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U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

IN THE UNITED STATES DISTRICT COURT
EASTERN MISSOURI

PAUL BERRY III,

Division: _____

Plaintiff,

v.

Case Number: _____

JOHN R. (JAY) ASHCROFT,
in his official capacity as
Missouri Secretary of State and
STATE OF MISSOURI,

Defendants.

VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff, Paul Berry III, and upon knowledge with respect to information, hereby allege for this Verified Motion for Temporary Restraining Order against Defendants, John R. ("Jay") Ashcroft and the State of Missouri, state as follows:

INTRODUCTION

The State of Missouri is required to enact a new congressional map based upon the 2020 United States Census results, which provides the State of Missouri eight (8) congressional representatives and establishes significant congressional district population variations when compared with the current 2012 Missouri Congressional Map.

Despite the 2020 United States Census results being certified to the Missouri Governor

over eight months ago on August 12, 2021, the State of Missouri has failed to enact any new congressional map based upon the 2020 United States Census results to comply with the Missouri Constitution and United States Constitution.

The 2022 Missouri Primary congressional election is set pursuant to Missouri statute authorized by the Elections Clause for August 2, 2022. Federal law requires absentee ballots for United States Service Members stationed overseas to be mailed to such United States Service Members no later than forty-five (45) days before the 2022 Missouri Primary congressional election or on June 18, 2022.

Missouri law prohibits any amendment to any Primary election ballot, regardless of whether such amendment to a Primary election ballot is ordered by a Missouri court, anytime after eight (8) weeks prior to the 2022 Missouri Primary congressional election or on June 7, 2022, inter alia, to provide the Missouri election authorities enough time to prepare printing and mailing of absentee ballots for United States Service Members stationed overseas no later than forty-five (45) days before the 2022 Missouri Primary congressional election or on June 18, 2022.

Missouri voters are entitled to know the identity of the 2022 Missouri Primary congressional candidates of the congressional district such Missouri voters reside in anytime after 5:00pm on March 29, 2022. The failure of the State of Missouri to enact a new congressional map based upon the 2020 United States Census further causes the necessity for the Court to declare and enjoin Missouri from violating its own election laws authorized by the

Elections Clause relevant to the 2022 Missouri Primary congressional election.

Verified Statement of Facts

I. The 2012 Missouri Congressional Map is Unconstitutional for the Purpose of Conducting the 2022 Missouri Primary Congressional Election (Counts I, II and III)

1. The only Missouri constitutional or statutory provision establishing the procedure for congressional reappointment is MO Const art III § 45, which fully states:

“When the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled, which districts shall be composed of contiguous territory as compact and as nearly equal in population as may be.”

2. MO Const art III § 45 requires the State of Missouri to enact by statute a congressional map based upon the 2020 U.S. Census certified to the Governor of the State of Missouri that is “composed of contiguous territory as compact and as nearly equal in population as may be.”

3. On August 12, 2021, the 2020 U.S. Census was certified to the Governor of the State of Missouri by the United States Census Bureau.

4. After eight months, Defendant Missouri has failed to enact any 2022 Missouri congressional map based upon the 2020 U.S. Census results certified to the Governor of the State of Missouri on August 12, 2021.

5. After the certification of the results of each decennial census conducted by the United States Census Bureau, the Missouri General Assembly is required to draft a new congressional map, specifically: “States must redistrict to account for any changes or shifts in population.”

Georgia v. Ashcroft, 539 U.S. 461, 488 n.2 (2003).

6. The current Missouri congressional map was enacted by the Missouri General Assembly voting to override the Missouri Governor’s veto of such Missouri congressional map on May 4, 2011 (“2012 Missouri Congressional Map”).

7. 2012 Missouri Congressional Map was drafted by the Missouri General Assembly utilizing population data from the 2010 United States Census, which provided at the time 2012 Missouri Congressional Map was enacted by the Missouri General Assembly seven (7) congressional districts with a population of 748,616 and one (1) congressional district with a population of 748,615, which equates to a maximum population deviation between congressional districts of one person.

8. Based upon the 2020 United States Census results, the State Missouri is appointed eight (8) congressional representatives with a target population of 769,364 per congressional district.

9. Based upon the 2020 United States Census results certified to the Missouri Governor on August 12, 2021, the following calculations represents the change of population for each Missouri congressional district represented by the 2012 Missouri Congressional Map:

	2012 CD Map Population	2022 CD Map Ideal Population	2020 CD Population	2022 CD Map Ideal Population Deviation
District 1:	748,616	769,364	714,731	-54,633
District 2:	748,616	769,364	777,688	8,324
District 3:	748,615	769,364	804,505	35,141
District 4:	748,616	769,364	777,217	7,853
District 5:	748,616	769,364	788,310	18,946

District 6:	748,616	769,364	781,000	11,636
District 7:	748,616	769,364	792,214	23,055
District 8:	748,616	769,364	719,043	-50,321

10. The 2012 Missouri Congressional Map violates the “nearly equal in population as may be” provision of MO Const art III § 45 for use as a congressional map to conduct the 2022 Missouri Primary congressional election based upon the significant population deviations reflected between the 2012 Missouri Congressional Map and the 2020 U.S. Census results certified to the Governor of the State of Missouri.

11. The Supremacy Clause of the United States Constitution requires the State of Missouri to abide by the United States Constitution when enacting any congressional redistricting map.

12. The “*One Man, One Vote*” provision of US Const art I § 2 requires the State of Missouri from utilizing congressional district boundaries that establish congressional district populations that are as near as practical.

13. US Const art I § 2 provides as declared by the United States Supreme Court in *Wesberry v. Sanders*, 376 US 1 - (1964):

“We hold that, construed in its historical context, the command of Art. I, § 2, that Representatives be chosen “by the People of the several States”^[9] means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's.^[10] This rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation's history.^[11] It would be extraordinary to suggest that in such statewide elections the votes of inhabitants of some parts of a State, for example, Georgia's thinly populated Ninth District, could be weighted at two or three times the value of the votes of people living in more populous parts of the State, for example, the Fifth District around Atlanta. Cf. *Gray v. Sanders*, 372 U. S. 368. We do not believe that the Framers of the

Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected "by the People," a principle tenaciously fought for and established at the Constitutional Convention. The history of the Constitution, particularly that part of it relating to the adoption of Art. I, § 2, reveals that those who framed the Constitution meant that, no matter what the mechanics of an election, whether statewide or by districts, it was population which was to be the basis of the House of Representatives."

14. Due to population changes over the past decade, the State of Missouri's current congressional districts are both unlawful and unconstitutional, and as such, the current configuration of the State of Missouri's congressional districts violates Article I, Section 2 of the U.S. Constitution's requirement that states must "achieve population equality 'as nearly as is practicable'" when drawing congressional districts. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)); see also *Reynolds v. Sims*, 377 U.S. 533 (1964).

15. The Equal Protections Clause of US Const art XIV requires the State of Missouri to maintain congressional districts apportioned on a population basis.

16. The State of Missouri failing to enact any 2022 Missouri congressional map does not constitute any legitimate considerations intended to effectuate rational state policy permitting any population deviation between congressional districts provided by the current 2012 Missouri Congressional Map.

17. As the United States Supreme Court stated in *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016):

"The product of these debates was § 2 of the Fourteenth Amendment, which retained total population as the congressional apportionment base. See U.S. Const., Amdt. 14, § 2 ("Representatives shall be apportioned among the several States according to their

respective numbers, counting the whole number of persons in each State, excluding Indians not taxed."). Introducing the final version of the Amendment on the Senate floor, Senator Jacob Howard explained:

"[The] basis of representation is numbers...; that is, the whole population except untaxed Indians and persons excluded by the State laws for rebellion or other crime.... The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution." Cong. Globe, 39th Cong., 1st Sess., 2766-2767 (1866).

"The debates at the [Constitutional] Convention," the Court explained, "make at least one fact abundantly clear: that when the delegates agreed that the House should represent 'people,' they intended that in allocating Congressmen the number assigned to each state should be determined solely by the number of inhabitants." 376 U.S., at 13, 84 S.Ct. 526. "While it may not be possible to draw congressional districts with mathematical precision," the Court acknowledged, "that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." *Id.*, at 18, 84 S.Ct. 526 (emphasis added)."

18. *Evenwel v. Abbott* further states:

"And the Court has suggested, repeatedly, that districting based on total population serves both the State's interest in preventing vote dilution and its interest in ensuring equality of representation. See *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 693-694, 109 S.Ct. 1433, 103 L.Ed.2d 717 (1989) ("If districts of widely unequal population elect an equal number of representatives, the voting power of each citizen in the larger constituencies is debased and the citizens in those districts have a smaller share of representation than do those in the smaller districts."). See also *Kirkpatrick*, 394 U.S., at 531, 89 S.Ct. 1225 (recognizing in a congressional-districting case that "[e]qual representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives")."

19. The 2012 Missouri Congressional Map violates the "*One Man, One Vote*" provision of US Const art I § 2 and the Equal Protections Clause of US Const art XIV for use as a

congressional map to conduct the 2022 Missouri Primary congressional election due to the substantial population deviations between the eight (8) congressional districts of the 2012 Missouri Congressional Map and the 2020 U.S. Census results certified to the Governor of the State of Missouri.

20. The Missouri “General Assembly’s failure to provide a means for congressional representation would, if unremedied, result in an unconstitutional deprivation” of Plaintiffs’ right to select representatives, as the current congressional districts are “patently and obviously unconstitutional.” *Shayer v. Kirkpatrick*, 541 F. Supp. 922, 925 (W.D. Mo. 1982) (quoting *Wright, Miller, and Cooper*, Fed. Prac. and Procedure, § 4235, at 400).

21. 2 U.S. Code § 2a(c) requires the State of Missouri to utilize the unconstitutional 2012 Missouri Congressional Map in the event that no 2022 Missouri congressional map is enacted prior to the 2022 Missouri Primary congressional election, which states in relevant part:

“(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected;”

22. The *Purcell* principle is a series of rulings from the United States Supreme Court that if applied by the Court in the instant Complaint would prohibit Plaintiff from receiving judicial relief from Defendants utilizing an unconstitutional congressional map at an unset date prior to the 2022 Missouri Primary congressional election.

23. Without the Court’s immediate adjudication of this Complaint, six million Missourians

will be bound to a congressional map that grossly conflicts with various amendments of the Missouri Constitution and the United States Constitution.

II. Defendant Ashcroft is Required to Abide by Missouri Election Law and the Missouri Constitution Irrespective of Defendant Missouri Failing to Enact a 2022 Missouri Congressional Map (Counts IV, V and VI)

24. The Elections Clause of the U.S. Constitution assigns the Missouri General Assembly the responsibility to establish for congressional elections: “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, cl. 1.

25. Defendant Ashcroft, as the Missouri Secretary of State, is responsible for conducting Missouri congressional elections on behalf of the State of Missouri, specifically, Defendant Ashcroft is required to abide by MO Const art III § 29, MO Const art III § 45, §§ 115.121(2), 115.34, 115.349(1) and 115.349(2) RSMo set by the Missouri General Assembly, inter alia, to comply with the Elections Clause when conducting any congressional elections on behalf of the State of Missouri.

26. Section 115.349(2) RSMo states: “No declaration of candidacy for nomination in a primary election shall be accepted for filing prior to 8:00 a.m. on the last Tuesday in February immediately preceding the primary election.”

27. On February 22, 2022, the Missouri Secretary of State began accepting congressional candidate filing for the 2022 Missouri Primary congressional election set to occur pursuant to 115.121(2) RSMo and section 115.341 RSMo on August 2, 2022.

28. On February 22, 2022, Plaintiff filed for the Republican nomination for Missouri Congressional District 2 along with other Primary congressional candidates in all eight (8) congressional districts in the State of Missouri, which required each Missouri Primary congressional candidate to declare before the Missouri Secretary of State which congressional district and political party such congressional candidates declared themselves a Primary candidate for.

29. MO Const art III § 45 declares any congressional map enacted by the Missouri General Assembly is a “law” or a Missouri statute, which is governed by MO Const art III § 29 and states:

“No law passed by the general assembly, except an appropriation act, shall take effect until ninety days after the adjournment of the session in either odd-numbered or even-numbered years at which it was enacted. However, in case of an emergency which must be expressed in the preamble or in the body of the act, the general assembly by a two-thirds vote of the members elected to each house, taken by yeas and nays may otherwise direct; and further except that, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of the recess.”

30. MO Const art III § 29 provides when any Missouri statute, such as a Missouri congressional map, is enacted by the Missouri General Assembly without an emergency clause, such Missouri statute will not go in effect until August 28, 2021, which is ninety (90) days after the adjournment of the 2022 Missouri General Assembly set pursuant to MO Const art III § 20(a) to “adjourn at midnight on May thirteenth” 2022.

31. Since the Missouri Primary congressional election day date is set pursuant to section 115.121(2) RSMo and section 115.341 RSMo for August 2, 2022, and any Missouri

congressional map enacted by the 101st Missouri General Assembly without an “emergency clause” pursuant to MO Const art III § 29 will not go in effect until August 28, 2022, any such Missouri congressional map enacted by the 101st Missouri General Assembly without an “emergency clause” pursuant to MO Const art III § 29 may not be utilized to conduct any 2022 Missouri congressional elections, and as such, Defendant Ashcroft is constitutionally-barred pursuant to MO Const art III § 29 from conducting any 2022 Missouri Primary congressional election with any Missouri congressional map enacted by the 101st Missouri General Assembly without an “emergency clause” pursuant to MO Const art III § 29.

32. Section 115.121(2) RSMo states “The primary election day shall be the first Tuesday after the first Monday in August of even-numbered years.”

33. Section 115.341 RSMo states: “For the nomination of candidates to be elected at the next general election, a primary election shall be held on the first Tuesday after the first Monday in August of even-numbered years.”

34. Section 115.121(2) RSMo and section 115.341 RSMo provides the 2022 Missouri Primary congressional election date shall be set for August 2, 2022.

35. There are only two legal authorities that authorize Missouri to change the 2022 Missouri Primary congressional election day date from August 2, 2022, which include section 44.100 RSMo or section 115.024 RSMo.

36. The Missouri Secretary of State is required pursuant to section 115.121(2) RSMo and section 115.341 RSMo to conduct a 2022 Missouri Primary election for United States Congress

on August 2, 2022, unless the 2022 Missouri congressional date is rescheduled pursuant to section 44.100 RSMo or section 115.024 RSMo.

37. Pursuant to section 44.100 RSMo, the failure of the Missouri General Assembly to enact a Missouri congressional map does not constitute an “emergency” permitting the Missouri General Assembly to pass a resolution or the Missouri Governor to issue a proclamation granting the authority to change the 2022 Primary congressional election from any date other than “the first Tuesday after the first Monday in August of even-numbered years.”

38. Pursuant to section 115.024 RSMo, the failure of the Missouri General Assembly to enact a Missouri congressional map does not constitute a “disaster” permitting the “election committee” consisting of three Missouri appellate judges to consider any petition to reschedule the 2022 Primary congressional election within the Eastern District Missouri Court of Appeals from any date other than “the first Tuesday after the first Monday in August of even-numbered year” as required by 115.121(2) RSMo and section 115.341 RSMo.

39. Neither section 44.100 RSMo or section 115.024 RSMo provides for the rescheduling of the 2022 Primary congressional election from August 2, 2022, due to the failure of the Missouri General Assembly to enact a 2022 Missouri congressional map or anything related to the 2012 Missouri Congressional Map, and as such, Defendant Ashcroft is statutorily-barred pursuant to 115.121(2) RSMo and section 115.341 RSMo, and constitutionally-barred pursuant to the Elections Cause, from rescheduling the 2022 Primary congressional election from any date other than August 2, 2022, due to the failure of the Missouri General Assembly to enact a 2022

Missouri congressional map or anything related to the 2012 Missouri Congressional Map.

40. Section 115.349(1) RSMo states: "Except as otherwise provided in sections 115.361 to 115.383 or sections 115.755 to 115.785, no candidate's name shall be printed on any official primary ballot unless the candidate has filed a written declaration of candidacy in the office of the appropriate election official by 5:00 p.m. on the last Tuesday in March immediately preceding the primary election."

41. Pursuant to Section 115.349(1) RSMo, the Missouri Secretary of State was statutorily-required to cease accepting or amending congressional candidate filing for the 2022 Missouri Primary congressional election at 5:00pm on March 29, 2022.

42. Sections 115.361 to 115.383 and sections 115.755 to 115.785 are irrelevant to Missouri Primary congressional candidate elections.

43. There is no constitutional or statutory procedure that authorizes the Missouri Secretary of State to permit Missouri congressional candidates to file or amend a congressional candidate filing for the 2022 Missouri Primary congressional election after 5:00pm on March 29, 2022, and as such, Defendant Ashcroft is statutorily-barred pursuant to Section 115.349(1) and constitutionally-barred pursuant to the Elections Cause from permitting any Missouri congressional candidates to file or amend a congressional candidate filing for the 2022 Missouri Primary congressional election after 5:00pm on March 29, 2022.

III. Plaintiff is Irreparably Harmed by Defendants' Threatened Violations of the United States Constitution and Missouri Election Law

44. There is no question that Plaintiff, both as a United States congressional candidate and a

Missouri voter, sits under irreparably harm by Defendants intending to utilize the 2012 Missouri Congressional Map to conduct the 2022 Missouri Primary congressional election and the uncertainty of whether Defendants may legally reschedule the 2022 Missouri Primary election date based upon the delay of passing any 2022 Missouri congressional map, reopen 2022 Missouri Primary congressional election candidate filing or utilize any Missouri congressional map that may be enacted by the Missouri General Assembly without an emergency clause to conduct the 2022 Missouri Primary congressional election, all while the 2022 Missouri Primary congressional election has commenced.

Plaintiff Meets Standard for Temporary Restraining Order

I. Plaintiff Is Entitled To A Temporary Restraining Order

In determining whether a temporary restraining order is warranted, the Court is guided by *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981). Injunctive relief functions to “preserve the status quo until, upon final hearing, a court may grant full, effective relief.” *Kansas City Southern Trans. Co., Inc. v. Teamsters Local Union #41*, 126 F.3d 1059, 1065 (8th Cir. 1997) (internal quotation omitted).

Injunctive relief is only appropriate where the party seeking the relief has no adequate remedy at law. The relevant factors to be considered by a district court are: “(1) the probability of success on the merits; (2) the threat of irreparable harm to the movant; (3) the balance between this harm and the injury that granting the injunction will inflict on the other interested parties; and (4) whether the issuance of an injunction is in the public interest.” *Entergy, Arkansas, Inc. v.*

Nebraska, 210 F.3d 887, 898 (8th Cir. 2000) (citing *Dataphase*, 640 F.2d at 114). The “[f]actors are not a rigid formula ‘The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.’” *Branstad v. Glickman*, 118 F. Supp. 2d 925, 938 (N.D. Iowa 2000) (citing *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506-07 (1959)).

No one factor is dispositive of the request for injunction; the Court considers all of the factors and decides whether “on balance, they weigh in towards granting the injunction.”

Dataphase, 640 F.2d at 113. See also *Brandstad*, 118 F. Supp. 2d at 938 (citing *Baker Elec. Co-Op, Inc. v. Chaske*, 28 F. 3d 1466, 1472 (8th Cir. 1994)). The burden of establishing that preliminary relief is warranted is on the party seeking the injunction. *Id.*

Plaintiff meets all four *Dataphase* factors for this Court to grant the instant temporary restraining order application. “Preliminary injunctions in constitutional cases often turn on likelihood of success on the merits, usually making it unnecessary to dwell on the remaining three factors.” *Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep’t*, 984 F.3d 477, 482 (6th Cir. 2020) (quote cleaned up).

28 U.S.C. § 2284(b)(3) provides a single judge “may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction.”

A. Plaintiff Is Likely To Succeed On The Merits

There are two standards this Court must consider when assessing Plaintiff's probability of success on the merits of the underlying Complaint. The first standard requires the Court to determine whether Plaintiff requesting a preliminary injunction has a "fair chance of prevailing." *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (en banc). The fair-chance standard does not require Plaintiff to "show 'a greater than fifty percent likelihood that he will prevail on the merits.'" *Id.* at 731 (citation omitted). The second standard requires the Court to determine whether the movant is "likely to prevail" on the claims sought by temporary or preliminary relief. *Id.* at 733. The likely-to-prevail standard applies when "a preliminary injunction is sought to enjoin the implementation of a duly enacted state statute." *Id.* at 732.

The test for determining which standard applies is whether the "preliminary injunction is sought to enjoin the implementation of a duly enacted state statute." *Id.* The heightened standard in such instances because the duly enacted state statute constitutes "government action based on presumptively reasoned democratic processes," and such action is "entitled to a higher degree of deference and should not be enjoined lightly." *Id.* at 732 (quoting *Able v. United States*, 44 F.3d 128, 131 (2d Cir. 1995)). The likely-to-prevail test may also be appropriate when a movant seeks to preliminarily enjoin other forms of government action such as "administrative actions by federal, state or local government agencies." *Id.* at 732 n.6.

Counts VI, V and VI of the underlying Complaint seek declaratory judgment and injunctive relief regarding legal interpretations of Missouri election statutes and the Missouri

Constitution which does not seek to invalidate any Missouri statute or Missouri constitutional amendment, although such Counts of the underlying Complaint does seek “to preliminarily enjoin other forms of government action such as administrative actions by federal, state or local government agencies” and Counts I, II and III of the underlying Complaint seeks to invalidate the 2012 Missouri Congressional Map (which is a Missouri statute), thus the “likely to prevail” standard is applicable to the Court’s consideration of each count of the instant temporary restraining order application.

Count I of the Underlying Complaint

Count I of the underlying Complaint seeks the Court to declare the 2012 Missouri Congressional Map unconstitutional for the purpose of conducting the 2022 Missouri Primary congressional election because the 2012 Missouri Congressional Map violates the “*One Man, One Vote*” provision of US Const art I § II.

The State of Missouri is required to enact by statute a congressional map based upon the 2020 U.S. Census certified results that does not violate the “*One Man, One Vote*” provision of US Const art I § II. On August 12, 2021, the 2020 U.S. Census was certified to the Governor of the State of Missouri by the United States Census Bureau. After eight months, Defendant Missouri has failed to enact any 2022 Missouri congressional map based upon the 2020 U.S. Census results certified to the Governor of the State of Missouri on August 12, 2021.

After the certification of the results of each decennial census conducted by the United States Census Bureau, the Missouri General Assembly is required to draft a new congressional

map, specifically: “States must redistrict to account for any changes or shifts in population.”

Georgia v. Ashcroft, 539 U.S. 461, 488 n.2 (2003).

The current Missouri congressional map was enacted by the Missouri General Assembly voting to override the Missouri Governor’s veto of such Missouri congressional map on May 4, 2011 (“2012 Missouri Congressional Map”). 2012 Missouri Congressional Map was drafted by the Missouri General Assembly utilizing population data from the 2010 United States Census, which provided at the time 2012 Missouri Congressional Map was enacted by the Missouri General Assembly seven (7) congressional districts with a population of 748,616 and one (1) congressional district with a population of 748,615, which equates to a maximum population deviation between congressional districts of one person.

Based upon the 2020 United States Census results, the State Missouri is appointed eight (8) congressional representatives with a target population of 769,364 per congressional district. Based upon the 2020 United States Census results certified to the Missouri Governor on August 12, 2021, the 2012 Missouri Congressional Map provides population deviations between the congressional district that violates the “*One Man, One Vote*” provision of US Const art I § II.

The 2012 Missouri Congressional Map is unconstitutional pursuant to Article III, Section II of the United States Constitution for the purpose of the State of Missouri conducting the 2022 Missouri Primary congressional election. Defendants utilizing the 2012 Missouri Congressional Map to conduct the 2022 Missouri Primary congressional election is a civil rights violation against Plaintiff subject to the instant 42 U.S.C. § 1983 Complaint. As a matter of law, Plaintiff

is likely to prevail against Defendants on Count I of the Complaint.

Count II of the Underlying Complaint

Count II of the underlying Complaint seeks the Court to declare the 2012 Missouri Congressional Map unconstitutional for the purpose of conducting the 2022 Missouri Primary congressional election because the 2012 Missouri Congressional Map violates the Equal Protection Clause of US Const art XVI.

The State of Missouri is required to enact by statute a congressional map based upon the 2020 U.S. Census certified results that does not violate the Equal Protection Clause of US Const art XVI. On August 12, 2021, the 2020 U.S. Census was certified to the Governor of the State of Missouri by the United States Census Bureau. After eight months, Defendant Missouri has failed to enact any 2022 Missouri congressional map based upon the 2020 U.S. Census results certified to the Governor of the State of Missouri on August 12, 2021.

After the certification of the results of each decennial census conducted by the United States Census Bureau, the Missouri General Assembly is required to draft a new congressional map, specifically: “States must redistrict to account for any changes or shifts in population.”

Georgia v. Ashcroft, 539 U.S. 461, 488 n.2 (2003).

The current Missouri congressional map was enacted by the Missouri General Assembly voting to override the Missouri Governor’s veto of such Missouri congressional map on May 4, 2011 (“2012 Missouri Congressional Map”). 2012 Missouri Congressional Map was drafted by the Missouri General Assembly utilizing population data from the 2010 United States Census,

which provided at the time 2012 Missouri Congressional Map was enacted by the Missouri General Assembly seven (7) congressional districts with a population of 748,616 and one (1) congressional district with a population of 748,615, which equates to a maximum population deviation between congressional districts of one person.

Based upon the 2020 United States Census results, the State Missouri is appointed eight (8) congressional representatives with a target population of 769,364 per congressional district.

Based upon the 2020 United States Census results certified to the Missouri Governor on August 12, 2021, the 2012 Missouri Congressional Map provides population deviations between the congressional district that violates the Equal Protection Clause.

The 2012 Missouri Congressional Map is unconstitutional pursuant to Article XIV of the United States Constitution for the purpose of the State of Missouri conducting the 2022 Missouri Primary congressional election. Defendants utilizing the 2012 Missouri Congressional Map to conduct the 2022 Missouri Primary congressional election is a civil rights violation against Plaintiff subject to the instant 42 U.S.C. § 1983 Complaint. As a matter of law, Plaintiff is likely to prevail against Defendants on Count II of the Complaint.

Count III of the Underlying Complaint

Count III of the underlying Complaint seeks the Court to declare the 2012 Missouri Congressional Map unconstitutional for the purpose of conducting the 2022 Missouri Primary congressional election because the 2012 Missouri Congressional Map violates MO Const art III § 45.

US Const art I § 4 states, “(t)he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators”, which requires the State of Missouri to abide by its own constitutional amendments when utilized to conduct any congressional election.

The only Missouri constitutional or statutory provision establishing the procedure for congressional reappointment is MO Const art III § 45, which fully states:

“When the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled, which districts shall be composed of contiguous territory as compact and as nearly equal in population as may be.”

MO Const art III § 45 requires the State of Missouri to enact by statute a congressional map based upon the 2020 U.S. Census certified to the Governor of the State of Missouri that is “composed of contiguous territory as compact and as nearly equal in population as may be.”

On August 12, 2021, the 2020 U.S. Census was certified to the Governor of the State of Missouri by the United States Census Bureau. After eight months, Defendant Missouri has failed to enact any 2022 Missouri congressional map based upon the 2020 U.S. Census results certified to the Governor of the State of Missouri on August 12, 2021.

After the certification of the results of each decennial census conducted by the United States Census Bureau, the Missouri General Assembly is required to draft a new congressional map, specifically: “States must redistrict to account for any changes or shifts in population.”

Georgia v. Ashcroft, 539 U.S. 461, 488 n.2 (2003).

The current Missouri congressional map was enacted by the Missouri General Assembly voting to override the Missouri Governor's veto of such Missouri congressional map on May 4, 2011 ("2012 Missouri Congressional Map"). 2012 Missouri Congressional Map was drafted by the Missouri General Assembly utilizing population data from the 2010 United States Census, which provided at the time 2012 Missouri Congressional Map was enacted by the Missouri General Assembly seven (7) congressional districts with a population of 748,616 and one (1) congressional district with a population of 748,615, which equates to a maximum population deviation between congressional districts of one person.

Based upon the 2020 United States Census results, the State Missouri is appointed eight (8) congressional representatives with a target population of 769,364 per congressional district. Based upon the 2020 United States Census results certified to the Missouri Governor on August 12, 2021, the 2012 Missouri Congressional Map provides population deviations between the congressional districts that are not "nearly equal in population as may be" in the manner required pursuant to MO Const art III § 45.

The 2012 Missouri Congressional Map violates the "nearly equal in population as may be" provision of MO Const art III § 45 for use as a congressional map to conduct the 2022 Missouri Primary congressional election based upon the significant population deviations reflected between the 2012 Missouri Congressional Map and the 2020 U.S. Census results certified to the Governor of the State of Missouri.

The 2012 Missouri Congressional Map is unconstitutional pursuant to Article III, Section 45 of the Missouri Constitution and the Elections Clause for the purpose of the State of Missouri conducting the 2022 Missouri Primary congressional election. Plaintiff is likely to prevail against Defendants on Count III of the Complaint.

Count IV of the Underlying Complaint

Count IV of the underlying Complaint seeks the Court to enjoin Missouri from utilizing any congressional map enacted by the 101st Missouri General Assembly pursuant to MO Const art III § 45 to conduct any election during the 2022 Missouri congressional election cycle unless such congressional map passed by the 101st Missouri General Assembly was enacted with an “emergency clause” pursuant to MO Const art III § 29.

MO Const art III § 45 declares any congressional map enacted by the Missouri General Assembly is a “law” or a Missouri statute, which is governed by MO Const art III § 29 and states:

“No law passed by the general assembly, except an appropriation act, shall take effect until ninety days after the adjournment of the session in either oddnumbered or even-numbered years at which it was enacted. However, in case of an emergency which must be expressed in the preamble or in the body of the act, the general assembly by a two-thirds vote of the members elected to each house, taken by yeas and nays may otherwise direct; and further except that, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of the recess.”

MO Const art III § 29 provides when any Missouri statute, such as a Missouri congressional map, is enacted by the Missouri General Assembly without an emergency clause, such Missouri statute will not go in effect until August 28, 2021, which is ninety (90) days after

the adjournment of the 2022 Missouri General Assembly set pursuant to MO Const art III § 20(a) to “adjourn at midnight on May thirteenth” 2022.

Since the Missouri Primary congressional election day date is set pursuant to section 115.121(2) RSMo and section 115.341 RSMo for August 2, 2022, and any Missouri congressional map enacted by the 101st Missouri General Assembly without an “emergency clause” pursuant to MO Const art III § 29 will not go in effect until August 28, 2022, any such Missouri congressional map enacted by the 101st Missouri General Assembly without an “emergency clause” pursuant to MO Const art III § 29 may not be utilized to conduct any 2022 Missouri congressional elections. As a matter of law, Plaintiff is likely to prevail against Defendants on Count IV of the Complaint.

Count V of the Underlying Complaint

Count V of the underlying Complaint seeks the Court to enjoin Missouri from violating section 115.121(2) RSMo and section 115.341 RSMo by scheduling the 2022 Missouri Primary congressional election day date on any date other than “the first Tuesday after the first Monday in August of even-numbered years” (or August 2, 2022) for any cause related to the 2012 Missouri Congressional Map or enactment of any 2022 Missouri congressional map. There are only two legal authorities that authorize Missouri to change the 2022 Missouri Primary congressional election day date from August 2, 2022, which include section 44.100 RSMo or section 115.024 RSMo.

Neither section 44.100 RSMo or section 115.024 RSMo provides for the rescheduling of

the 2022 Primary congressional election from August 2, 2022, due to the failure of the Missouri General Assembly to enact a 2022 Missouri congressional map or anything related to the 2012 Missouri congressional map. Further, changes to current Missouri election law changing the date of the 2022 Primary congressional election from August 2, 2022, after filing for the 2022 Missouri Primary congressional election has concluded violates the Elections Clause. As a matter of law, Plaintiff is likely to prevail against Defendants on Count V of the Complaint.

Count VI of the Underlying Complaint

Count VI of the underlying Complaint seeks the Court to enjoin Missouri from violating Section 115.349(1) RSMo by accepting any new or amended Missouri congressional candidate filings after 5:00pm on March 29, 2022, and section 115.349(1) RSMo states: "Except as otherwise provided in sections 115.361 to 115.383 or sections 115.755 to 115.785, no candidate's name shall be printed on any official primary ballot unless the candidate has filed a written declaration of candidacy in the office of the appropriate election official by 5:00 p.m. on the last Tuesday in March immediately preceding the primary election."

US Const art I § 4 states, "(t)he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators", which requires the State of Missouri to abide by its own election statutes when utilized to conduct any congressional election.

Section 115.349(1) RSMo states: "Except as otherwise provided in sections 115.361 to

115.383 or sections 115.755 to 115.785, no candidate's name shall be printed on any official primary ballot unless the candidate has filed a written declaration of candidacy in the office of the appropriate election official by 5:00 p.m. on the last Tuesday in March immediately preceding the primary election.”

Pursuant to Section 115.349(1) RSMo, the Missouri Secretary of State was statutorily-required to cease accepting or amending congressional candidate filing for the 2022 Missouri Primary congressional election at 5:00pm on March 29, 2022. Sections 115.361 to 115.383 and sections 115.755 to 115.785 are irrelevant to Missouri Primary congressional candidate elections.

There is no constitutional or statutory procedure that authorizes the Missouri Secretary of State to permit Missouri congressional candidates to file or amend a congressional candidate filing for the 2022 Missouri Primary congressional election after 5:00pm on March 29, 27 2022.

Defendants are statutorily-barred pursuant to Section 115.349(1) and constitutionally-barred pursuant to the Elections Cause from permitting any Missouri congressional candidates to file or amend a congressional candidate filing for the 2022 Missouri Primary congressional election after 5:00pm on March 29, 2022. As a matter of law, Plaintiff is likely to prevail against Defendants on Count VI of the Complaint.

Violation of 42 U.S.C. § 1983

Any violation by Defendants of US Const art I § 2, US Const art I § 4 or US Const art XIV is a violation of 42 U.S.C. § 1983 against Plaintiff.

Plaintiff is Likely to Prevail on Merits

Provided the Court agrees with Plaintiff's aforementioned legal and evidentiary interpretations of Counts I, II, III, IV, V and VI of the underlying Complaint, Plaintiff is likely to prevail on the merits of such Counts of the underlying Petition against Defendants.

B. Plaintiff Will Suffer Irreparable Harm Absent Immediate Relief From This Court

A threat of irreparable harm is exactly what it sounds like: "a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief." *Roudachevski v. All-Am. Care Ctrs., Inc.* 648 F.3d 701, 706 (8th Cir. 2011)

There is no reasonable dispute to the fact that Defendants intend to conduct the 2022 Missouri Primary congressional election utilizing the 2012 Missouri Congressional Map or that the 2012 Missouri Congressional Map is unconstitutional for the purpose of conducting the 2022 Missouri Primary congressional election. Plaintiff further acknowledges that the Court has time to declare the 2012 Missouri Congressional Map unconstitutional and to draft a 2022 Missouri congressional map prior to the 2022 Missouri Primary congressional election.

The irreparable harm Plaintiff will endure if the Court does not grant a temporary restraining order on Counts I, II and III of the underlying Complaint is without immediately declaring to Defendants that the 2012 Missouri Congressional Map is unconstitutional for the purpose of conducting the 2022 Missouri congressional election will likely result in the Court

drafting the 2022 Missouri congressional map instead of Plaintiff's elected Missouri Representative, Senator and Governor in the manner provided by the Missouri Constitution and the Elections Clause.

Defendant Missouri failing to enact a 2022 Missouri congressional map causes Plaintiff's congressional campaign irreparable harm because Plaintiff is barred by Defendant's actions from knowing who his congressional voters will be, which frustrates congressional voter engagement and fundraising. Plaintiff's congressional campaign is also unable to conduct election polling of Missouri Congressional District 2, which as a matter of law such congressional boundaries are unconstitutional for the 2022 Missouri congressional election.

Missouri voters have a variety of interests in knowing as soon as possible the districts in which they reside and will vote, and the precise contours of those districts, specifically, deciding which congressional candidates to support and whether to encourage others to run; holding elected representatives accountable for their conduct in office; and advocating for and organizing around candidates who will share their views, including by working together with other district voters in support of favored candidates.

Missouri voters are entitled to know all Missouri Primary congressional candidates who have filed for the United States Congress anytime after 5:00pm on March 29, 2022. Only candidates that are removed as Missouri Primary congressional candidates alter the list of Missouri Primary congressional candidates who have declared their candidacy for the United States Congress, which does not add a new congressional candidate for any Missouri voter to

consider.

There is no question that Plaintiff, both as a United States congressional candidate and a Missouri voter, sits under irreparably harm by Defendants intending to utilize the 2012 Missouri Congressional Map to conduct the 2022 Missouri Primary congressional election or any 2022 Missouri congressional map that cracks Missouri counties in a manner against case law of the Missouri Supreme Court.

Both as a United States congressional candidate and a Missouri voter, Plaintiff is also irreparably harmed by the uncertainty of whether Defendants may utilize any Missouri congressional map that may be enacted by the Missouri General Assembly without an emergency clause to conduct the 2022 Missouri Primary congressional election (Count IV), legally reschedule the 2022 Missouri Primary election date day based upon the delay of passing any 2022 Missouri congressional map (Count V) or reopen 2022 Missouri Primary congressional election candidate filing (Count IV), all while the 2022 Missouri Primary congressional election has commenced.

Granting Defendants twenty-one (21) additional days to respond to a preliminary injunction application to receive the same relief requested by the instant temporary restraining order application would eliminate any meaningful opportunity for the Missouri General Assembly to enact any 2022 Missouri congressional map based upon the Court's declaration that the 2012 Missouri Congressional Map is unconstitutional for the purpose of conducting the 2022 Missouri congressional election because the last day of the Missouri General Assembly general

session is May 13, 2022, and twenty-one (21) days from the filing date of the underlying Complaint is May 9, 2022. Plaintiff endures further irreparable harm by extending any declaration of election laws relevant to Plaintiff's congressional election for an additional twenty-one (21) days.

The *Purcell* principle serves as the only de facto "statutory of limitation" inside of a pending civil Complaint, without a "redline" from the United States Supreme Court as to when the *Purcell* principle is triggered on a congressional map or election law litigation of when judicial relief is unattainable by a candidate or a voter. For any citizen of the Union to be entitled to judicial relief from unconstitutional or non-statutory conduct by the government and subsequently denied such constitutional protection due to the same government refusing to provide an opportunity to seek meaningful relief from our court system threatens the most basic alienable rights guaranteed by the United States Constitution.

Simply stated, Plaintiff currently and unconstitutionally endures irreparable harm by Defendant Missouri not enacting a 2022 Missouri Congressional Map based upon the 2022 United States Census results, an uncontroverted fact, with such irreparable harm being exacerbated by Defendants intending to conduct the 2022 Missouri Primary congressional election by utilizing the unconstitutional 2012 Missouri Congressional Map and the temporal guidelines to receive the underlying relief requested pursuant to the *Purcell* principle.

C. The Balance Of Harms Between Parties Favors Granting Temporary Restraining Order

As stated above, the harm Plaintiff endures without the Court's legal determinations of

the statutory duties of Defendants requested by the underlying Complaint affects the orderly conduct of a congressional election and Plaintiff's congressional election campaigning.

Defendants can not utilize the *Purcell* principle as a sword against Plaintiff by not passing any congressional map or declaring their intentions to follow or not follow specific statutory election procedures to conduct any congressional election until any challenge to such statutory election procedures are threatened or unavailable due to the *Purcell* principle.

Further, there can be little harm to other parties where, as the Eleventh Circuit noted, "a stay preserves the status quo and promotes confidence in our electoral system assuring voters that all will play by the same, legislatively enacted rules." *Raffensperger*, 2020 WL 5877588, at *4. What preserves the status quo in the instant is restraining Defendants to its own clear constitutional and statutory election laws enacted by Missourians.

Conversely, Defendants can not be harmed by the Court declaring the law to be followed to conduct congressional election activities or requiring Defendants to follow clear interpretations of Missouri statutes in the instant. None of the relief requested by the underlying Complaint creates any additional cost for Defendants to perform official acts as required by statute.

Defendants are unharmed by immediate preliminary declarations of law that places Plaintiff, Defendants and the entire population of Missouri on notice of the initial consideration by the Court regarding rudimentary and relevant election procedures that Defendants are likely required to utilize during the 2022 Missouri congressional elections.

D. Granting Temporary Restraining Order Is In The Interest Of The Public

The public has an interest in the fair and orderly operation of elections, and the Supreme 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.*, 140 S. Ct. 1205, 1207 (2020); see also *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam). Counts I, II, III, IV, V and VI of the underlying Complaint seek immediate statutory declarations of election laws wholly-relevant to the 2022 Missouri congressional elections, which supports the public interest foundation of the *Purcell* principle to address legal controversies regarding election law prior to an impending congressional election.

Further, injunctive relief in the instant will ensure that the law is obeyed, which is by definition in the public interest. See *Council of Alternative Pol. Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997), which states: “Finally, the public interest also favors granting plaintiffs preliminary relief. In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights, including the voting and associational rights of alternative political parties, their candidates, and their potential supporters. Since there is no basis for concluding that preliminary relief will negatively impact the November 1997 election, these constitutional rights can and should be protected immediately, consistent with the public interest.” The public has an interest in Missouri following its own legal authorities and the Supremacy Clause when drafting congressional maps or conducting any congressional election and to not conduct congressional elections utilizing any congressional map that violated both the

Missouri Constitution or the United States Constitution.

Candidate filing for the 2022 Missouri Primary congressional election concluded on March 29, 2022, it is in the public interest for this Court to immediately declare the law necessary for the Missouri General Assembly to enact a legal 2022 Missouri congressional map that does not unnecessarily divide Missouri counties into separate congressional districts. The Court's instant temporary restraining order supports the public interest of Missouri legislators enacting a congressional map on behalf of all Missourians, in lieu of, this Honorable Court having to expedite drafting of a congressional map on behalf of Missouri voters.

II. The Court Should Expedite Consideration Of This Motion

Where the Court can expedite election law litigation, the *Purcell* principle limiting when the Court can grant judicial relief related to any election law suggests the Court should do so in the instant. Counts I, II, III and IV of the underlying Complaint seek declarations of election law that does not require the Court's adjudication of any substantial circumstance or evidentiary considerations. No issue challenged by the underlying Complaint contains legal controversies that Defendants are not aware of, evidence not in possession of Defendants and are legally required to have an official opinion regarding.

Plaintiff simply seeks declaration of Missouri election laws to conduct campaigning and fundraising for his Missouri congressional election in a manner that provides meaningful use of such a declaration of Missouri election laws. The Eighth Circuit states in *Hawse v. Page*, 7 F. 4th 685 - Court of Appeals, 8th Circuit 2021: "The courts in this circuit, in the context of election

disputes, death penalty litigation, and other urgent matters, have demonstrated the capacity to resolve timesensitive requests for relief in a matter of days.”

The Court’s issuance of the instant temporary restraining order application on Counts I, II and III of the underlying Complaint is likely the last opportunity for Plaintiff and all Missourians to avoid the Court drafting Missouri’s congressional map over the elected Representatives and Senators of the Missouri General Assembly.

The Court should consider whether Plaintiff is subject to Missouri election law litigated by each Count of the underlying Complaint, and if so, immediate injunctive relief against Defendants regarding such Missouri election law is appropriate and just. Plaintiff should not be deprived of another hour from the protection of the clear procedure and rights established by Missouri election law that Defendants are statutory-required to abide by when conducting the 2022 Missouri Primary congressional election.

CONCLUSION

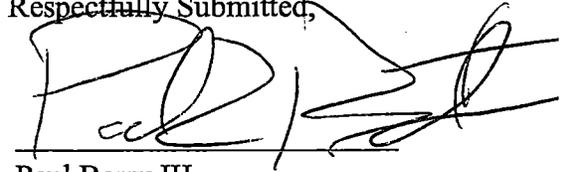
This Honorable Court should expedite its consideration of this motion and (i) grant the requested relief sought by this temporary restraining order application and (ii) join the Court’s consideration of the preliminary and permanent injunction relief requested by the underlying Complaint for an expedited injunction hearing by a three-judge panel set for Friday April 29, 2022.

Verified By,



Paul Berry III
Plaintiff

Respectfully Submitted,



Paul Berry III
Plaintiff, Pro Se
11932 Barbara
Maryland Heights, MO 63043
PBIIIUSA@gmail.com

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VERIFICATION OF FACTS INCORPORATED IN TRO MOTION

THE STATE OF MISSOURI

COUNTY OF SAINT LOUIS

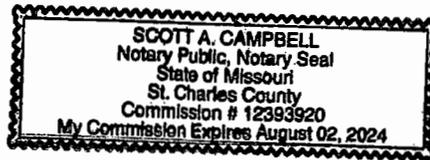
Paul Berry III, being of lawful age, being duly sworn on his oath, states that he is the Plaintiff named in the attached motion and that the facts stated in the attached Verified Motion for Temporary Restraining Order are true according to his best knowledge and belief.


Paul Berry III
Plaintiff

Subscribed and sworn to before me this 18th day of April , 2022.

My commission expires: 08/02/2024

 Notary Public



CERTIFICATE OF SERVICE

A copy of the foregoing motion shall be sent by hand delivery from Plaintiff's special process server of record to Defendant John ("Jay") Ashcroft and Defendant State of Missouri in conjunction with service of the underlying complaint.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul Berry III", written over a horizontal line.

Paul Berry III
Plaintiff

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