

Court Document Not an Official Court Document Not an Official Court Document Not an Official Court Document

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI, AT KANSAS CITY

Official Court Document Not an Official Court Document Not an Official Court Document

TERRENCE WISE, et al.,
Plaintiffs,
v.
STATE OF MISSOURI, et al.,
Defendants.

Case No. 2516-CV29597
Division 15

Not an Official Court Document Not an Official Court Document Not an Official Court Document

PLAINTIFFS' SUGGESTIONS IN OPPOSITION TO STATE DEFENDANTS' MOTION
TO DISMISS OR IN THE ALTERNATIVE FOR TRANSFER OF VENUE

Defendants State of Missouri and Secretary of State ("State Defendants")¹ move to dismiss all claims in Plaintiffs' petition based on speculation and a strained reading of the Missouri Constitution. They seek to stay or dismiss proceedings on Count I based on misapplication of the abatement doctrine and embed in their dismissal motion an improper and unjustified request to transfer venue. State Defendants' motion lacks any legal basis and should be denied.

First, the case is ripe. State Defendants' ripeness objection was presumably based on the speculative possibility of a gubernatorial veto. However, the veto would be of a bill that the Governor requested the legislature pass when he convened an extraordinary session for the specific purpose of establishing his "new congressional districts." See Defs. Suggestions at 2. That remote possibility, even if it did ever exist, no longer exists. Governor Kehoe signed H.B. 1 into law on September 28, 2025, creating a ripe controversy for this Court to resolve.

¹ Notably, Defendants Jackson County Election Board and Kansas City Board of Election Commissioners, and their respective members and directors, are not parties to this motion.

Second, the Missouri Constitution does not impose a venue restriction on challenges to congressional redistricting plans. Article III contains separate provisions for state House, state Senate, and congressional redistricting. Sections 3 and 7 explicitly require challenges to *state* House and *state* Senate maps to be filed in Cole County, but § 45, which governs *federal* congressional maps, contains no such requirement. The text, structure, and history of these provisions confirm that the Cole County venue restriction applies only to *state* legislative redistricting.

Third, the abatement doctrine provides no basis for dismissing Count I. That doctrine applies only where the same parties and the same subject matter are already before another court. Here, Plaintiffs are different, the defendants are different, and the claims and requested relief are different from those in the Cole County cases. Plaintiffs cannot be denied their day in court—to vindicate their own individual constitutional rights—simply because other, unrelated litigants have filed separate lawsuits.

Fourth, the Jackson County Election Board and Kansas City Board of Election Commissioners, and their respective members and directors, are proper defendants. They are directly responsible for implementing the congressional districts at issue in this case, and their presence ensures the availability of complete relief. State Defendants' effort to dismiss them and transfer venue is both procedurally and substantively unfounded.

For these and the following reasons, State Defendants' motion should be denied in full.

ARGUMENT

I. This Case Is Ripe for Adjudication.

As stated above, this case is ripe. State Defendants' only argument to the contrary was that Governor Kehoe had not yet signed H.B. 1—a bill he himself proposed and called the legislature

into extraordinary session to enact.² If a bill is not vetoed, even if it is not signed, it still becomes law. See Mo. Const. art. III, § 31. In any event, Governor Kehoe signed H.B. 1 on September 28, 2025.³ When determining ripeness, courts look at the facts as they exist in the present, and a ripe controversy now unquestionably exists. *See Mo. Health Care Ass'n v. Att'y Gen. of the State of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997); *see also Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 140 (1974) (“[S]ince ripeness is peculiarly a question of timing, it is the situation now rather than the situation at the time of the [trial court’s] decision that must govern.”).

II. The Missouri Constitution Does Not Limit Venue to Cole County for Challenges to Congressional Redistricting Maps.

The Missouri Constitution does not require that challenges to federal congressional plans be filed in a particular county. The Missouri Constitution includes three separate sections that govern redistricting of the *state* House, the *state* Senate, and *federal* congressional districts respectively, each with specific requirements. See Mo. Const. art. III, §§ 3, 7, 45; *Faatz v. Ashcroft*, 685 S.W.3d 388, 394 (Mo. banc 2024). Challenges to the state House and Senate maps must be filed in Cole County; challenges to the state’s congressional map face no such jurisdictional restriction.

² Indeed, Governor Kehoe was so focused on his plan to redraw the congressional map that he chose to withdraw his selections for the newly created St. Louis Board of Police Commissioners “so that lawmakers can focus the special session on redrawing Missouri’s congressional map and revising the constitutional amendment process.” *See Abby Llorico, Gov. Kehoe pulls back appointments to St. Louis Police Board*, St. Louis Public Radio (Sep. 3, 2025), <https://www.stlpr.org/government-politics-issues/2025-09-03/gov-kehoe-pulls-back-appointments-to-st-louis-police-board>. In other words, the redistricting efforts were so important to the Governor that he chose to leave a major metropolitan area in Missouri without a governing body for its police force. Surely, he always intended for the bill to become law.

³ Press Release, Mike Kehoe Governor of Missouri, Governor Kehoe Signs Missouri First Map Into Law (Sep. 28, 2025), <https://governor.mo.gov/press-releases/archive/governor-kehoe-signs-missouri-first-map-law>.

The plain language of the Constitution makes this clear. Article III, § 3's initial provision explains the purpose of the following provisions: “[t]he house of representatives shall consist of one hundred sixty-three members elected at each general election and redistricted *as provided in this section.*” Mo. Const. art. III, § 3(a) (emphasis added). The remaining subsections go on to lay out the process for redistricting the state House, including that any challenge to a House map “shall be filed in the circuit court of Cole County.” *Id.* § 3(j). Section 7 includes similar redistricting requirements for the state Senate, including the identical language requiring that any challenge to a Senate map be brought in Cole County. *Id.* § 7(i); *Faatz*, 685 S.W.3d at 394.

In contrast, § 45, which addresses federal congressional redistricting, contains neither the detailed procedural requirements of §§ 3 and 7 nor their restrictions on venue. In interpreting the Missouri Constitution, the “[t]raditional rules of construction dictate looking at words in the context of [] the particular provision in which they are located.” *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301, 302 (Mo. banc 1991). Doing so reveals the venue restriction in §§ 3 and 7 applies only to maps drawn pursuant to those respective sections—state House and state Senate maps.

The history of the venue restrictions confirms this understanding. Sections 3(j) and 7(i) were added to the Missouri Constitution when Missourians approved a constitutional amendment in 2020. The fair ballot language described, in part, the effect of the amendment as follows: “The amendment modifies the criteria for redrawing legislative districts and changes the process for redrawing the *state legislative* district boundaries during redistricting.”⁴ (emphasis added). Missourians plainly understood this amendment, including its venue restrictions in §§ 3(j) and 7(i),

⁴ Missouri Secretary of State, 2020 Ballot Measures, <https://www.sos.mo.gov/elections/petitions/2020BallotMeasures> (last visited Sep. 29, 2025).

to regulate state legislative redistricting—not congressional redistricting—because that is what it expressly set out to do.

In the face of straightforward text and history, State Defendants claim that Article III, § 3(j) makes Cole County the exclusive venue for *any* challenge to *any* redistricting plan, including a federal congressional redistricting plan. To reach this atextual conclusion, State Defendants delve deeply into the drafters' use of the word "any" (which is clearly intended to describe the type of challenge brought, not the redistricting plan) and the choice to use "a" over "the" to describe challenged redistricting plans. Defs. Suggestions at 4-5.

But constitutional interpretation in Missouri "is not to be hyper-technical, but instead is to be reasonable [and] logical."⁵ *Sarcoxie Nursery Cultivation Ctr. LLC v. Williams*, 649 S.W.3d 127, 134 (Mo. App. W.D. 2022) (internal quotations and citation omitted). The logical conclusion is that § 3(j) does just what the text and context say it does: provides a description of the constitutional process for challenging *state* House redistricting plans.

To read § 3(j) more broadly would render the *identical* language in Section 7(i) superfluous. In Missouri, "[w]ords used in constitutional provisions must be viewed in context; their use is presumed intended, and not meaningless surplusage." *Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983). If § 3(j), which appears in the section about state house districts, were to

⁵ Indeed, the hyper-technical reading that State Defendants propose would subject congressional redistricting plans to the numerous other requirements under § 3 that the state did not even attempt to comply with, such as the creation of a bipartisan commission and the requirement of partisan balance. *See, e.g.*, Mo. Const. art. III, § 3(b)(5) ("In any redistricting plan and map of the proposed districts, the difference between the two parties' total wasted votes, divided by the total votes cast for the two parties, shall not exceed fifteen percent."); *id.* § 3(e) ("Not later than five months after the appointment of the commission, the commission shall file with the secretary of state a tentative redistricting plan and map of the proposed districts and during the ensuing fifteen days shall hold such public hearings as may be necessary to hear objections or testimony of interested persons. The commission shall make public the tentative redistricting plan and map of the proposed districts, as well as all demographic and partisan data used in the creation of the plan and map.").

encompass every type of redistricting plan as State Defendants suggest, then the framers would not have needed to repeat that language in § 7(i), the section about state senate districts. State Defendants' interpretation therefore renders the entirety of § 7(i) mere surplusage, and this Court should not adopt it.

State Defendants concede as much in recognizing that the venue restriction "is included in a section of the constitution discussing state legislative redistricting, and [] a separate constitutional provision governs federal redistricting." Defs. Suggestions at 4. That provision, Article III, § 45, contains no venue restriction, and State Defendants' overly expansive reading of § 3(j)'s "any" cannot import one. Thus, Article III, § 3(j) does not, as State Defendants contend, deprive this Court of jurisdiction over this claim, and venue in this county is proper. *See* § 508.010.2(2), RSMo. ("When there are several defendants, and they reside in different counties, the suit may be brought in any such county.").

III. The Abatement Doctrine Is Inapplicable.

Under the abatement doctrine, the court may stay or dismiss a claim "where a prior suit is pending in another court involving *the same parties and the same subject matter.*" *Ryan v. Campbell Sixty-Six Exp.*, 276 S.W.2d 128, 130-31 (Mo. banc 1955) (emphasis added). The text of Rule 55.27(a)(9) confirms this. Rule 55.27(a)(9) (providing for a defense based on "another action pending between *the same parties for the same cause in this state*" (emphasis added)).

As State Defendants concede, this case involves "different plaintiffs"—that alone is fatal to the abatement argument. Defs. Suggestions at 7. The defendants differ as well. *Id.* at 8. And although one of the claims in this case has also been raised in the *Luther v. Hoskins* ("Luther") case in Cole County Circuit Court, Plaintiffs here present distinct legal and factual arguments and seek different relief. The *Missouri NAACP v. Kehoe* ("NAACP") case in Cole County also

previously had an overlapping legal claim with *Luther* and this case, but that claim has since been withdrawn in the *NAACP* plaintiffs' amended petition. *See* 1st Am. Pet., *NAACP*, No. 25AC-CC06724 (19th Jud. Cir. Ct. Sep. 14, 2025). Finally, even if State Defendants could somehow satisfy the requirements for abatement, the decision to dismiss or stay a case is discretionary, and this Court should retain jurisdiction to allow Plaintiffs their day in court.

A. Abatement is improper because this case involves different parties.

The “general rule” is that cases must involve the “the same parties” for abatement to apply. *Ryan*, 276 S.W.2d at 130-31. State Defendants admit that this case involves different plaintiffs and defendants, and they have not identified any applicable exceptions to the general rule. *See* Defs. Suggestions at 7-8.

1. The earlier-filed suits involve different plaintiffs and should not deny Plaintiffs in this case their right to be heard.

State Defendants acknowledge, as they must, that none of the Plaintiffs here are named in the two cases in Cole County challenging Missouri's new districts.⁶ Defs. Suggestions at 7. They then attempt to redefine what it means for parties to be “identical” and even suggest that every Plaintiff in this case is extraneous to the litigation. These efforts have no legal support. Indeed, denying Plaintiffs access to the courts—on the basis of actions taken by completely unrelated litigants—would violate their constitutional right to due process.

⁶ The *NAACP* case was filed on September 3, 2025, while both the *Luther* case and Plaintiffs' petition in this case were filed hours apart on September 12, 2025. *See* Pet. at 45; Pet. at 1, *Luther*, No. 25AC-CC06964; Pet. at 1, *NAACP*, No. 25AC-CC06724. To the extent that State Defendants are correct that this case was not ripe at the time it was filed, none of the three cases would have been ripe at their inception but have simultaneously become ripe when Governor Kehoe signed H.B. 1. *See supra* Section I. Accordingly, under State Defendants' theory, all three cases should be considered to have been commenced at the same time, and there is not one first-filed case to which this Court should defer.

State Defendants repeatedly assert that the plaintiffs in the three cases are “sufficiently similar” to each other, but none of the cases they cite have equated the identity of different litigants.⁷ See Defs. Suggestions at 7-8. Rather, State Defendants’ own cited authority held that “[t]he abatement doctrine technically does not apply unless . . . the alignment and identity of the parties [are] *identical*.” E.g., *Hampton v. Llewellyn*, 663 S.W.3d 899, 902-03 (Mo. App. W.D. 2023) (emphasis added). The requirement of precisely identical parties has been well-established for over a hundred years. See *Long v. Lackawanna Coal & Iron Co.*, 136 S.W. 673, 679 (Mo. 1911) (“The defense of a prior suit pending applies only when the plaintiff in both suits is the *same person* and both are commenced by *himself*.”) (emphasis in original) (quoting *Rodney v. Gibbs*, 82 S.W. 187, 189 (Mo. 1904)).

Courts do refer to parties as being “sufficiently similar” for abatement in a specific context inapplicable here—when all parties would have been identical but for the inclusion of an additional, “extraneous” litigant. See *State ex rel. Dunger v. Mummert*, 871 S.W.2d 609, 610 (Mo. App. E.D. 1994) (regarding estate’s beneficiaries as extraneous because dispute is between plaintiff asserting claim against the estate and the representative of the estate); *see also Skaggs Chiropractic, L.L.C. v. Ford*, 564 S.W.3d 633, 639 (Mo. App. S.D. 2018). In those cases, the parties completely overlapped except for the presence of a party who is not essential to the case. In such circumstances, abatement would not deprive a plaintiff of their day in court. But here, there is zero

⁷ As a factual matter, Plaintiffs here are five Kansas City-area residents of what was Congressional District (“CD”) 5 who have their own interests in a fair redistricting map, *see Pet.* ¶¶ 10-14, and specifically in reinstatement of the 2022 districts, *id.* at 45. Their petition and alleged injuries include localized concerns about the way the Kansas City metro area previously united in CD 5 is split under the State’s new plan, *id.* ¶¶ 55-88, 127-37, and none of those allegations appear in the other lawsuits. There is no indication that the plaintiffs in the other cases share those concerns or intend to raise the same harms.

overlap between the plaintiffs (not to mention multiple different defendants, as discussed below).

State Defendants' attempt to categorize every single Plaintiff in this case as "nominal" is baseless.

Defs. Suggestions at 7. Plaintiffs are the parties whose constitutional rights are being violated, and they are, by definition, indispensable to the existence of a case and controversy and cannot be extraneous to the litigation. *See Mo. All. for Retired Americans v. Dep't of Lab. & Indus. Rel's.*, 277 S.W.3d 670, 676 (Mo. banc 2009).

State Defendants also claim that the requirement of identical parties is "not inflexible," but they again stretch the doctrine beyond recognition. *See* Defs. Suggestions at 7. They cite *State ex rel. City of Springfield, Through Bd. of Public Utilities v. Conley*, which explained that abatement could apply to some mirror-image lawsuits, i.e., cases that involve the exact same parties but with their roles as plaintiff and defendant reversed. 760 S.W.2d 948, 950 (Mo. App. W.D. 1988). This case, however, is not a mirror-image of the separate lawsuits filed in Cole County challenging Missouri's redistricting plan: Plaintiffs are not participants on either side of those other cases. Indeed, the fact that mirror-image suits are a close call for abatement indicates that any flexibility in the requirements for abatement is minimal—and cannot possibly preclude entirely different parties from asserting their constitutional rights. *See Meyer v. Meyer*, 21 S.W.3d 886, 889-90 (Mo. App. E.D. 2000) ("[A]batement generally does not apply where the parties' alignment in the original suit is reversed in the subsequent action.").

State Defendants assume that all three sets of plaintiffs "seek the same relief" and will be "identically affected" by the outcomes of the Cole County cases, but neither assertion is true. *See* Defs. Suggestions at 7 (quoting *Dunger*, 871 S.W.2d at 610). Of the three cases, only Plaintiffs in this case have requested a declaration "that the 2022 Map is Missouri's lawful congressional map."

Compare Pet. at 45 with Pet. at 7, *Luther*, No. 25AC-CC06964 and Pet. at 14-17, *NAACP*, No.

25AC-CC06724. Also, the plaintiffs in the three cases will not be “identically affected”—if the *Luther* and *NAACP* plaintiffs lose, those rulings will bind only the parties in those cases and would not determine Plaintiffs’ individual legal rights in this case.⁸ See *Brink v. Kansas City*, 217 S.W.2d 507, 510 (Mo. banc 1949) (holding that abatement may be proper if earlier lawsuit would “adequately determine the rights” of the later litigants). Indeed, the *NAACP* case cannot possibly determine Plaintiffs’ rights here, because the two petitions raise completely different claims.

In any event, similarity of requested relief has nothing to do with the *identity* of the parties requesting the relief, and State Defendants’ reliance on *Dunger* is misplaced. See *Defs. Suggestions at 7*. In *Dunger*, the same plaintiff claimed an interest in a deceased individual’s estate via two separate proceedings—once in probate court and once as an ordinary civil suit. 871 S.W.2d at 610. The court ruled that both cases would affect the estate’s beneficiaries in the same way and that abatement of the civil suit was proper. *Id.* at 610-11. Here, however, the three redistricting cases involve different plaintiffs, rather than a single person filing the same claim in multiple forums. *Dunger* also involved the disposition of property interests in an estate, where the determination of a creditor’s rights necessarily affects others’ interests in the estate. See 871 S.W.2d at 610-11. This case, however, involves Missouri voters’ individual constitutional rights, which, unlike a shared property interest, may be separately adjudicated. See *Reynolds v. Sims*, 377 U.S. 533, 561 (1964) (holding that unlawful redistricting schemes implicate constitutional rights that are “individual and personal in nature”); *Weinschenk v. State*, 203 S.W.3d 201, 211 (Mo. banc 2006) (“[V]oting

⁸ The earlier lawsuits do not purport to be class actions on behalf of all affected voters or residents. And res judicata does not apply to unrelated litigants such as Plaintiffs. See *Clements v. Pittman*, 765 S.W.2d 589, 591 (Mo. banc 1989).

rights are an area where our state constitution provides greater protection than its federal counterpart.”).

At bottom, State Defendants have not identified any case in which the abatement doctrine precluded plaintiffs from asserting their constitutional rights simply because completely unrelated individuals have separately sued to vindicate their own rights. That is likely because doing so would violate Plaintiffs’ due process rights, and courts should construe Rule 55.27(a)(9) to avoid unconstitutionalities. *See Berdella v. Pender*, 821 S.W.2d 846, 850 (Mo. banc 1991) (discussing constitutional avoidance). Having an “opportunity to be heard is an essential requisite of due process of law in judicial proceedings.” *Am. Polled Hereford Ass’n v. City of Kansas City*, 626 S.W.2d 237, 242 (Mo. 1982) (quoting *Postal Tel. Cable Co. v. City of Newport, Ky.*, 247 U.S. 464, 476 (1918)); *see also* Mo. Const. art. I, § 14 (providing “[t]hat the courts of justice shall be open to every person . . . and that right and justice shall be administered without sale, denial or delay”). As such, that opportunity should not be denied unless that party “has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction.” *Am. Polled Hereford Ass’n*, 626 S.W.2d at 242 (citation omitted). Plaintiffs have had no other opportunity to litigate their claims. Accordingly, their case should not be held in abeyance or dismissed pending other lawsuits that raise different factual questions and legal arguments and would not ultimately adjudicate Plaintiffs’ constitutional rights.

2. This case involves different defendants, who are not “extraneous.”

State Defendants also concede that the “defendants in this Petition are not identical to either of the previously . . . filed petitions.” Defs. Suggestions at 8. They wrongly suggest that the Jackson County Election Board and Kansas City Board of Election Commissioners (and their members and

directors) (collectively “Local Election Authorities” or “LEAs”) are “nominal” or “extraneous.”

See Defs. Suggestions at 7-8.

As State Defendants admit, Local Election Authorities “implement the districts enacted by the State.” *Id.* Local Election Authorities are directly responsible for the conduct of “all public elections within [their] jurisdiction.” § 115.023, RSMo. They have numerous duties related to election administration, including assigning voting precincts to each congressional district and reporting the votes cast in congressional elections to the Secretary of State, who then tallies and announces the results. §§ 115.113, 115.507, 115.511, RSMo.; *see also* Pet. ¶¶ 17, 20, 27, 121, 165; Defs. Suggestions at 10. If Local Election Authorities are enjoined from implementing the new congressional districts, those districts cannot be used to conduct elections in the areas where Plaintiffs reside. That is sufficient to redress Plaintiffs’ injury and would enable them to obtain relief.

Local Election Authorities and the Secretary of State execute different steps of the election process, but *both* are essential to the implementation of the new districts passed by the legislature, and *both* will provide necessary relief to Plaintiffs. Because Local Election Authorities have separate responsibilities from State Defendants, their inclusion in this case enables Plaintiffs to enjoin different aspects of the implementation of the new congressional maps than an injunction against State Defendants. And while a judgment against the Secretary alone could provide relief, obtaining relief against Local Election Authorities alone would be similarly effective and provide Plaintiffs with an alternative remedy. Because Local Election Authorities can provide unique and effective remedies, they should not be regarded as “extraneous” parties.

The Court should also reject State Defendants’ argument that Local Election Authorities are “nominal” or “extraneous” parties simply because they “did not draw the challenged maps.”

Defs. Suggestions at 10. Contrary to State Defendants' claim that the Secretary "put in place" the congressional districts, he did not in fact draw the district lines either. *See id.* at 8. The lines were "put in place" by the legislature via H.B. 1. Pet. ¶¶ 105-12. Lawsuits challenging redistricting and other election laws invariably proceed against the election officials charged with the law's implementation. *See, e.g., Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. banc 2012); *Preisler v. Doherty*, 284 S.W.2d 427, 436 (Mo. banc 1955); *see Coal. for Sensible & Humane Sols. v. Wamser*, 771 F.2d 395, 396 (8th Cir. 1985). And State Defendants agree that Local Election Authorities are the ones who actually "reconfigure" voting precincts and "assign [them] to different congressional districts." Defs. Suggestions at 10. Local Election Authorities are therefore proper defendants in this matter and are no more "nominal" than the Secretary of State.

The presence of different defendants in this matter is a second, independent basis for rejecting State Defendants' abatement argument.

B. The subject matter of this case is not identical to the earlier-filed cases.

The subject matter of this case differs from that of *Luther* and *NAACP* as well. *NAACP* solely concerns the state's authority to convene a special legislative session and does not raise any of the legal claims in Plaintiffs' petition. *See* 1st Am. Pet., *NAACP*, No. 25AC-CC06724. Meanwhile, *Luther* invokes only one of the four claims in Plaintiffs' petition, namely that the legislature does not have constitutional authority to redraw congressional districts for a second time this decade. Pet. at 5-6, *Luther v. Hoskins*, No. 25AC-CC06964 (19th Jud. Cir. Ct. Sep. 12, 2025). But Plaintiffs present different factual and legal questions even as to that single overlapping claim.

As discussed *supra*, Plaintiffs here are all Kansas City-area residents of the former CD 5 who object to the new districts fragmenting their metro area's political representation and who seek a return to the 2022 districts. *See supra* note 7. The *Luther* petition does not request the

restoration of the 2022 congressional districts as a form of relief. Though some *Luther* plaintiffs hail from Jackson County, the *Luther* petition does not address the injuries uniquely suffered by residents of former CD 5, like Plaintiffs here, whose district has been made less compact, non-contiguous, unequally populated, and more radically transformed than any other in the new congressional map. Pet. ¶¶ 169, 189-215. The differences in the alleged injuries and the requested relief differentiate the subject matter of this case from *Luther*.

Additionally, Plaintiffs here advanced distinct legal arguments that do not appear in the *Luther* petition. For instance, Plaintiffs rely not only on Art. III, § 45 of the Missouri Constitution, but also Art. III, § 10 to show that mid-decade congressional redistricting is unconstitutional.

Compare Pet. ¶ 182 with Pet. at 5-6, *Luther*, No. 25AC-CC06964. Plaintiffs have also researched the history and structure of the Missouri Constitution, including the multiple drafts of § 45's text and its original purpose during the Missouri Constitutional Convention. See Pet. ¶ 178; Suggestions in Supp. of Pls.' Mot. for Prelim. Inj. at 5-10. The *Luther* plaintiffs have raised none of these arguments.

The differences in subject matter also make abatement inappropriate here.

C. There is little risk of inconsistent judgments.

State Defendants argue that the risk of inconsistent judgments weighs in favor of abatement, but that risk is minimal here. Certainly, this Court and the *Luther* or *Kehoe* courts could reach differing *opinions* on the legislature's authority to engage in mid-decade redistricting—but a differing legal opinion is not always an inconsistent judgment. Inconsistent judgments occur “where two identical civil actions are filed in different courts,” creating the possibility of “inherently conflicting judgments” that point “in totally inapposite” directions and are impossible to comply with. *See Kelly v. Kelly*, 245 S.W.3d 308, 313 (Mo. App. W.D. 2008). For the reasons

already stated, this case is not identical to the earlier filed suits—it involves adjudication of a different set of plaintiffs' rights, and it is possible for all Defendants to comply with the courts' judgments even if this Court reaches a different legal conclusion than the *Luther* and *NAACP* courts. And indeed, given the importance of the rights and issues at stake, the appellate courts will benefit from percolation of these issues from different trial courts.

Inconsistent judgments often arise in cases of identical or mirror-image lawsuits involving the same parties. *Kelly*, 245 S.W.3d at 313. In those scenarios, one court could rule that Party A did not violate Party B's rights, while another could conclude Party A did violate Party B's rights, and the two judgments would be fundamentally incompatible. But here, if the Circuit Court of Cole County in the earlier-filed *Luther* and *NAACP* cases rules that State Defendants did not violate the *Luther* and *NAACP* plaintiffs' rights, that does not preclude this Court from ruling that State Defendants violated Plaintiffs' rights in this case—a different set of plaintiffs, a different set of rights, and a different opinion and judgment. As discussed in section III.A.1 & note 8, the earlier filed suits do not determine Plaintiffs' rights, because they involve unrelated litigants and are not class actions. And State Defendants would be able to comply with each court's ruling even if differing legal opinions are rendered. For instance, if the *NAACP* and *Luther* courts reject the plaintiffs' claims, those courts would not require State Defendants to take any action at all (and also would not affirmatively forbid him from taking any actions), whereas this Court could order State Defendants (and other Defendants) to act if Plaintiffs prevail.

Inconsistent judgments could also occur in cases involving different parties if the adjudication of one litigant's rights necessarily implicates the other parties' rights—such as cases involving child custody or the disposition of property. *In the Matter of S.J.M.*, 453 S.W.3d 340, 344 (Mo. App. E.D. 2015); *Kelly*, 245 S.W.3d at 313. Notably, the abatement cases that State

Defendants rely upon almost exclusively involve property or custody rights. *See* *Defs. Suggestions* 6-9. For the reasons stated in section III.A.1, these redistricting cases implicate personal and individual rights of voters, which can be separately adjudicated.

Another reason why inconsistent judgments are unlikely to be an issue is the availability and likelihood of appellate review. These redistricting cases involve a matter of national and statewide importance. And the last time congressional districts in Missouri were challenged, the Missouri Supreme Court reviewed the matter twice.⁹ *See Pearson v. Koster*, 367 S.W.3d 36 (Mo. banc 2012); *Pearson*, 359 S.W.3d 35. In cases of such importance and particularly given the novelty of Missouri's engaging in mid-decade congressional redistricting, appellate courts may benefit from percolation of the legal issue in lower courts, and differing opinions could even be useful for that purpose. *See McCrory v. Alabama*, 144 S. Ct. 2483, 2489 (2024) (Sotomayor, J., concurring in denial of certiorari); *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 587 U.S. 490, 496 (2019) (Thomas, J., concurring in denial of certiorari).

D. Abatement is discretionary, not mandatory.

Even if State Defendants could somehow show that the pre-requisites for abatement have been satisfied, despite the non-overlapping plaintiffs, different defendants, and distinct legal and factual questions, this Court should decline to stay or dismiss any of Plaintiffs' claims. Contrary to State Defendants' argument that this Court would be "require[d]" to "dismiss[]" Count I of Plaintiffs' Petition, *see* *Defs. Suggestions* at 6, abatement is a discretionary doctrine. *Ryan*, 276

⁹ Additionally, in *Pearson*, two cases were filed in the same trial court by different parties, on different dates, challenging the same congressional districting plan; the later-filed case was not stayed or dismissed pending the earlier suit. *See* Pet., *Pearson v. Koster*, No. 11AC-CC00624 (19th Jud. Cir. Ct. Sep. 23, 2011); Pet., *McClatchey v. Carnahan*, No. 11AC-CC00752 (19th Jud. Cir. Ct. Nov. 22, 2011). Both cases proceeded to a bench trial on the same day, and the decisions in both cases were appealed under different case numbers to the Missouri Supreme Court, which issued decisions in both appeals at the same time.

S.W.2d at 130-31; *State ex rel. U.S. Fire Ins. Co. v. Terte*, 176 S.W.2d 25, 30 (Mo. banc 1943); *see also Harris v. Edgar*, 583 S.W.3d 497, 504-05 (Mo. App. S.D. 2019) (reviewing abatement decision for abuse of discretion). Discretionary considerations include “public policy and interest, efficiency, convenience, economy and the good or bad faith of the party bringing the declaratory action.” *Terte*, 176 S.W.2d at 30.

First, public interest favors allowing voters being deprived of their rights an opportunity to be heard. Redistricting affects the individual right to vote and be represented in government, and as the Missouri Supreme Court has held, the Missouri Constitution “establish[es] with unmistakable clarity that the right to vote is fundamental to Missouri citizens.” *Weinschenk*, 203 S.W.3d at 211; *see also Reynolds*, 377 U.S. at 561. State Defendants do not cite, and Plaintiffs are unaware of, a single case in which the court used the abatement doctrine to deny a voter any opportunity whatsoever to assert and protect their rights in court. This Court should decline to be the first to do so. The mere fact that unrelated voters—with different interests and requests for relief—may be challenging the same law does not mean that Plaintiffs’ rights are being “adequately” protected. *See Brink*, 217 S.W.2d at 510. That is especially true when the other cases are not raising Plaintiffs’ specific factual and legal arguments and have not pleaded the same injuries regarding the fracturing of the Kansas City metro area. *See supra* note 7 & Section III.B.

Second, consideration of judicial efficiency favors this Court retaining jurisdiction over Plaintiffs’ petition. This case is the most complete vehicle challenging Missouri’s new congressional districts and is most likely to reach ultimate resolution in a prompt manner. Plaintiffs assert a total of four claims, while the *Luther* petition has one claim and the *NAACP* petition has two claims. Thus, even if State Defendants were to prevail in both *Luther* and *NAACP*, this case would remain live. And although *Luther* was docketed about six hours before this case, Plaintiffs

have endeavored to obtain timely relief by seeking a preliminary injunction on the claim that Missouri legislature lacks the constitutional authority to redistrict congressional seats mid-decade. The *Luther* plaintiffs have not sought emergency relief, and the NAACP case no longer includes that claim. The fact that the *Luther* case and this one were filed on the same day weighs against abatement, because this Court would not be retreading old ground already covered by another court.

an Official Court Document Not an Official Court Document Not an Official Court Document

Ultimately, abatement is designed to deter suits that are so “unnecessary” and in “bad faith” as to be “vexatious and oppressive.” *See Long*, 136 S.W. at 679 (citation omitted); *accord Terte*, 176 S.W.2d at 30. State Defendants do not allege any bad faith here—nor can they. Unlike the classic abatement case in which the same litigant files multiple suits, *see Long*, 136 S.W. at 679, this is Plaintiffs’ only opportunity to be heard as to whether the redistricting plan violates their constitutional rights, and they raise numerous arguments and claims that are not duplicated in any other case. Abating Plaintiffs’ case would raise grave due process concerns, *see supra* III.A.1, and this Court should decline to do so.

IV. Local Election Authorities Are Proper Defendants, and Transfer of Venue Should Be Denied.

State Defendants reiterate their erroneous argument that Local Election Authorities are “nominal” defendants and request their dismissal, along with a transfer of this case to Cole County. Defendants at 9. For the reasons already discussed above, *see supra* Section III.A.2, Local Election Authorities are not “nominal” or “extraneous” to the case and can provide effective and unique remedies to redress the violation of Plaintiffs’ constitutional rights. State Defendants’ request for dismissal and transfer of venue should therefore be denied on those bases alone. There are at least two other reasons to reject State Defendants’ request to dismiss Local Election Authorities.

First, State Defendants' request to dismiss Local Election Authorities is procedurally improper and premature. If Local Election Authorities believe they are not proper defendants, they may file a motion raising any defenses under Rule 55.27. They have not done so. Local Election Authorities have separate counsel, and State Defendants do not represent them and cannot raise other parties' defenses on their behalf.

Second, State Defendants incorrectly argue that Local Election Authorities for Kansas City and Jackson County are improper defendants because they cannot provide a statewide remedy. As an initial matter, relief against Local Election Authorities will effectively result in a statewide remedy, because the Secretary of State cannot conduct a congressional election without assigning the precincts in Jackson County and Kansas City and tallying the votes from those jurisdictions.

See supra Section III.A.2. But even if this Court were to agree with State Defendants that the Jackson County and Kansas City Local Election Authorities can only provide partial, localized relief and that more fulsome, statewide relief is necessary, that is not a basis for *dismissing* Local Election Authorities from the case. Rather, the logical solution would be to allow Plaintiffs to amend the petition to include *additional* Local Election Authorities responsible for the conduct of elections elsewhere in the state—something that Plaintiffs are prepared to do if necessary.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss and transfer venue should be denied.

Respectfully submitted,

/s/ Gillian R. Wilcox
Gillian R. Wilcox, MO #61278
Jason Orr, MO # 56607
ACLU of Missouri Foundation

406 W. 34th Street, Suite 420
Kansas City, MO 64111
Phone: (816) 470-9938
gwilcox@aclu-mo.org
Jorr@aclu-mo.org

Kristin M. Mulvey, MO # 76060
Jonathan D. Schmid, MO # 74360
906 Olive Street, Suite 1130
St. Louis, MO 63101
Telephone: (314) 652-3114
kmulvey@aclu-mo.org
jschmid@aclu-mo.org

Mark P. Gaber*
Aseem Mulji*
Benjamin Phillips*
Isaac DeSanto*
Campaign Legal Center
1101 14th St NW Suite 400
Washington, DC 20005
Phone: (202) 736-2200
mgaber@campaignlegalcenter.org
amulji@campaignlegalcenter.org
bphillips@campaignlegalcenter.org
idesanto@campaignlegalcenter.org

ACLU FOUNDATION
Ming Cheung*
Dayton Campbell-Harris*
Sophia Lin Lakin*
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2500
mcheung@aclu.org
dcampbell-harris@aclu.org
slakin@aclu.org

*pro hac vice motion submitted

Court Document Not an Official Court Document Not an Official Court Document Not an Official Court Document **Certificate of Service**

I certify that a copy of the foregoing was filed on case.net and served electronically to all counsel of record, which includes counsel for State Defendants who have entered appearances, and also served by email on September 29, 2025, to the following:

JACKSON COUNTY BOARD OF ELECTION COMMISSIONERS; MICHAEL K. WHITEHEAD, HENRY R. CARNER, COLLEEN M. SCOTT, and LYLE K. QUERRY, in their official capacities as commissioners of the Jackson County Board of Election Commissioners; TAMMY BROWN and SARAH ZORICH, in their official capacities as directors of the Jackson County Board of Election Commissioners

bconstance@sccmlaw.com
jdwilliamson@comcast.net

KANSAS CITY BOARD OF ELECTION COMMISSIONERS; SARAH (SALLY) MILLER, SHARON TURNER BUIE, and RALPH F. MUNYAN II, in their official capacities as commissioners of the Kansas City Board of Election Commissioners; and SHAWN KIEFFER and LAURI EALOM, in their official capacities as directors of the Kansas City Board of Election Commissioners,

charles.renner@huschblackwell.com
david.raymond@huschblackwell.com

/s/ Gillian R. Wilcox