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting." *Luther*, 730 S.W.3d at 571. Article III, section 45 provides that after "each census," "the *general assembly shall* by law divide the state into districts corresponding with the number of representatives to which it is entitled." Mo. Const. art. III, § 45 (emphasis added). Fulfilling this obligation would be impossible, however, if all redistricting legislation could be suspended by a mere referendum petition. *Maggard* held that if a referendum petition's "filing is ultimately determined to be sufficient," then the challenged legislation never went into effect under Article III, Section 52(b). 733 S.W.3d at 420. This would have disastrous consequences in the context of a congressional map. And it would be particularly problematic after each decennial census, when the Missouri Constitution nullifies the

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prior decade's congressional map and *requires* the General Assembly to enact a new map. See Mo. Const. art. III, § 45.

Thus, reading the Missouri Constitution's referendum provisions to apply to the congressional-redistricting provision necessarily creates a collision. Compare Mo. Const. art. III, § 45, with art. III, §§ 49, 52(a), 52(b). In these circumstances, a faithful interpreter of the law must prioritize the specific provision over the more general provision. See *City of Aurora v. Spectra Commc'ns Grp., LLC*, 592 S.W.3d 764, 788 (Mo. banc 2019); Scalia & Garner, *Reading Law* 184–85 (2012) (citing *McCallister v. McCallister*, 809 S.W.2d 423 (Mo. App. S.D. 1991)). Here, the more specific provision is Article III, Section 45.

Additionally, even setting aside the general/specific canon, congressional-redistricting legislation falls under exceptions to referenda outlined in Article III, Section 52(a). That section excepts “laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools.” Mo. Const. art. III, § 52(a). Congressional redistricting falls under these exceptions. As an example, suffrage is a fundamental state institution, and congressional redistricting is necessary to maintain the suffrage right as populations shift over time. Furthermore, post-census redistricting is not only required by the Missouri Constitution, Mo. Const. art. III, § 45; it is also functionally required by virtue of the U.S. Constitution's “one person, one vote” rule, *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964). Thus, redistricting legislation also falls under the exceptions outlined in Article III, § 52(a).

III.

Even if the Missouri Constitution authorizes referenda on congressional maps, the Elections Clause and the Guarantee Clause of the U.S. Constitution would nonetheless require Missouri to implement the HB 1 map for the 2026 election.

The U.S. Constitution's Elections Clause expressly vests redistricting authority in Missouri's General Assembly. U.S. Const. art. I, § 4. And the U.S. Supreme Court has *never* suggested that a small percentage of a state's population can usurp this authority. It is one thing to say that a *majority* of voters can overrule the General Assembly. See *Arizona Indep. Redistricting Comm'n*, 576 U.S. at 819–20. But allowing a small fraction of Missourians to override the General Assembly and force a vote under a different congressional map is profoundly at odds with the Elections Clause. “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof,” U.S. Const. art. I, § 4, and a small band of citizens cannot rip that power away merely by filing a referendum petition.

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Holding otherwise would also violate the U.S. Constitution's Guarantee Clause, which provides that "[t]he United States shall guarantee to every State in this Union a Republican Form of Government." U.S. Const. art. IV, § 4. The Guarantee Clause is also a mandate for state governments because "[t]he guaranty necessarily implies a duty on the part of the States themselves to provide such a government." *Minor v. Happersett*, 88 U.S. 162, 175 (1874).

There is no mystery about what is a "Republican Form of Government." See U.S. Const. art. IV, § 4. "All the States had governments when the Constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner specially provided." *Minor*, 88 U.S. at 175. "Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution." *Id.* at 176. The right of the people to enact legislation through elected representatives is bedrock in our Republic.

As to HB 1, Missourians have spoken overwhelmingly. HB1 passed 21 to 11 in the Senate and 90 to 65 in the House of Representatives. See Mo. S. Journal, 2d Extra. Sess., 103d Gen. Assembly, 25–26 (Sept. 12, 2025); Mo. H. Journal, 2d Extra. Sess., 103d Gen. Assembly, 37–38 (Sept. 9, 2025). Even if "five percent of the legal voters in each of two-thirds of the congressional districts" signed PNP's referendum petition, Mo. Const. art. III, § 52(a), the Guarantee Clause forbids the State of Missouri from allowing that fraction of five percent to override the People's representatives before a majority vote. Until a majority of Missourians vote against the HB 1 map, the will of the People must remain in effect.

IV.

Finally, throwing out the HB 1 map before the imminent 2026 General Election is impracticable and prohibited by federal law.

Today, Missouri completed its Primary Election for selecting congressional candidates. See § 115.121.2, RSMo. The General Election is now thirteen weeks (or 91 days) away. See § 115.121.1, RSMo. The 2026 General Election therefore must proceed under the same maps created for the Primary. As just one example, consider the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). See 52 U.S.C. §§ 20301, 20302; §§ 115.900–.936, RSMo (implementing UOCAVA into state election chapter). UOCAVA requires local election authorities to transmit ballots "not later than forty-five days before the election" to military and overseas voters, § 115.914, RSMo; 52 U.S.C. § 20302(a)(8), and prevents the certification of election results for three days after an election, see §§ 115.920.1, 115.508, RSMo. These requirements apply to both primary and general elections for congressional seats. § 115.904(1), RSMo. Thus, to satisfy UOCAVA in the event of a newly-ordered primary, there would need to be a minimum 93 days required to rerun the primary and then host a general election. This is greater than the 91 days between August 4

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and November 3, 2026. And that is assuming that local election officials could instantly transmit a new congressional map into the Missouri Centralized Voter Registration system; instantly print and test the requisite absentee ballots; and instantly transmit all the necessary absentee ballots to military and overseas voters. These tasks would be impossible.

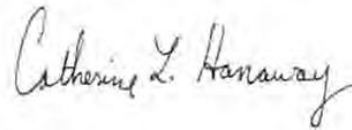
Missouri also cannot discard the HB 1 map for the November General Election now that the HB 1 map was used for the August Primary Election. Doing so would violate Article I, Section 2 of the U.S. Constitution, which provides: "The House of Representatives shall be composed of Members chosen every second Year *by the People of the several States*, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. Const. art. I, § 2 (emphasis added). If Missouri forced hundreds of thousands of Missourians to consider a slate of candidates that they never voted on in the primary, the State would deprive "the People" of the right to choose their representatives under Article I, Section 2. Rather, millions of Missourians would consider a slate of candidates in the General Election that they never considered in the Primary Election.

Thus, even if it is ultimately determined that a referendum on congressional redistricting is constitutionally permissible, the 2026 general election must go forward under the HB 1 map.

V.

PNP's referendum petition is unconstitutional. Additionally, setting aside the petition's unconstitutionality, the U.S. Constitution and federal law require Missouri election officials to enforce House Bill 1 during the November 2026 election. The filing of a referendum petition, signed by only five percent of the State's voters, cannot displace the will of the people.

Very truly yours,

A handwritten signature in cursive script, reading "Catherine L. Hanaway".

CATHERINE L. HANAWAY
Missouri Attorney General