

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MERRIE SUZANNE LUTHER, *et al.*,)

Plaintiffs,)

v.)

Case No. 25AC-CC06964

DENNY HOSKINS,)

Defendant.)

DEFENDANT'S PRETRIAL BRIEF

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INTRODUCTION

Under the Missouri Constitution, “the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained* by the Constitution.” *State v. Clay*, 481 S.W.3d 531, 537 (Mo. banc 2016) (quoting *Liberty Oil Co. v. Dir. of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991)) (emphasis in *Clay*).

In pursuit of transparently political goals, Plaintiffs ask this Court to abandon that fundamental rule of Missouri constitutional law and insert nonexistent restrictions into the plain language of Article III, § 45 of the Missouri Constitution to prohibit mid-decade redistricting. This Court should deny their motion for injunctive relief and declaratory judgment for the following reasons.

First, the General Assembly has discretion to conduct mid-decade redistricting under its plenary legislative authority *and* the U.S. Constitution’s Elections Clause. U.S. Const. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”). Under longstanding precedent, Plaintiffs must point to “express” constitutional language prohibiting mid-decade redistricting. *See Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 835 (Mo. banc 1991) (quoting *Harrell v. Total Health Care, Inc.*, 781 S.W.2d 58, 63–64 (Mo. banc. 1989)). But none exists. Plaintiffs’ claim therefore fails.

Second, constitutional text, history, and precedent all reinforce the General Assembly’s discretion to conduct mid-decade redistricting. A plain reading of Article III, § 45 of the Missouri Constitution shows that it merely sets a mandatory *floor* to redistrict at least once per decade, nothing more. Missouri history and practice

bolster this straightforward reading of § 45. First, the General Assembly *has* conducted prior mid-decade redistrictings, both before and after the ratification of the 1945 Constitution. Second, a three-decade redistricting drought in the early twentieth century explains why the 1943–1944 Constitutional Convention added the requirement for *at least* decennial redistricting in § 45. It sets a floor, not a ceiling.

Third, binding and persuasive precedents support the General Assembly’s redistricting power. The Missouri Supreme Court has expressly confirmed that the General Assembly retains the power—in the absence of “express” constitutional prohibitions—to act with complete discretion. *Blaske*, 821 S.W.2d at 835. This includes realigning legislative districts at its discretion. Additionally, out-of-state precedent interpreting similar state provisions confirms that in the absence of a clear constitutional prohibition, state legislatures enjoy the power to redistrict mid-decade at will. *See, e.g., State ex rel. Meighen v. Weatherill*, 147 N.W. 105, 106 (Minn. 1914) (upholding the Minnesota Legislature’s discretionary mid-decade redistricting power).

Finally, the federal decennial Census is undoubtedly a permissible source of data to conduct congressional redistricting. Plaintiffs seemingly suggest that Missouri is required to generate its own population data for mid-decade redistricting. *See* Pet. ¶ 42. While the State *may* be permitted to do this, it is certainly not mandatory. The U.S. Supreme Court has long recognized that populations may “shift[]” and “change[]” after the decennial Census, but also that States can and should “operate under the legal fiction” that their congressional districts are of equal

population until the next decennial Census. *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003), *superseded by statute on unrelated grounds*, P.L. 109-246, *as recognized in Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254 (2015). The General Assembly's use of the 2020 decennial census data is constitutional.

Even if Plaintiffs could somehow prevail on the merits, the Court should decline to grant them the remedy they seek. In assessing whether to give injunctive relief, this Court must consider the equities and public interest. *See City of Normandy v. Kehoe*, 709 S.W.3d 327, 335–39 (Mo. banc 2025) (reviewing equities and public interest for injunctive relief). And “public policy and interest” are “[p]aramount” for declaratory relief. *Crown Diversified Holdings, LLC v. St. Louis Cnty.*, 452 S.W.3d 226, 232 (Mo. App. E.D. 2014) (internal quotation omitted). Here, Plaintiffs ask this Court to order the restoration of the prior congressional map.

But there is a serious risk that the prior map violates the U.S. Constitution's Equal Protection Clause. The minority opportunity district in the Missouri First Congressional District may violate the U.S. Constitution. *See, e.g., Pearson v. Koster*, 367 S.W.3d 36, 54 (Mo. banc. 2012) (noting district boundaries were intentionally shaped to maximize minority representation); *Berry v. Ashcroft*, 2022 WL 2643504, at *2 (E.D. Mo. July 8, 2022) (concerning a challenge to Missouri's 1st Congressional District on allegations of racial gerrymandering). But the U.S. Supreme Court appears poised to hold that Section 2 of the Voting Rights Act is unconstitutional to the extent it requires creating such districts. *See, e.g., Amy Howe, Court appears ready to curtail major provision of the Voting Rights Act*, SCOTUSblog (Oct. 15, 2025),

<https://perma.cc/P4A5-ZKVR>. Thus, granting Plaintiffs the remedies they seek would likely force Missouri to violate the U.S. Constitution and plunge the State into legal chaos over which legislative map will govern midterm elections in 2026. The Court should decline to embark on that chaotic and unlawful journey, which would inflict grave harm on the State.

For all these reasons, the Court should enter judgment in favor of the State.

LEGAL STANDARD

“Statutes are presumed constitutional and will be found unconstitutional only if they clearly contravene a constitutional provision.” *State v. Vaughn*, 366 S.W.3d 513, 517 (Mo. banc 2012) (citing *State v. Pribble*, 285 S.W.3d 310, 313 (Mo. banc 2009)). “The person challenging the validity of the statute has the burden of proving the act clearly and undoubtedly violates the constitutional limitations.” *Id.* (quoting *Franklin Cnty. ex rel. Parks v. Franklin Cnty. Comm’n*, 269 S.W.3d 26, 29 (Mo. banc 2008)). “[I]f it is at all feasible to do so, statutes must be interpreted to be consistent with the constitutions.” *Id.* (alteration in original) (quoting *State v. Stokely*, 842 S.W.2d 77, 79 (Mo. banc 1992)).

FACTS

In 2022, Missouri drew congressional districts based on the 2020 federal Census. Joint Stipulation ¶ 16; *see also* Ex. B.

On August 29, 2025, Governor Kehoe announced an extraordinary session of the Missouri General Assembly. *See* Pet. ¶ 29. The Governor directed the General Assembly to consider legislation to realign the State’s congressional districts. *See id.*

On September 3, the General Assembly convened and passed House Bill 1, titled “To repeal sections 128.345, 128.346, and 128.348, RSMo, and to enact in lieu thereof twelve new sections relating to the composition of congressional districts,” on September 12. Joint Stipulation ¶ 10; *id.* Ex. A. The General Assembly used the 2020 Census data to draw the new congressional districts. Pet. ¶ 31; *see also* Joint Stipulation ¶ 18. On September 28, Governor Kehoe signed the new map into law. Joint Stipulation ¶ 12.

Plaintiffs bring this suit challenging the General Assembly’s most recent redistricting. *See generally* Pet. Their one-count petition alleges that the General Assembly violated Article III, § 45 of the Missouri Constitution by redistricting mid-decade. *See id.* ¶¶ 34–41, 43–45. Also buried in this Count is an undeveloped, single-sentence assertion that the new districts “do[] not comply with the Constitution because [House Bill 1] utilized the 2020 census.” *Id.* ¶ 42. Plaintiffs ask this Court to declare that “House Bill 1 is unconstitutional” and to enjoin the Secretary of State “from using [it] to conduct any congressional election.” *Id.* ¶¶ 45, 46.

ARGUMENT

I. Plaintiffs’ argument fails on the merits because the General Assembly has discretion to conduct mid-decade redistricting.

A. Two constitutional principles demonstrate that the General Assembly can conduct mid-decade redistricting.

The General Assembly has the power to redistrict congressional seats mid-decade. This power flows from (1) the General Assembly’s state plenary legislative authority and (2) the U.S. Constitution. *See Coldwell Banker Residential Real Estate Servs., Inc. v. Mo. Real Estate Comm’n*, 712 S.W.2d 666, 668 (Mo. banc 1986) (“The

power of our General Assembly is plenary.”); *Moore v. Harper*, 600 U.S. 1, 38 (2023) (Kavanaugh, J., concurring) (observing that “the Elections Clause assigns authority respecting federal elections to state legislatures”).

1. The General Assembly exercises plenary power to redistrict mid-decade.

The General Assembly has the power to conduct mid-decade congressional redistricting. “The general assembly’s authority is plenary, except when *express* constitutional provisions intervene.” *Blaske*, 821 S.W.2d at 835 (emphasis added) (quoting *Harrell*, 781 S.W.2d at 63–64). Here, no such provisions “intervene.” And even if such provision intervene, “[a]ny constitutional limitation . . . [must] be strictly construed in favor of the power of the General Assembly.” *Bd. of Educ. of City of St. Louis v. City of St. Louis*, 879 S.W.2d 530, 533 (Mo. banc 1994) (citing *Brown v. Morris*, 290 S.W.2d 160, 166 (Mo. banc 1956)).

For decades before the 1945 Constitution, the General Assembly exercised its federal redistricting power without any explicit authorization in the Missouri Constitution—as some state legislatures still do. *See, e.g., Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 702 (Tex. 2022) (citing *Mumme v. Mars*, 40 S.W.2d 31, 33 (Tex. 1931)) (explaining that Article III, § 28 of the Texas Constitution, by not mentioning congressional redistricting, imposed *no* limits on the Texas’s mid-decade redistricting). In 1945, the then new Missouri Constitution added a mandatory requirement that the General Assembly *must* redistrict at least after each census. *See* Mo. Const. art. III, § 45. This was a duty—not a denial of power.

2. The General Assembly exercises federal authority power to redistrict mid-decade.

The General Assembly's mid-decade redistricting powers also emanate from article I, § 4 of the U.S. Constitution. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 414 (2006) [*LULAC*] (plurality opinion) (explaining that art. I, § 4 “leaves with the States primary responsibility for apportionment of their federal congressional . . . districts”) (quoting *Grove v. Emison*, 507 U.S. 25, 34 (1993)). This key state responsibility, at the heart of “Our Federalism,” *see Younger v. Harris*, 401 U.S. 37, 44 (1971), creates a presumption *in favor of* mid-decade redistricting, allowing state political processes to respond to changes in federal law. As the Supreme Court made clear, “[w]ith respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition.” *LULAC*, 548 U.S. at 415 (plurality opinion). Mid-decade redistricting discretion is thus, by default, allowed under the U.S. Constitution’s Elections Clause.

B. Text, constitutional history, and precedent do not impose any temporal restraint on redistricting.

In light of Missouri’s plenary power doctrine and the U.S. Constitution’s Elections Clause, Plaintiffs must show that the Missouri Constitution “expressly” takes away the power to conduct mid-decade redistricting. *Liberty Oil*, 813 S.W.2d at 297 (citing *Bohrer v. Toberman*, 227 S.W.2d 719, 723 (Mo. banc 1950)). But Plaintiffs cannot make that showing because Article III, § 45’s language is silent on the question. Consistent with that silence, the Missouri Supreme Court has never recognized any limit on mid-decade redistricting, and it has strongly suggested that

no such limit exists. See *Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. banc 2012) (“Article III, section 45 of the Missouri Constitution sets out *only* three requirements for the redistricting of seats in Missouri . . . The districts ‘shall’ be composed of ‘contiguous territory as compact and as nearly equal in population as may be.’” (quoting Mo. Const. art. III, § 45) (emphasis added)). And history shows that § 45 imposes a floor for redistricting, not a temporal restraint.

1. Section 45’s text merely requires General Assembly to congressionally redistrict at least once per decade.

Article III, § 45 of the Missouri Constitution 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.

The plain text of § 45 mandates redistricting after the Census, but it contains no timing prohibitions. It says nothing about mid-decade redistricting. It says only that the General Assembly *must* redistrict following the decennial census, a command that makes perfect sense given the General Assembly’s prior failures to conduct any congressional redistricting. See *infra* at 19–20.

Section 45’s silence cannot “expressly restrain[]” the General Assembly from additional redistrictings. *Liberty Oil*, 813 S.W.2d at 297; see also *Bohrer*, 227 S.W.2d at 723 (“[A]n express enumeration of legislative powers and privileges in the Constitution cannot be considered as the exclusion of others not named unless accompanied by negative terms.”). “[W]here the constitution is silent, the legislature may properly address the issue.” *State ex rel. Mathewson v. Bd. of Election Comm’rs*

of *St. Louis Cnty.*, 841 S.W.2d 633, 636 (Mo. banc 1992). Plaintiffs' complaint says nothing to rebut this fundamental point, which dooms their case. The General Assembly's mid-decade redistricting is permissible under § 45.

2. Constitutional context reveals that § 45 does not impose any temporal restraint on redistricting.

Broadening one's view to related constitutional provisions confirms that § 45 is indeed silent on mid-decade redistricting. See *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991) (Court must interpret constitutional provisions "in harmony with all related provisions").

Section 45 states that the "the general assembly *shall*" redistrict following the decennial census. Mo. Const. art. III, § 45 (emphasis added). "[T]he word 'shall' imposes a mandatory duty." *Am. Fed'n of State, Cnty. & Mun. Emps. v. State*, 653 S.W.3d 111, 120 (Mo. banc 2022).

When compared to the language of other provisions, it becomes clear that § 45 imposes merely a constitutional floor. Other sections in Article III are instead phrased in the negative: "the general assembly shall have no power to . . ." or "the general assembly shall not . . ." *E.g.*, Mo. Const. art. III, § 37 ("The general assembly shall have no power to contract or authorize the contracting of any liability of the state, or to issue bonds therefor . . ."); *id.* at § 38(a) ("The general assembly shall have no power to grant public money or property . . ."); *id.* at § 39 ("The general assembly shall not have power [to] . . ."); *id.* at § 40 ("The general assembly shall not pass any local or special law . . ."). "Shall not" are "words of prohibition." *Brooks v. State*, 128 S.W.3d 844, 847 (Mo. banc 2004). These examples show that the

constitutional framers knew how to restrict the General Assembly's power and that they could have done so in § 45. But they did not. This absence of prohibitory language in § 45 confirms that there is no temporal restriction on redistricting. Imposing one here, as Plaintiffs ask, would read this requirement into the Missouri Constitution and be, in effect, a constitutional amendment.

3. Missouri's pre-1945 history illuminates why § 45 lacks any temporal restraint on redistricting.

The General Assembly *has* conducted mid-decade redistricting under the previous state Constitutions, and, under the 1945 Constitution, the General Assembly can still conduct mid-decade redistricting.

Historically, Missouri's General Assembly, like state legislatures nationwide, exercised great discretion consistent with its plenary authority and art. I, § 4 of the U.S. Constitution.¹ Responding to the Fourteenth Amendment's ratification, the General Assembly passed an apportionment act in February 1872. A mere five years later, starting in 1877, *before* the 1880 census, the Missouri General Assembly met again to conduct mid-decade redistricting to shore up Democratic power in the wake of the 1876 election. *See Twenty-Ninth General Assembly*, *The Springfield Leader*, (Jan. 25, 1877) ("The special committee on congressional boundaries met and organized last night The committee agreed to redistrict the state, or at least

¹ Missouri's first constitution (1820) did not enumerate or limit the General Assembly's congressional redistricting power. Until 1842, Congress simply changed the size of the House in response to Censuses, allowing the state legislatures to dictate the details of the election of members. *See Emanuel Celler, Congressional Apportionment—Past, Present, and Future*, 17 LAW & CONTEMP. PROBS. 268, 268–69 (Spring 1952).

change some of the congressional districts.”).² It realigned Missouri’s congressional districts intra-decennially. *See* Ex. C. No legal challenge derailed this partisan initiative, indicating a broad understanding that the General Assembly had the power to conduct mid-decade redistricting. Again, mid-decade redistricting was common nationwide at the time.³

In subsequent decades, Missouri swung from excess redistricting to the opposite extreme: not enough redistricting. From 1901 to 1931, Missouri did not adjust its congressional districts at all.⁴ In 1930, Governor Caulfield vetoed the General Assembly’s redistricting bill, prompting several years of (now unconstitutional) at-large representation.⁵ This history explains *why* the 1943–1944 Constitutional Convention added § 45—to ensure that the 1901–1931 redistricting drought would not occur again.

To achieve that end, the Missouri Constitutional Convention agreed in 1944 on Amendment 7 to File No. 21, what became § 45. Amendment 7’s history

² *See also* *Jefferson City. Proceedings of the Legislature Yesterday*, THE KANSAS CITY JOURNAL (Jan. 20, 1877) (“Mr. Anthony, of Morgan, one of the special committee selected by the Democrats to redistrict the state, reported a bill this morning that aims to make, beyond peradventure, all the congressional districts of the state Democratic.”); *Re-Districting the State*, THE SEDALIA WEEKLY EAGLE (Jan. 26, 1877) (“Among the first acts of our Democratic Legislature was the raising of a committee in the House to re-district the State into Congressional Districts.”).

³ *See* Erik J. Engstrom, *Stacking the States, Stacking the House: The Partisan Consequences of Congressional Redistricting in the 19th Century*, 100 AM. POL. SCI. REV. 419, 421 (Aug. 2006) (noting how in Ohio, the general assembly redistricted seven times between 1878 and 1892).

⁴ Lloyd M. Short, *Congressional Redistricting in Missouri*, 25 AM. POL. SCI. REV. 634, 639 (1931).

⁵ ERIK J. ENGSTROM, *PARTISAN GERRYMANDERING AND THE CONSTRUCTION OF AMERICAN DEMOCRACY* 76 (2013).

establishes that § 45 creates a mandatory floor for redistricting to occur *at least* once per decennial period, triggered by the decennial census and subsequent congressional reapportionment. *See* Debates of the 1943-1944 Constitutional Convention of Missouri—1943-44, vol. 22, 6750, 7030-32 (September 6, 1944), <https://dl.mospace.umsystem.edu/umkclaw/islandora/object/umkclaw%3A7736#page/280/mode/2up>. After agreement on Amendment 7, the Committee on Phraseology rewrote its language, establishing the adopted and current form of § 45. *See* File No. 21, Report No. 1 of Committee No. 23 on Phraseology, Arrangement and Engrossment, Article IV, Legislative Department, Congressional, State Senatorial and Representative Districts at 19-24 (September 19, 1944), <https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=1088&q1=congress&view=2up>. This revision corrected the previous version that stated that redistricting would be triggered by the “census of 1950,” rather than the certification of the Census to the Governor. *Id.* at 22. There is no evidence that the 1943-1944 Constitutional Convention deemed mid-decade redistricting to be a problem—even though delegates surely knew it had previously happened in Missouri. *Id.* at 22-24. The fact that the delegates then said nothing about mid-decade redistricting reinforces that they did not intend to ban it. *Cf. Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 63 (2004) (noting another case involving a “dog that didn’t bark”).

4. Post-1945 history confirms the General Assembly’s mid-decade redistricting power.

Successive, mid-decade congressional redistrictings in the 1960s *confirm* the General Assembly’s power. During the 1960s, Missouri struggled to establish

constitutionally-compliant congressional districts. In 1965, a federal court declared the General Assembly's 1961 congressional map unconstitutional. *Preisler v. Sec'y of State*, 238 F. Supp. 187, 190 (W.D. Mo. 1965) (per curiam) [*Preisler I*]. The court deferred drawing new congressional districts itself, reasoning that "the State Legislature of Missouri has an *unmistakable duty* to reapportion the Congressional Districts of that State." *Id.* at 191 (emphasis added). This holding would have made no sense if the Missouri Constitution was understood to prohibit mid-decade redistricting.

Following the court's ruling, the General Assembly redistricted in 1965. *See Preisler v. Sec'y of State*, 257 F. Supp. 953, 956 (W.D. Mo. 1966) [*Preisler II*]. Again, the district court determined these maps were unconstitutional and enjoined the Secretary of State from using them. *Id.* at 980, 984–85, *aff'd, sub nom. Kirkpatrick v. Preisler*, 385 U.S. 450, 450 (1967).

In 1967, the General Assembly redistricted again, and again, the federal district court rejected the map. *Preisler v. Sec'y of State*, 279 F. Supp. 952, 955, 1004 (W.D. Mo. 1967) [*Preisler III*], *aff'd, sub nom. Kirkpatrick v. Preisler*, 394 U.S. 526, 533 (1969). Two years later in 1969, the General Assembly passed yet another congressional redistricting bill. *See generally Preisler v. Sec'y of State*, 341 F. Supp. 1158, 1160 (W.D. Mo. 1972) [*Preisler IV*]. In total, the General Assembly conducted *three* mid-decade redistrictings in the 1960s in response to previous maps being thrown out by the courts.

In all these cases, the federal courts recognized that the General Assembly had the power to redistrict mid-decade. *E.g.*, *Preisler II*, 257 F. Supp. at 982 (“Primary responsibility . . . rests on the 1967 General Assembly of Missouri.”); *Preisler IV*, 341 F. Supp. at 1162 (“unless and until the State of Missouri enacts a timely and constitutionally permissible new Congressional Redistricting Act”). These courts recognized that the General Assembly can “take all necessary action”—redistricting mid-decade—“to comply with its duty under the Federal, *as well as its own State*, Constitution.” *Preisler I*, 238 F. Supp. at 191 (emphasis added). Yet under Plaintiffs’ theory, all these federal court rulings were legally erroneous.

5. Missouri precedent highlights the General Assembly’s power to redistrict.

Missouri precedent confirms the General Assembly’s discretion to conduct mid-decade redistricting. Article III, § 45 requires congressional districts to “be composed of contiguous territory as compact and as nearly equal in population as may be.” And the Missouri Supreme Court has recognized *only* those three limitations on the General Assembly’s redistricting power. *See Pearson*, 359 S.W.3d at 40. “As long the districts comply with these constitutional requirements [contiguous, compactness, and equal population], the circuit court *shall* respect the political determinations of the General Assembly and allow for minimal and practical deviations required to preserve the integrity of the existing lines of our various political subdivisions.” *Id.* (emphasis added) (citing *State ex rel. Teichman v. Carnahan*, 357 S.W.3d 601 (Mo. banc 2012); *Preisler v. Hearnese*, 362 S.W.2d 552, 556 (Mo. banc 1962)). Beyond that, “the General Assembly . . . is vested in its representative capacity with all the

primary power of the people and . . . has the power to enact any law not prohibited by the federal or state constitution.” *Three Rivers Junior Coll. Dist. of Poplar Bluff v. Statler*, 421 S.W.2d 235, 243 (Mo. banc 1967).

To the extent that Missouri case law concerning state legislative districts provides guidance for interpreting § 45, it strengthens the General Assembly’s mid-decade redistricting powers. In *State ex rel. Major v. Patterson*, 129 S.W. 888 (Mo. 1910), the Missouri Supreme Court bolstered the General Assembly’s power to redistrict state legislative districts at will:

This section 9, art. 4 [analog to today’s Art. III, § 10], is merely directory in terms, and in our judgment reserves to the Legislature the right to provide for the alteration of legislative districts once established as per the terms of the Constitution. In other words, the Constitution contemplates that these districts shall be established at decennial periods, but has reserved a power in the Legislature to provide by law for a change in the same.

Id. at 892. The lack of “guideposts” for “alteration” of districts, “strongly tends to show that this clause of the Constitution was intended to give legislative authority to act, and by proper laws provide for such alteration or changes in previously established districts.” *Id.* at 893. Section 9 was “a reservation of a power in the Legislature to make provisions for readjusting the districts, *if* the Legislature saw fit so to do.” *Id.* at 894 (emphasis added). Even though the General Assembly had not conducted such a mid-decade adjustment of district boundaries, “[t]he Legislature could” if it had wished. *Id.*

The General Assembly having a “reserve[ed]” power to redistrict state districts when it “saw fit” shows that the General Assembly retains this power over congressional districts too. The only restrictions on this power could come from the

Elections Clause or explicitly in the text of § 45, but as established above, there are no restrictions. Therefore, the General Assembly retains the power to redistrict congressional districts as it “s[ees] fit.”

C. Out-of-state persuasive precedents bolster the General Assembly’s mid-decade congressional redistricting authority.

Missouri courts can look to out-of-state precedents to help inform their jurisprudence. “[A]ppellate court decisions from other states can be persuasive when they are based on similar facts and ‘sound principles and good reason.’” *Penzel Construction Co., Inc. v. Jackson R-2 Sch. Dist.*, 544 S.W.3d 214, 234 (Mo. App. E.D. 2017) (quoting *Craft v. Philip Morris Companies, Inc.*, 190 S.W.3d 368, 380 (Mo. App. E.D. 2005)). Although both parties can identify some out-of-state precedential support, most cases reinforce the General Assembly’s mid-decade redistricting ability.

For example, the Minnesota Supreme Court grappled with a 1913 mid-decade redistricting of legislative districts, and employing principles familiar to Missouri courts today, the court permitted mid-decade redistricting. *State ex rel. Meighen v. Weatherill*, 147 N.W. 105, 106 (Minn. 1914). The court held that Minnesota’s redistricting clause, without a clear statement restricting when the legislature could redistrict, sets a floor, not a ceiling. *Id.*

As the *Weatherill* court explained, “in the absence of some constitutional limitation upon the subject, the Legislature would possess the power to redistrict the state at will.” *Id.* Just like the Missouri General Assembly, the Minnesota Legislature exercised plenary power and, just like the Missouri Constitution, the

Minnesota “Constitution is generally construed as a limitation, and not a grant of power.” *Id.* The *Weatherill* court concluded that “the theory that the Constitution imposes that [redistricting] as a duty, and not as a mere prohibition against reapportionment at some time other than at the first session after a census, seems most consistent with the manifest purpose to be attained.” *Id.* And, it demanded a clear statement: “[H]ad there been any intention to restrict or limit the time when a reapportionment might be made, those framing the Constitution had language at their command which, if employed, would not have left that intention shrouded in doubt or uncertainty.” *Id.* This logic cleanly demonstrates the limited function of § 45 and the proper use of the negative-implication canon. Courts look for clear statements restricting legislative power and the absence of restricting language indicates an absence of a restriction. *See id.* This Court should too.

Other States have also reinforced their legislatures’ ability to redistrict mid-decade. Similar to Minnesota, they have upheld legislative redistricting discretion and that absence of truly restrictive, back-end language *means* an absence of actual restriction. For example, in Texas, Article III, § 28 of their Constitution discusses legislative reapportionment. The Texas Supreme Court explained that § 28 “neither expressly nor impliedly forecloses this [redistricting] power from being exercised at another time.” *Mexican Am. Legis. Caucus*, 647 S.W.3d at 702 (citing *Mumme v. Mars*, 40 S.W.2d 31, 33 (Tex. 1931)). As in Missouri, where the redistricting power is explicitly housed in the legislature’s hands, “the Legislature is exercising its

legislative power to make laws, not ‘a power ordinarily and intrinsically belonging to another department of the government.’” *Id.*

The Georgia Supreme Court also refused to read in nonexistent restrictions on mid-decade redistricting authority. The court stated, “[h]ad the intent been to depart from the 1976 Constitution and limit the General Assembly to only one redistricting after each census, the framers of the 1983 Constitution could have made an express provision to that effect” *Blum v. Schrader*, 637 S.E.2d 396, 398 (Ga. 2006). As in Missouri, the Georgia Constitution “requires the General Assembly to reapportion itself at least once after the census if ‘necessary,’ but does not limit the exercise of that power to a once-in-a-decade occurrence. The frequency of reapportionment between censuses is *solely a matter of unfettered legislative discretion*, unrestricted by any state constitutional prohibition.” *Id.* at 399 (emphasis added). Interpreting § 45 to not allow mid-decade redistricting, would be out of step with these other States with similar constitutional provisions. This Court should not make Missouri an outlier.

II. To the extent Plaintiffs properly raised an equal population claim, the new map complies with the Constitution because it utilizes the correct census data.

In a single sentence—lacking *any* legal authority, explanation, or relation to the sole claim actually raised in their petition—Plaintiffs seemingly contend that using federal decennial census data for mid-decade redistricting is barred under the Missouri Constitution. Pet. at ¶ 42. This lone assertion is nothing more than a “conclusory statement[] of fact and [a] legal conclusion[],” and it “fail[s] to invoke substantive principles of law entitling [Plaintiffs] to relief.” *State ex rel. Gardner v.*

Stelzer, 568 S.W.3d 48, 52 (Mo. App. E.D. 2019) (internal quotations omitted). Indeed, Plaintiffs do not even *purport* to present this theory as a stand-alone count, so the Court should reject it. See *Zoological Park Subdistrict of the Metropolitan Park Museum Dist. v. Smith*, 561 S.W.3d 893, 896 n.2 (Mo. App. E.D. 2018) (“three paragraphs of conclusory language regarding [plaintiff’s] alleged violation . . . was insufficient to satisfy the pleading requirement”) (citing *State ex rel. Weatherby v. Dick & Bros. Quincy Brewing Co.*, 192 S.W. 1022, 1024 (Mo. 1917)).

Even if this Court considers Plaintiffs’ argument, it is obviously wrong. “Under Art. I, § 2, cl. 3, of the U.S. Constitution, responsibility for conducting the decennial census rests with Congress,” not Missouri. *Baldrige v. Shapiro*, 455 U.S. 345, 347–48 (1982). “[I]t was the obvious intent of Art. I, § 2 of the Constitution of the United States to tie congressional reapportionment and congressional districting to decennial census required by that same Section.” *Preisler III*, 279 F. Supp. at 984. This Census data continues to provide the relevant population for a State to equally apportion its congressional districts.

In setting up this system, the U.S. Constitution’s framers clearly understood that, as a particular decade progressed, representation would be decreasingly correlated with the population count in the decennial Census. As the U.S. Supreme Court explained, “substantial population shifts over” ten years and five congressional elections “can be anticipated.” *Kirkpatrick*, 394 U.S. at 535. So, “before the new census, States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned.” *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003). This

legal fiction continues to exist even when the legislature “enacts a voluntary, mid-decade plan” that “relie[s]” on the decennial Census. *LULAC*, 548 U.S. at 421–22.

That principle governs here. Yes, a State “may” consider population shifts—at least in certain circumstances. *Kirkpatrick*, 394 U.S. at 535. But this is permissive, not mandatory. Moreover, these population shifts can only be considered if “predicted with a high degree of accuracy.” *Id.* And using new population data may open a State up to litigation over equal representation. *See, e.g., id.* A State need not do that. And as the Supreme Court observed, the U.S. Census figures were “the best population data” available to legislature in mid-decade redistricting. *Id.* at 528.

To the extent that Plaintiffs independently base this claim in Article III, § 45 of the Missouri Constitution, it must fail. *See* Pet. ¶ 42. Section 45’s equal population requirement is “consistent with the policy established by Art. I, § 2 of the Constitution of the United States.” *Preisler III*, 279 F. Supp. at 984; *see also Shayer v. Kirkpatrick*, 541 F. Supp. 922, 931–32 (W.D. Mo. 1982) (discussing only § 45’s compactness and contiguous requirements separately from the U.S. constitutional—equal population—requirement). There is no basis to suggest that § 45 *requires* a different standard than the Apportionment Clause. Therefore, the General Assembly’s use of the 2020 Census data was proper, and any argument to the contrary must fail.

III. Plaintiffs are not entitled to injunctive or declaratory relief because such remedies would harm Missouri and the public interest.

Plaintiffs are also not entitled to injunctive or declaratory relief because the balance of the equities and public interest also firmly weigh in favor of Defendant.

See *City of Normandy*, 709 S.W.3d at 335–39 (injunctive relief); *Crown Diversified Holdings*, 452 S.W.3d at 232 (public interest for declaratory relief).

The State would suffer grave harm if this Court were to grant Plaintiffs' requested relief. This relief would intrude on the General Assembly's constitutional prerogative to set congressional district boundaries, which is "predominately a political question." *Pearson*, 359 S.W.3d at 39. "[T]he inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); cf. *Carson v. Simon*, 978 F.3d 1051, 1062 (8th Cir. 2020) (per curiam) (the Constitution recognizes that the state legislature "sets the status quo" in elections).

Plaintiffs' relief would pose serious harm to Missouri's corrective redistricting ability. Under Plaintiffs' legal theory, the General Assembly could not redistrict if or when its congressional districts were deemed unconstitutional, whether by court order or through the State's own determination. But "a lawful, legislatively enacted plan should be preferable to one drawn by the courts." *LULAC*, 548 U.S. at 416 (plurality opinion). Plaintiffs' legal theory would invert this paradigm making courts—not the legislature—the "primary locus of responsibility" for redistricting. *Id.* at 415 (plurality opinion).

This case demonstrates the point. There is a serious legal question whether the prior Missouri congressional map complied with the U.S. Constitution's Equal Protection Clause. See *Allen v. Milligan*, 599 U.S. 1, 79 (2023) (Thomas, J., dissenting); *id.* at 45 (Kavanaugh, J., concurring). Consistent with prior

understandings of Section 2 of the Voting Rights Act, the General Assembly created a minority opportunity district in the Missouri First Congressional District. See *Pearson*, 367 S.W.3d at 54 (noting shapes of districts in prior map were less compact because of intent to maximize minority representation); see also *Berry v. Ashcroft*, 2022 WL 2643504, at *2 (E.D. Mo. July 8, 2022) (concerning a challenge to Missouri's 1st Congressional District on allegations of racial gerrymandering). The U.S. Supreme Court is currently considering whether such moves are constitutional, and most legal observers expect that court to hold that they are not. See *Louisiana v. Callais*, 606 U.S. ___, Nos. 24–109 & 24–110 (June 27, 2025) (reh'g order); see, e.g., Amy Howe, *Court appears ready to curtail major provision of the Voting Rights Act*, SCOTUSblog (Oct. 15, 2025), <https://perma.cc/P4A5-ZKVR>. Such a holding would jeopardize the constitutionality of the prior congressional map. The General Assembly and Governor Kehoe thus acted prudently in trying to preempt such problems by enacting a new, race-blind congressional map.

If the Court grants Plaintiffs the remedies they request—restoration of the prior congressional map—it would likely be forcing Missouri to violate the U.S. Constitution's Equal Protection Clause. Indeed, Missouri would likely be exposed to last-minute litigation over the prior map's constitutional validity in mid-2026—just months before important midterm elections. Cf. *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) (acknowledging similar last-minute litigation against Louisiana congressional voting map).

This Court should reject Plaintiffs’ invitation to embark on that journey. In this case, and in others, “a lawful, legislatively enacted plan should be preferable to one drawn by the courts.” *LULAC*, 548 U.S. at 416 (plurality opinion). Plaintiffs’ legal theory would invert this paradigm making courts—not the legislature—the “primary locus of responsibility” for redistricting. *Id.* at 415 (plurality opinion). This would compel judicial intrusion into redistricting decisions which are “political in nature and best left to political leaders.” *Pearson*, 359 S.W.3d at 39. Issues, which are “decidedly political in nature . . . are properly left to the legislature.” *Bennett v. Mallinckrodt, Inc.*, 698 S.W.2d 854, 865–66 (Mo. App. E.D. 1985).

Therefore, the equities and the public interest weigh heavily in favor of the State.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests this Court deny all relief requested in Plaintiff’s Petition and enter judgment for Defendant.

Dated: November 10, 2025

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was filed and served electronically on all counsel of record via the Court's e-filing system on November 10, 2025.

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