
In the Supreme Court of the United States

PEOPLE NOT POLITICIANS et al.,

Applicants,

v.

CONGRESSMAN ROBERT “BOB” ONDER et al.,

Respondents,

and

STATE OF MISSOURI et al.,

Respondents.

**BRIEF FOR MISSOURI VOTERS JAKE MAGGARD AND
GREGG LOMBARDI AS AMICI CURIAE IN SUPPORT
OF APPLICANTS**

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INTEREST OF AMICI CURIAE¹

It's déjà vu all over again.

Amici Curiae Jake Maggard and Gregg Lombardi (“Amici”) once again call on this Court to vindicate not only their voting rights under the U.S. Constitution but their referendum right under the Missouri Constitution. Under Missouri law, a “measure referred to the people shall take effect when approved by a majority of the votes cast thereon, *and not otherwise.*” Mo. Const. art. III, § 52(b) (emphasis added). This is the essence of the people’s referendum right: As the Missouri Supreme Court recognized a half-century ago, the

[p]urpose of referendum is to suspend or annul a law which *has not gone into effect* and to provide the people a means of giving expression to a legislative proposition, and require their approval *before it become operative as a law*; and its purpose does not intend to invalidate a law already operative.

State ex rel. Moore v. Toberman, 250 S.W.2d 701, 706 (Mo. 1952) (emphasis added) (citation modified).

Amici are qualified Missouri voters who signed the petition to refer House Bill 1 (“HB 1”), Missouri’s proposed new congressional map, to the people for approval or rejection. They therefore have a clear interest in the outcome of the pending emergency application and urge the Court to rule in Applicants’ favor. Under the Missouri Constitution, the people “reserve[] a share of the legislative power *for themselves* to serve as a check on the legislature.” *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 489 (Mo. 2022) (emphasis added). Each Amici possesses a share of the legislative power and therefore has a personal stake in safeguarding the right to cast a meaningful vote in the HB 1 referendum *before* the proposed map is used to elect members of Congress—and, for that matter, in voting for a congressional delegation using a lawfully enacted map.

¹ Pursuant to this Court’s Rule 37.6, counsel for Amici Curiae Jake Maggard and Gregg Lombardi (“Amici”) state that no party or counsel for a party, or any other person other than Amici and their counsel, made a monetary contribution to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

“The voters of Missouri first adopted a constitutional amendment establishing the right of referendum more than 100 years ago,” “reserv[ing] a share of the legislative power for themselves” and “ensur[ing] that ‘those who have no access to or influence with elected representatives may take their cause directly to the people.’” *No Bans*, 638 S.W.3d at 486, 489 (quoting *Missourians to Protect Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. 1990)). For over a century, the Missouri Supreme Court—having recognized that “an erroneous interpretation of powers conferred always ends in trouble,” *State ex rel. Drain v. Becker*, 240 S.W. 229, 233 (Mo. 1922)—has zealously defended the boundaries of the referendum right against procedural chicanery and mischief. The court long ago acknowledged the “prudence” of the people reserving “the right to correct any evils which may result from unwise legislation” and decided that this “absolute power” is “immune from obstructive interference *from any source* until the purpose for which it is exercised has been consummated.” *Id.* at 231–32 (emphasis added).

Nearly three weeks ago, the Missouri Supreme Court was required once again to safeguard Missourians’ share of the legislative power, the latest leg of the “unseemly race between the Governor, the Legislature, and the people” that has always accompanied the referendum right. *Becker*, 240 S.W. at 233. The court’s intervention was sorely needed. Since Secretary of State Denny Hoskins (the “Secretary”) received 691 boxes containing nearly 50,000 pages of signed referendum petitions last December—far more than necessary to refer HB 1 for popular approval—he has done everything in his power to deny Missouri voters their right to have their say before HB 1 goes into effect. The Secretary did not hide his intentions or motivation: Within one day of submission, he told the Associated Press he was “going to do everything [he] can to protect” HB 1.²

² David A. Lieb & Hannah Schoenbaum, *Opponents of Trump-Backed Redistricting in Missouri Submit a Petition to Force a Public Vote*, PBS News (Dec. 10, 2025), <https://bit.ly/491AIKs>.

Delay was the Secretary's chosen strategy, and he refused to make a final certification decision until just one hour before his statutory deadline on August 4, 2026—primary day. This in turn postponed the inevitable suspension of HB 1, allowing the Secretary to implement the new map in Missouri's August primary even though, the Missouri Supreme Court later explained, that map was never actually enacted. "[B]ecause a 'legal, sufficient, and timely' referendum petition was filed on December 9—*before* HB 1 went into effect on December 11—HB 1 did not take effect on December 11, HB 1 was 'referred to the people' as of December 9, and HB 1 'shall take effect when approved by a majority of the votes cast thereon, and not otherwise.'" *Von Glahn v. Hoskins*, No. SC 101805, 2026 WL 2628846, at *5 (Mo. Sept. 3, 2026) (quoting *Maggard v. State*, 733 S.W.3d 411, 420 (Mo. 2026)). After undertaking this straightforward application of Missouri law, the court had a pointed response to the Secretary's sudden concerns about "the confusion, expense, and practical difficulties that may result from not utilizing the congressional redistricting in HB 1 for the November 2026 election": "[T]hese arguments are particularly misplaced given the secretary's delay created the confusion, expense, and practical difficulties of which he complains." *Id.* at *6 n.8.

The Missouri Supreme Court was right on the law and on the equities. Any logistical difficulties were a problem entirely of the Secretary's own making, a byproduct (if not the intended effect) of his promise to do "everything [he] can to protect" HB 1 by subverting Missourians' constitutional referendum right. And because HB 1 was properly referred to the people, it cannot take effect—and cannot be implemented—until the people vote to approve it. That should have been the end of this story.

Instead, the Eighth Circuit has injected new chaos and uncertainty on the eve of the general election—indeed, after the election was already underway. As the Missouri Supreme Court made clear on September 3, the day it handed down the *von Glahn* decision, the one and only operative congressional map in Missouri is the map adopted by the General Assembly in 2022. *See* 2026 WL 2628846, at *6 n.8 ("[T]he 2022 map is the only map in

effect.”). *That* was the status quo at the time the district court issued its temporary restraining order (“TRO”), and it remains the state-law status quo today. And yet, in a remarkable departure from comity and federal practice, the Eighth Circuit has *prohibited* use of the only lawful congressional map Missouri currently has. More shocking still, the Eighth Circuit premised its “final judgment on the merits,” App. 18a, on legal theories that had already been considered *and rejected* by this Court—and in apparent defiance of this Court’s September 10 order staying the district court’s TRO.

This Court’s immediate intervention is needed for at least two reasons.

First, the Eighth Circuit erroneously concluded “that, if the 2022 map is used in the November 2026 general election, some Missouri voters will have more say than others on who represents them in Congress.” App. 24a. Not so: No authority requires perfect symmetry between the electorates in primary and general elections or otherwise suggests that use of Missouri’s 2022 congressional map (as required by the Missouri Supreme Court’s injunction) would produce an unconstitutional result. Instead, it is the Eighth Circuit’s decision that risks constitutional deprivation here, since use of the HB 1 map in the general election would deny Missouri voters their right to referendum.

Second, this Court “has repeatedly stated that federal courts ordinarily should not enjoin a state’s election laws in the period close to an election” and “in turn has often stayed lower federal court injunctions that contravened that principle.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays). By upending the state-law status quo—use of the 2022 congressional plan, Missouri’s only lawfully enacted map—on the eve of the general election, the Eighth Circuit (like the district court before it) violated *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), and disregarded the compelling equitable concerns militating against emergency relief.

ARGUMENT

Following the Missouri Supreme Court’s clear directive that the 2022 congressional map be used in the upcoming election and this Court’s stay of a TRO mandating otherwise, the Eighth Circuit flouted any recognizable theory of federalism and enjoined Missouri officials from using a congressional map other than HB 1, a map that, in a legal sense, *does not exist and has never existed*. The premise underlying the Eighth Circuit’s decision—that, since the Secretary intentionally violated state law by administering a primary election under an unlawful map (for concededly partisan purposes), Missouri must now conduct a *second* election under the same unlawful map—is as stunning as it is baseless. Repeating the Secretary’s error is inconsistent with federal and state law, and this Court should immediately act to restore the status quo.

I. The Eighth Circuit’s decision, not the Missouri Supreme Court, threatens the constitutional rights of Missouri voters.

The Eighth Circuit’s conclusion that “[c]hanging district lines between the primary and general election prevents an affected voter from participating in either district’s complete procedure of choices,” App. 26a, does not bear scrutiny. Contrary to the Eighth Circuit’s decision, use of Missouri’s only lawfully enacted congressional map will not violate Article I, Section 2 of the U.S. Constitution or the Equal Protection Clause.

Article I, Section 2. The U.S. Constitution provides 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, cl. 1. But use of Missouri’s 2022 congressional map in the general election will not prevent voters from “cho[osing]” the state’s congressional delegation to the House of Representatives as Article I, Section 2 requires. After all, the 2022 map has been used in two prior elections—and there is certainly no argument that Missouri voters were denied their constitutional right to elect members of Congress in 2022 or 2024.

As for 2026, all that has changed since the Missouri Supreme Court decided *von Glahn* is that some voters will find themselves in different congressional districts with

candidates other than those they voted for in the August primary. But the Eighth Circuit cited no authority foreclosing this outcome, and no wonder: There is nothing inherently or necessarily static about the composition of an electorate between a primary and general election. After all, plenty of voters sit out primaries, but they are still perfectly able to cast votes in general elections. Other voters move between districts after a primary but before the general election—meaning they too find new candidates on their general-election ballots. What matters is that voters have the opportunity to vote in a primary and a general election. Missourians were able to do so this year. That the district lines (and the voters within them) might have changed between the elections is of no constitutional moment.

The cases the Eighth Circuit relied on underscore this point. *See* App. 23a. In *United States v. Classic*, this Court held that, “[w]here the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, *the right of the elector to have his ballot counted at the primary*, is likewise included in the right protected” by the U.S. Constitution. 313 U.S. 299, 318 (1941) (emphasis added). Here, no Missouri voter was denied that right—and thus Article I, Section 2 has not been violated or even undermined. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), and *Klein v. United States*, 176 F.2d 184 (8th Cir. 1949), all stand for the same principle: States cannot exclude voters from primaries. But that didn’t happen here. And *none* of the cases cited by the Eighth Circuit held that deviations between primary and general electorates run afoul of the U.S. Constitution.

Equal Protection Clause. The Eighth Circuit’s (brief) equal-protection analysis fails for a simple reason: No Missourian’s vote for Congress will be worth more than any other’s. *Contra* App. 27a. Each voter will be able to cast a single vote for a member of Congress. Again, all that has changed is that some voters will find themselves in different congressional districts, but the Eighth Circuit found no authority proscribing this outcome.

In short, no “Missouri voters will have more say than others on who represents them in Congress” if the 2022 map is used, *contra* App. 24a, and no voter’s constitutional rights

will be violated. Instead, it is *the Eighth Circuit’s decision* that is now on the brink of producing an unconstitutional result. If the HB 1 map is used in the upcoming general election *before* the people approve the map at the ballot box, then the Missouri Constitution’s referendum right will be effectively vitiated because the “[p]urpose of referendum is to suspend or annul a law which has not gone into effect ... and its purpose *does not intend to invalidate a law already operative.*” *Toberman*, 250 S.W.2d at 706 (emphasis added) (citation modified). This purpose would be clearly and irreparably subverted if legislation like HB 1 could take effect before voters approve it—just like the gubernatorial veto power would be diminished if legislation could become effective before a governor has a chance to exercise the veto. *See Nichols v. Robinson*, 211 S.W. 11, 13 (Mo. 1919) (explaining that “[t]he legislative authority in Missouri is not wholly with the General Assembly” because “[t]he Governor is a factor in legislation” and thus “[i]t would be far-fetched to say that the legislative body meant that [a] law should become effective without the presentation to the Governor”).

The Eighth Circuit’s decision would force Amici and other Missourians to vote on whether to approve or reject HB 1 *at the very same time* they elect members of Congress from districts drawn by that legislation. The referendum right would lose any meaning or value if voters rejected HB 1 in the general election and yet were still forced to live under its map for the duration of the 120th Congress. That potential injury—dilution of the referendum right, which Missourians reserved to themselves as a check on the legislature—is far more real and immediate than any of the manufactured constitutional injuries contained in the Eighth Circuit’s decision.³

Additionally, “[a] state legislature’s exercise of authority under the Elections Clause” of the U.S. Constitution “must be in accordance with the method which the State has prescribed for legislative enactments.” *Moore v. Harper*, 600 U.S. 1, 24 (2023) (citation

³ It’s not just this map and this election that are at stake. If the Secretary’s gambit succeeds, then the General Assembly could draw a new map every year, repeat the Secretary’s maximum-delay playbook, and thereby prevent Missourians from ever effectively exercising their referendum right.

modified). Consistent with that admonition, “[t]here is only one valid congressional redistricting in effect—the congressional redistricting the General Assembly established in 2022.” *Von Glahn*, 2026 WL 2628846, at *6 n.8. No other map has been in effect since then. Accordingly, requiring use of HB 1 would not just dilute the state constitutional referendum right but also impair Missouri’s federal constitutional obligation to draw its congressional maps pursuant to its legislative process, referendum included. Whatever else might be said of such a result, it is hardly consistent with *any* constitution—federal or state.

II. The Eighth Circuit’s decision fundamentally misunderstood the equities.

The equities do not favor the result ordered by the Eighth Circuit, as a matter of either fairness or federalism.

First, the Eighth Circuit’s decision has the ultimate effect of rewarding the Secretary for his intentionally dilatory tactics and gamesmanship. His hands are decidedly unclear here, as the Missouri Supreme Court recognized: “In December 2025,” immediately after the signed HB 1 referendum petitions were filed,

a federal district court advised the secretary and the state that, if the referendum petition is sufficient, “the new map will be frozen until after the referendum, which could significantly disrupt the 2026 elections.” At the same time, the federal district court noted the secretary had the ability to declare the petition insufficient based on his argument ... that the Missouri Constitution does not permit a referendum as to congressional redistricting passed by the General Assembly.

Von Glahn, 2026 WL 2628846, at *6 n.8 (citation omitted) (quoting *Mo. Gen. Assembly v. von Glahn*, No. 25-CV-1535-ZMB, 2025 WL 3514277, at *2 (E.D. Mo. Dec. 8, 2025)). “[T]here is no apparent reason,” the federal court earlier observed, “why [the Secretary] would incur the significant cost of signature verification given his stated belief that the petition is constitutionally deficient.” *Mo. Gen. Assembly*, 2025 WL 3514277, at *2 n.2. And yet the Secretary “chose to delay his certification until the last possible day,” waiting until 4 p.m. on primary day, August 4—the certification deadline—to reject the HB 1

referendum on the same ground he raised in federal court nearly eight months earlier. *Von Glahn*, 2026 WL 2628846, at *6 n.8.

Moreover, nearly three months before the certification deadline, the Missouri Supreme Court put the Secretary on notice that a sufficiency determination would suspend HB 1 and prevent its further use no matter when that determination was made: “If ... the December 9 referendum petition filing is ultimately determined to be sufficient,” the court made clear, then “HB 1 did not take effect on December 11, HB 1 was ‘referred to the people’ as of December 9, and HB 1 ‘shall take effect when approved by a majority of the votes cast thereon, and not otherwise.’” *Maggard*, 733 S.W.3d at 420 (quoting Mo. Const. art. III, § 52(b)). And yet the Secretary still delayed until the last possible hour.

The result? HB 1 was used in the August primary, even though it was never properly enacted. The Secretary’s tactics denied Missourians the opportunity to vote under a lawful congressional map, and that injury should not be compounded in the general election. That is exactly how the Eighth Circuit would have it: doubling down on use of an unlawful map just because it was used in the primary election. *See* App.32a. Even setting aside the absence of a colorable legal theory justifying the Eighth Circuit’s decision, the equities do not favor rewarding the Secretary’s machinations and delay at the expense of Missourians’ constitutional referendum right—which is precisely what the decision accomplishes by mandating use of the HB 1 map.

Second, apart from the Secretary’s gamesmanship, it is difficult to imagine a more glaring violation of *Purcell* than the Eighth Circuit’s opinion. “This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). The *Purcell* principle “is infused with federalism concerns, arising from the notion that federal courts should show a degree of caution before they intervene in state-created election procedures that could bollix up the management of an election by state officials.” *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020)

(Appel, J., specially concurring); *see, e.g., Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (purpose of *Purcell* is to avoid “upsetting the delicate federal-state balance in elections”).

Put plainly, the Eighth Circuit failed to exercise the restraint required by *Purcell*, deciding instead to intrude on the Missouri Supreme Court’s injunction and issue a “conflicting order[]” that creates “voter confusion” and administrative chaos on the eve of voting. 549 U.S. at 4–5. Missouri now finds itself in an impossible situation: The HB 1 map cannot be used (because the Missouri Supreme Court enjoined it, *see von Glahn*, 2026 WL 2628846, at *7), but nor can any other map (because the Eighth Circuit prohibited the Secretary “from implementing, using, publishing, distributing, or mandating the use of any congressional district map other than the [HB 1] map for the November 3, 2026, general election,” App. 34a–35a). In creating this catch-22, the Eighth Circuit failed to “weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 4–5. The Eighth Circuit’s decision has effectively left Missouri voters without a usable congressional map in contravention of well-settled equitable rules counseling restraint in the leadup to elections—and in violation of federal law requiring that “a State [be] redistricted in the manner provided by the law thereof.” 2 U.S.C. § 2a(c).

The Eighth Circuit went so far as to conclude that “*Purcell* supports, not prevents, its decision” because “[t]he Missouri General Assembly set the status quo, the Missouri Supreme Court upset it, and it is our duty, consistent with *Purcell*, to at least preserve the possibility of restoring it.” App. 30a, 32a (citation modified). This reasoning misapprehends the status quo in Missouri. Because “[t]he *Purcell* principle is a presumption against disturbing the status quo,” “[t]he question [] is who sets the status quo? The Constitution’s answer is generally the state legislature,” *Carson v. Simon*, 978 F.3d 1051, 1062 (8th Cir.

2020), subject to the “requirements imposed by the state constitution with respect to the enactment of laws”—including, where applicable, popular referenda, *Moore*, 600 U.S. at 23–26 (citation modified). In other words, the starting point when applying *Purcell* is the status quo *as established by state law*. See, e.g., *Wise v. Circosta*, 978 F.3d 93, 98 (4th Cir. 2020) (en banc) (“[I]t is the state’s action—not any intervening federal court decision—that establishes the status quo.”).

Here, the Missouri Supreme Court—the “highest court in the state,” with “exclusive appellate jurisdiction in all cases involving the validity ... of a statute or provision of the constitution of” Missouri, Mo. Const. art. V, §§ 2–3; see *Riley v. Kennedy*, 553 U.S. 406, 425 (2008) (recognizing that “[a] State’s highest court is unquestionably the ultimate expositor of state law” and that its “prerogative ... to say what [state] law is merits respect in federal forums” (citation modified))—established the state-law status quo when it ruled that “the 2022 map is the only map in effect,” *von Glahn*, 2026 WL 2628846, at *6 n.8. This “status quo ([Missouri’s] duly-enacted election law) was disrupted by the [Missouri] Secretary of State” when he conducted the August primary election using a map that was, ultimately, never lawfully enacted. *Carson*, 978 F.3d at 1062. But the injury should go no further. Under *Purcell* and the principles of federalism it embraces, the Eighth Circuit did not have license to order for the November general election the same unlawful result orchestrated by the Secretary for the August primary—and it certainly was not at liberty to upend the status quo established by the Missouri Supreme Court. “It is one thing for a State on its own to toy with its election laws close to a State’s elections. But it is quite another thing for a federal court to swoop in and re-do a State’s election laws in the period close to an election.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays).

Nor was the Eighth Circuit entitled to disregard this Court’s September 10 stay order. “Lower court judges may sometimes disagree with this Court’s decisions, but they

are never free to defy them.” *Nat’l Insts. of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring in part and dissenting in part).

CONCLUSION

The stay application should be granted.

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