IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

ELIZABETH HEALEY, *et al.*,	)	
	)	
Plaintiffs,	)	
-vs-	)	No. 2516-CV31273
	)	
STATE OF MISSOURI, *et al.*,	)	
	)	
Defendants.	)	

STATE DEFENDANTS' SUGGESTIONS IN SUPPORT OF MOTION TO DISMISS

Plaintiffs disagree with the Missouri General Assembly's decision to implement a new congressional map. Regardless of the merits of Plaintiffs' concerns, there are three independent problems with their Petition which require this Petition either be dismissed or transferred to Cole County. *First*, Plaintiffs have filed their suit in the wrong venue and this Court lacks jurisdiction over this Petition. Instead, the Missouri Constitution vests exclusive jurisdiction over redistricting cases in Cole County. *Second*, Plaintiffs' Count I duplicates a previously-filed suit in Cole County. In order to avoid inconsistent judgments and to use judicial resources efficiently, the twin aims of abatement, the Court should dismiss Count I or stay proceedings on Count I. *Third*, named defendants, the Board of Election Commissioners for Jackson County and Kansas City, have no ability to grant Plaintiffs' requested relief and must be dismissed. Without these defendants, the proper venue by statute is Cole County to where this Petition should be transferred.

FACTUAL BACKGROUND

On August 29, 2025, Governor Kehoe announced a Proclamation convening an extraordinary session of the legislature under Article IV, Section 9 of the Missouri Constitution to "establish new congressional districts" and amend the "petition process." Proclamation (Aug. 29, 2025). The General Assembly convened on September 3, and the General Assembly passed House Bill 1 drawing new congressional districts on September 12.

Also on September 12, another set of plaintiffs filed a suit challenging the redistricting plan, naming the Secretary of State as a defendant. *See* Pet., *Luther v. Hoskins*, 25AC-CC06964 (Cir. Ct. Cole Cnty. Sept. 12, 2025). Those plaintiffs argue that the General Assembly's mid-decade redistricting violates Article III, § 45 of the Missouri Constitution. *Id.* at ¶¶ 34, 38–41. A trial is already scheduled for November 12. Notice of Trial Setting, *Luther v. Hoskins*, 25AC-CC06964 (Cir. Ct. Cole Cnty. Oct. 3, 2025).

The Governor signed House Bill 1 into law on September 28, and Plaintiffs filed this suit shortly thereafter. Plaintiffs seek to enjoin the implementation of House Bill 1 based in part on their belief that mid-decade redistricting violates Article III, § 45 of the Missouri Constitution (Count I). Plaintiffs also assert that House Bill 1 violates § 45's compactness requirements (Count II). But relying solely on their Count I merits theory, Plaintiffs move for a preliminary injunction.

Additionally, yet another set of plaintiffs had already filed suit challenging the redistricting plan, this time in Jackson County. *See* Pet., *Wise v. State of Missouri*,

2516-CV29597 (Cir. Ct. Jackson Cnty. Sept. 12, 2025). The State has moved to dismiss or in the alternative transfer this case to Cole County. Mot., *Wise v. State of Missouri*, 2516-CV29597 (Cir. Ct. Jackson Cnty. Sept. 26, 2025). The court has not ruled on this motion. Plaintiffs and the *Wise* Plaintiffs have also jointly moved to consolidate their actions. Mot., *Wise v. State of Missouri*, 2516-CV29597 (Cir. Ct. Jackson Cnty. Oct. 3, 2025). The State Defendants have consented to consolidation but have preserved their arguments that both cases should be dismissed or transferred. *See id.* at ¶ 5.

ARGUMENT

I. Cole County Circuit Court is the exclusive venue to challenge a redistricting plan.

The Missouri Constitution expressly sets venue for *all* redistricting cases in Cole County: "Any action expressly or implicitly alleging that a redistricting plan violates this Constitution . . . shall be filed in the circuit court of Cole County." Mo. Const. art. III, §§ 3(j), 7(i). The text could not be clearer, and two textual clues bolster this point.

First, Sections 3(j) and 7(i) requires "*any* action expressly or implicitly alleging that a redistricting plan violates the Constitution" be filed in Cole County. The word "any" is significant because it connotes a broad reach. As the U.S. Supreme Court has explained, "read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quoting Webster's Third New International Dictionary 97 (1976)). For example, in *Ali*, the U.S. Supreme Court relied on the word "any" in refusing to

give broad language a narrower reading in light of surrounding statutory language. *See id.* ("Notwithstanding the subsection's initial reference to federal drug trafficking crimes, we held that the expansive word 'any' and the absence of restrictive language left 'no basis in the text for limiting'" the operative phrase." (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997))). So too here. The Court should give "any action" its natural, broad meaning and hold that it refers to all redistricting plans.

Second, Sections 3(j) and 7(i) refers to "a redistricting plan" to be filed in Cole County. The use of the indefinite article is significant. "A" indicates the noun in question is "undetermined, unidentified, or unspecified" while the definite article, "the," "refers to someone or something previously mentioned or clearly understood from the context." *Claspill v. State Div. of Econ. Dev.*, 809 S.W.2d 87, 89 (Mo. App. W.D. 1991) (quoting *Webster's Third New Int'l Dictionary* 1, 2368 (1971)). If the General Assembly had intended to limit this constitutional provision to challenges to a state legislative redistricting plan, it could easily referred to state-legislative redistricting plans. *See Hopkins v. State*, 802 S.W.2d 956, 957 (Mo. App. W.D. 1991) ("The use of the definite article 'the' . . . denotes the particular judgment or the particular sentence . . . .").

Plaintiffs are bringing an "action expressly . . . alleging that a redistricting plan violates the Constitution," and so this suit must be filed in Cole County. Mo. Const. art. III, §§ 3(j), 7(i).

Admittedly, this language is found in the Missouri Constitution governing state legislative districting, and Article III, § 45 lacks a similar provision. But it

nonetheless shows that this court lacks jurisdiction. The *default* constitutional venue rule requires congressional redistricting challenges be brought in Cole County. "For lawsuits filed against state officials, venue is appropriate in the county where their offices are located and their main duties are performed." *Talley v. Mo. Dept. of Corrections*, 210 S.W.3d 212, 215 (Mo. App. W.D. 2006) (citing *State ex rel. Mitchell v. Dalton*, 831 S.W.2d 942, 946 (Mo. App. E.D. 1992)) (explaining how a suit against the Missouri Department of Corrections was only proper in Cole County); *see also* Mo. Const. art. IV, § 20 ("The executive and administrative officials and departments herein provided for shall establish their principal offices and keep all necessary public records, books and papers at the City of Jefferson."). This constitutional rule controls Article III, § 45.

Moreover, given that the Missouri Constitution *generally* vests exclusive jurisdiction in the Cole County Circuit Court over lawsuits against state officials, the inclusion of such explicit language in Article III, § 45 was unnecessary, unlike for Article III, §§ 3 and 7. Under §§ 3 and 7, different bodies may be responsible for completing state legislative redistricting plans. House and senate independent bipartisan citizens commissions, each consisting of five members representing multiple legislative districts, are charged with redistricting the state house and senate districts. *Id.* §§ 3(c)–(f), 7(a)–(e). But if they fail to redistrict within six months, a six-member judicial commission composed of judges from the appellate courts of the State is then tasked with redistricting. *Id.* §§ 3(g), 7(f). Thus, because these commissions' members are not necessarily statewide officials for which venue

in Cole County is already mandated, the inclusion of the Cole County venue provision in the sections governing state legislative districting was truly necessary to ensure that *all* redistricting litigation would begin in Cole County.

Congressional redistricting is simpler because the only proper defendants—*i.e.*, those who could plausibly be said to cause any injury—are deemed to reside in Cole County. The General Assembly—to the exclusion of other bodies—divides the State into congressional districts. Mo. Const. art. III, § 45. The Governor then signs the redistricting bill into law, and the Secretary of State executes. The Secretary of State is a "head[] of [an] executive department[] of state government and [his] office[] [is] located in and [his] principal official duties are required to be performed at the State Capitol in Jefferson City." *State ex rel. Toberman v. Cook*, 281 S.W.2d 777, 780 (Mo. banc 1955) (taking judicial notice); *see also* Mo. Const. art. IV, § 20 ("The executive and administrative officials and departments herein provided for shall establish their principal offices and keep all necessary public records, books and papers at the City of Jefferson."). So the proper venue for any suit against him for his official acts lies in Cole County. *State ex rel. Toberman*, 281 S.W.2d at 780 ("[U]nless otherwise provided by statute, the venue of actions against executive heads of departments of state government lies generally in the county in which their offices are located and their principal official duties are performed." (citing *State ex rel. Gardner v. Hall*, 221 S.W. 708, 711–12 (Mo. banc 1920))).

The Court should dismiss this case or, alternatively, transfer it to Cole County—to comply with the Missouri Constitution's express choice to channel all redistricting cases to Cole County.

II. Abatement mandates that this Court dismiss or stay proceedings on Count I.

Even if this Court does not transfer venue on constitutional grounds, the abatement doctrine requires that this Court either transfer, dismiss Count I, or at least stay this litigation. Count I of Plaintiffs' Petition argues that the Missouri Constitution prohibits mid-decade congressional redistricting. The *Luther* plaintiffs, filing first and filing in Cole County, argue the exact same point and seek analogous injunctive relief. The State agrees venue is proper there, and the *Luther* court has already scheduled trial for November 12, 2025. This is a matter of pure constitutional law, and interpretation of Article III, § 45 carries substantial consequences of Missouri law. Due to the lack of fact inquiry, the threat of incompatible opinions, and the time-sensitive nature of the relief sought, this Court should abate this case—either through dismissal of Count I without prejudice or venue transfer. Equitable factors also bolster abatement as the Plaintiffs will suffer no irreparable harm from resolution of their claims in Cole County. Furthermore, burden on the courts and the State will be lessened, and a single court can resolve this important question of Missouri constitutional law.

In Missouri, "[t]he court in which the claim is first filed acquires *exclusive* jurisdiction." *Hampton v. Llewellyn*, 663 S.W.3d 899, 903 (Mo. App. W.D. 2023) (quoting *Planned Parenthood of Kan. v. Donnelly*, 298 S.W.3d 8, 12 (Mo. App. W.D.

2009)) (emphasis added). As a matter of comity and judicial efficiency, all factors suggest that this Court should exercise its discretion to abate. And though abatement is discretionary, courts must address abatement *sua sponte*, if not raised. *Kelly v. Kelly*, 245 S.W.3d 308, 314 (Mo. App. W.D. 2008).

Count I of Plaintiffs' Petition is identical to the previously filed *Luther* petition. The abatement doctrine applies, and this Court should transfer, dismiss Count I, or, at a minimum, stay this Petition pending resolution of *Luther*.

A. Plaintiffs are "sufficiently similar."

Although this petition is facially brought by different plaintiffs, including some from all congressional districts in Missouri, than the previously filed *Luther* petition, plaintiffs in both cases are merely nominal. Their status as plaintiffs is solely determined by their status as Missouri residents whose congressional districts were altered in some fashion. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 395 (Mo. banc 2024) (to have standing, plaintiffs must only "resid[e] in a district that exhibits the alleged violation" and their alleged injury could be "remedied by a differently drawn district"). In other words, Plaintiffs bring the same claims and seek the same relief such that "[i]n either suit the interest of the beneficiaries is identically affected." *State ex rel. Dunger v. Mummert*, 871 S.W.2d 609, 610 (Mo. App. E.D. 1994).

B. The Jackson County and Kansas City Boards of Election Commissioners are "extraneous" defendants.

Several of Plaintiffs' named Defendants—the Jackson County Board of Election Commissioners and its members, and the Kansas City Board of Election Commissioners and its members—are "extraneous parties to the action" such that

they "do not preclude dismissal" under abatement. *Skaggs Chiropractic, LLC v. Ford*, 564 S.W.3d 633, 639 (Mo. App. S.D. 2018) (quoting *Mummert*, 871 S.W.2d at 610) (cleaned up). The Boards' clear function is to establish a hook (albeit an unconstitutional one) for venue in Jackson County instead of the proper venue in Cole County thanks to the Missouri Constitution and the suit's true focus on the state Defendants.

C. Petition raises identical and overlapping claims with earlier-filed suit.

Two interlinked factors militate in favor of dismissing or transferring the instant case. First, the Cole County Circuit Court has set a trial date for *Luther* on November 12, 2025. This proceeding will resolve the Count I question concerning of the propriety of mid-decade redistricting. Second, resolution of Count I naturally precedes Plaintiffs' other compactness count (Count II). Harms are no more imminent to Plaintiffs than to the identically-situated *Luther* plaintiffs. Furthermore, if the *Luther* plaintiffs prevail and the Cole County Circuit Court enjoins the 2025 map, then Plaintiffs' remaining claims immediately become moot and "[a]s a general rule, moot cases must be dismissed." *Friends of the San Luis, Inc. v. Archdiocese of St. Louis*, 312 S.W.3d 476, 484 (Mo. App. E.D. 2010) (quoting *Warlick v. Warlick*, 294 S.W.3d 128, 130 (Mo. App. E.D. 2009)). Plaintiffs' Count II is *dependent* on the failure of their Count I claim, which is identical to the claim in *Luther*.

D. There is a risk of inconsistent judgments.

The point of the venue restrictions in Article III, §§ 3(j) and 7(i) are to ensure consistency of judgments statewide. This is also why appeals are directly to the Missouri Supreme Court. *Id.* "More importantly, because the doctrine of abatement 'operates to forestall the possibility of inconsistent judgments on the same claim, a party has no ability to 'waive' this court's authority to address its own prudential concern about the possibility of inconsistent judgments.'" *Harris v. Edgar*, 583 S.W.3d 497, 502 (Mo. App. S.D. 2019) (quoting *Skaggs*, 564 S.W.3d at 641) (cleaned up). But abatement doctrine exists, in substantial part, to avoid the generation of such conflicting decisions in Missouri's courts. *Kelly*, 245 S.W.3d at 313.

Judicial efficiency favors transfer or dismissal without prejudice and refiling in Cole County of Plaintiffs' suit. Judicial efficiency benefits from consolidation and concentration of claims before one tribunal. No impediment stands before Plaintiffs bringing their two counts before the Cole County Circuit Court. They are free to transfer, refile, potentially consolidate, or join the *Luther* or other pending redistricting litigation in that venue. Indeed, if Plaintiffs litigated their claims in Cole County—which the State concedes is a proper venue and where a trial date has already been set—Plaintiffs would obtain a speedier resolution of their claims.

III. This Court should dismiss the Election Commissions as improper defendants and transfer the Petition to Cole County.

Plaintiffs added the local election boards to manufacture venue in Jackson County. But Plaintiffs lack standing to sue the election board defendants because (1) their injuries were not caused by these defendants and (2) Plaintiffs' alleged

injuries are not redressible by court orders against these defendants. *See, e.g.*, *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) ("[P]laintiffs must demonstrate standing for each claim that they press against each defendant, and for each form of relief they seek." (cleaned up)). Instead, the election board defendants are merely pretensive defendants, added to establish venue in Jackson County. The Court should reject Plaintiffs' improper attempt to manufacturer venue and dismiss these pretensive defendants.

A. Plaintiffs' claims against the Election Board Defendants are "pretensive."

Plaintiffs' joinder of the Elections Board Defendants is "pretensive" and thus there is no basis for venue in Jackson County. "Venue is pretensive if (1) the petition fails to state a claim for which relief can be granted against the resident defendant, or (2) the record in support of a motion asserting pretensive joinder establishes there is no cause of action against the resident defendant and the information available at the time the petition was filed would not support a reasonable legal opinion that a case could be made against that defendant." *Hefner v. Dausmann*, 996 S.W.2d 660, 663 (Mo. App. S.D. 1999) (citing *Breckenridge v. Sweeney*, 920 S.W.2d 901, 902 (Mo. banc 1996)). This test is "disjunctive" so State Defendants need only establish either prong. *Id.*

1. Plaintiffs lack standing to bring a claim against Election Board Defendants for which relief can be granted.

As established, Plaintiffs cannot show that the board Defendants caused their injury. *See St. Louis Cnty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014). Nor can do they demonstrate that their harms are redressible by enjoining these entities. *See*

id. Simply put, Plaintiffs lack standing to bring claims against board defendants. Without standing, Plaintiffs cannot state any claim for relief making these board defendants pretensive. *See Concerned Parents v. Caruthersville Sch. Dist. 18*, 548 S.W.2d 554, 557 (Mo. banc 1977) ("Before proceeding to consider whether the petition states a claim for relief, we consider first the contention, advanced in defendants' brief, that the trial court did not err in dismissing the suit because plaintiffs lack standing or capacity to maintain this action.").

2. Plaintiffs cannot support a reasonable legal opinion that the boards are proper defendants.

The venue restriction clauses in Article III, §§ 3(j) and 7(i) suggest that the joinder of local election boards as part of a state-run redistricting is improper. The role of local election boards does not differ for state or congressional contests. *See* § 115.023.1 ("Except as provided in subsections 2 and 3 of this section, each election authority shall conduct *all public elections* within its jurisdiction."(emphasis added)). Plaintiffs have provided no reason as to why local election boards can be proper defendants for congressional redistricting but not for state redistricting. *See* Mo. Const. art. III, §§ 3(j), 7(i) (mandating suits "be filed in the circuit court of Cole County"). This Court should follow the logic of §§ 3(j) and 7(i). *Cf. Preisler v. Hearnes*, 362 S.W.2d 552, 556 (Mo. banc 1962) ("We must hold that it was proper for the legislature to follow" constitutional policy for making senatorial districts when making congressional districts.).

More to the point, election boards are proper defendants in a redistricting challenge only when the election boards "ha[ve] a continuing duty to make a valid

redistricting." *Preisler v. Doherty*, 284 S.W.2d 427, 436 (Mo. banc 1955). The election board defendants here have no such duty. As the Missouri Supreme Court pointed out, these local election boards implement the applicable redistricting statute and act in a ministerial capacity. *See State ex rel. Wulfing v. Mooney*, 247 S.W.2d 722, 726 (Mo. banc 1952). Therefore because these election boards lack any "duty to make a valid redistricting" map, they are not proper defendants for congressional redistricting claims. Thus, there is no reasonable claim that can be made against these local election boards, and this Court should dismiss them as "pretensive" defendants.

B. The Election Board Defendants are neither necessary nor indispensable parties and their inclusion violates the principles of Equity.

Local election board defendants are not necessary or indispensable parties for this suit. *See Faatz*, 685 S.W.3d at 406. In a state redistricting challenge, the Missouri Supreme Court affirmed the dismissal of the Judicial Commission—which "approved the challenged redistricting plan"—because the Secretary of State could grant "[c]omplete relief" and the Judicial Commission "d[id] not have an interest in the disposition of [the] lawsuit." *Id.* at 405–06. Both of these reasons are met here. First, just as in *Faatz*, the Secretary of State can grant "[c]omplete relief." *Id.* at 406. Second, if the Judicial Commission who "approved the challenged redistricting plan" did not have an interest in the lawsuit, how can Plaintiffs claim local election boards that merely implement the congressional districts do? The sole interest of these local election boards is in running local elections; they play no role in drawing districting

lines. *See supra*. Therefore, these local election boards are neither necessary nor indispensable parties and should be dismissed.

Turning to broader principles in equity, "[t]he remedy of injunction, frequently characterized as 'the strong arm of equity,' is a summary, transcendent, and extraordinary remedy, may not be invoked as a matter of course, and should be exercised sparingly and only in clear cases . . . ." *Prentice v. Rowe*, 324 S.W.2d 457, 463 (Mo. 1959) (citations omitted). Preliminarily enjoining the local election boards would not be a "sparing[]" use of injunctive power. The election boards only have jurisdiction over the precincts in Jackson County and Kansas City. Thus, enjoining the boards without enjoining the Secretary of State would only cause confusion as to what congressional map was in use. Worse, it could prevent Plaintiffs and other citizens' votes from being counted either at all or in the proper district in the congressional elections. Enjoining the election board defendants without enjoining the Secretary of State would not preserve the status quo. *See Salau v. Deaton*, 433 S.W.3d 449, 453 (Mo. App. W.D. 2014). Therefore, the election boards are not proper defendants.

Enjoining local election boards to achieve a statewide result clashes with the proper scope of preliminary injunctive relief in Missouri. "An injunction should be narrowly framed to give the relief to which the parties are entitled but should not interfere with any legitimate or proper activities." *Terre Du Lac Property Owners' Ass'n v. Wideman*, 655 S.W.2d 803, 807 (Mo. App. E.D. 1983) (citing *Commission Row Club v. Lambert*, 161 S.W.2d 732, 736 (Mo. App. 1942); *Henson v. Payne*, 302 S.W.2d

44, 50 (Mo. App. 1956)). The narrow and proper framing of Plaintiffs' requested relief would be to enjoin directly the Secretary of State, not to enjoin the local election boards in order for the trickledown effects to "effectively" enjoin the Secretary of State.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss the Petition, or in the alternative, transfer the Petition to the circuit court in Cole County.

Dated: October 17, 2025 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2025, the foregoing Entry of Appearance was filed electronically using the Court's CM/ECF system, which sends notification to all counsel of record.

/s/ Louis J. Capozzi, III