

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MERRIE SUZANNE LUTHER, et. al.,

Plaintiffs,

vs.

DENNY HOSKINS,

Defendant.

Case No: 25AC-CC06964

PLAINTIFFS' TRIAL BRIEF

This case is surprisingly straightforward. The question before the Court is whether the General Assembly is constitutionally authorized to redraw Missouri's congressional districts absent a certification of a United State Census to the governor. This Court has no choice but to enter judgment in favor of Plaintiffs because the Missouri Supreme Court has already said "no."

Even if the Missouri Supreme Court had not already spoken on this issue (more than once), the plain reading of the Constitution makes clear that redistricting may occur only *when* a census has been certified to the governor of Missouri. That didn't happen here.

I. Background

The Missouri General Assembly convened for an extraordinary session this September and on September 12, 2025 truly agreed and finally passed House Bill 1 (2025) 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." Jt. Stip. ¶ 10; Ex. A. This bill purported to redraw

Missouri's congressional districts. On September 28, 2025, Governor Kehoe signed House Bill 1. Jt. Stip. ¶ 12.

The General Assembly did not redraw Missouri's congressional districts based on a new census. In fact, the "United States Census Bureau has not conducted a census since the 2020 census." Jt. Stip. ¶ 18. "No census has been certified to the Governor of Missouri since the certification of the 2020 census occurred on August 12, 2021." Jt. Stip. ¶ 19. That's because the census only occurs once every ten years "to determine the relevant population for federal congressional apportionment." Jt. Stip. ¶ 13.

And the General Assembly already drew congressional districts after the 2020 census. Using the 2020 census data, the legislature drew new districts in House Bill 2909 (2022). Jt. Stip. ¶ 16; Ex. B; *see also* § 128.461-.469, RSMo. Those districts should stay in place, and the Court should invalidate House Bill 1.

II. Missouri Supreme Court Precedent Limits When Congressional Redistricting May Occur

At issue here is Article III, Section 45 of the Missouri Constitution:

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

Mo. Const. art. III, § 45.

Luckily, The Missouri Supreme Court has already analyzed this provision and specifically addressed when congressional redistricting may occur. See *Pearson v. Koster*, 359 S.W.3d 35 (Mo. banc 2012).

In *Pearson*, the Supreme Court explained that Article III, Section 45 “establishes when the General Assembly must redistrict Missouri for the election of members to the United States House of Representatives[.]” 359 S.W. 3d at 37. Specifically, the Court said that Article III, Section 45 is “triggered when the results of the . . . United States Census revealed . . . the population[.]” *Id.* At that moment in time, “[i]t is the responsibility of the Missouri General Assembly to draw new congressional election districts.” *Id.* Once the General Assembly (after certification of the census) draws a congressional map “the new districts will take effect for the . . . election *and remain in place for the next decade or until a Census shows that the districts should change.*” *Id.* (emphasis added). Said plainly, congressional redistricting can occur only immediately following the certification of the census and cannot occur again until a subsequent census is certified.¹ As far as the Missouri Constitution is concerned— and as confirmed by the Missouri Supreme Court— redistricting happens only once every ten years (or, at most, only once after every census is certified to the governor of Missouri).

¹ Of course, if a court invalidates a congressional map for a violation of state or federal law, the General Assembly is not precluded from drawing another set of districts. It is as if that unlawful map never existed and the General Assembly starts from scratch.

That has long been the law. When reviewing the apportionment after the Decennial Census of 1960, the Supreme Court said that Section 45 requires that “after each decennial census, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled[.]” *Preisler v. Hearnnes*, 362 S.W.2d 552, 554 (Mo. banc 1962).

And when analyzing similar language in the state-level reapportionment provisions of the Constitution, the Supreme Court said: “[w]e think only one valid apportionment is intended for each decennial period. This must be true because the decennial census is made the basis of reapportionment.” *Preisler v. Doherty*, 284 S.W.2d 427, 436-37 (1955). The Supreme Court has considered and determined that redistricting (whether state or congressional) may occur only once each census cycle. *Pearson*, 359 S.W. 3d at 37; *Hearnnes*, 362 S.W.2d at 552; *Doherty*, 284 S.W.3d at 436-37.

This is the law, and this Court is bound by those decisions, which have not been over-ruled or questioned by any decision since. *See Doe v. Roman Catholic Diocese of St. Louis*, 311 S.W.3d 818, 822 (Mo. App. 2010) (lower courts “constitutionally bound to follow the most recent controlling decision of the Missouri Supreme Court”). House Bill 1 is unconstitutional and this Court should declare it so.

III. Article III, Section 45 Prohibits Redistricting When There Has Been No Census Certified to the Governor

Even if the Supreme Court had not already opined on this question, the language of the Constitution squarely addresses the issue and prohibits redistricting except for “[w]hen 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[.]” Mo. Const. art. III, § 45.

The word “when” in Article III, Section 45, is a temporal limitation on the General Assembly’s authority to redistrict. Here, “when” operates as a conjunction, defined as “at or during the time that: just at the moment that: at any or every time that.” <https://www.merriam-webster.com/dictionary/when>. So, the plain, ordinary, and natural meaning of the word “when” in Article III, Section 45 tells the reader that redistricting occurs at the time the census is certified to the governor of Missouri and at no other time. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 401 (Mo. banc 2024) (cleaned up) (“Words used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning.”).

Read in its simplest terms, Article III, Section 45 requires the General Assembly to draw congressional districts *when* the census is certified to the Governor of Missouri. Mo. Const. art. III, § 45. Once that is complete, the plain language says that redistricting is then done *when* “each census thereafter is certified to the Governor.” *Id.*

The General Assembly drew congressional districts in 2022 after the certification of the 2020 census and no census thereafter has been certified. *Jt. Stip.* ¶¶ 14-19; Ex. B. Said another way, congressional redistricting occurs once every ten years because the federal government only conducts a census once every ten years.

IV. Canons of Construction Lead to One Result—Redistricting Occurs Only After a Census is Certified to the Governor of Missouri

Even if the language of Article III, Section 45 was ambiguous (it is not), canons of construction require this Court to interpret Section 45 to allow redistricting when the census has been certified to the governor of Missouri.

“A standard rule of statutory construction is that the express mention of one thing implies the exclusion of another.” *Groh v. Ballard*, 965 S.W.2d 872, 874 (Mo. App. 1998) (cleaned up). In *Harris v. Missouri Ethics Commission*, the Court of Appeals recently concluded that because the legislature did not expressly provide an avenue to appeal the dismissal of a complaint by the Missouri Ethics Commission, the “legislature did not intend to allow appeals regarding dismissed complaints.” ___ S.W.3d ___, 2025 WL 2906971 (No. WD87716) (Mo. App. Oct. 14, 2025).

This same rule is applied to construction of the Constitution. *See Robust Mo. Dispensary 3, LLC v. St. Louis Cnty.*, 2025 WL 2053566 *3 (Mo. banc 2025) (cleaned up) (“[T]he rules of statutory interpretation mirror the rules for the interpretation of constitutional provisions[.]”). Since the Constitution delineates

when redistricting may occur, it follows that redistricting shall *not occur* any other time. “If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only” *State v. Hamey*, 65 S.W. 946, 948 (Mo. 1901). As explained above, the Supreme Court has interpreted Section 45 consistently with this presumption.

Another rule of construction is to review constitutional language on similar topics to see if it sheds light on the meaning of any ambiguous language. In this case, there is language regarding state-level redistricting in Article III. For state house and senate maps, districts are drawn by a citizen commission. The Constitution states that those state-level “districts may be altered from time to time as public convenience may require.” Mo. Const. art. III, § 14. If the framers of the Constitution had intended to allow Congressional redistricting to occur whenever the General Assembly wanted to, it would include language allowing it to do so “from time to time,” or some similar phrase. *See Frye v. Levy*, 440 S.W.3d 405, 424 (Mo. banc 2014). But “the Court has no authority to read into [the constitution intent] contrary to the intent made evident by the plain language.” *State ex rel. Nothum v. Walsh*, 380 S.W.3d 557, 566 (Mo. banc 2012). The plain language limits congressional redistricting to *when* there has been a census certified to the governor. Congressional redistricting done at any other time is unconstitutional and void.

V. The Secretary's Affirmative Defenses Lack Merit²

The Secretary's affirmative defenses do not bar a decision by this Court in Plaintiffs' favor. The Secretary raises the political question doctrine but that is inapplicable here. The political question doctrine, rarely invoked in Missouri law, "establishes a limitation on the authority of the judiciary to resolve issues, decidedly political in nature, that are properly left to the legislature." *Maryland Heights Leasing, Inc. v. Mallinckrodt, Inc.*, 706 S.W.2d 218, 220 (Mo. App. 1985). There is no political question here.

All Plaintiffs ask is for this Court to review a statute for compliance with the Missouri Constitution. That is certainly not a "political question" shielded from judicial review. Rather, it is at the core of what courts do every day. *Asbury v. Lombardi*, 846 S.W.2d 196, 200 (Mo. banc 1993) ("The quintessential power of the judiciary is the power to make *final* determinations of questions of law."); *see also Moore v. Harper*, 600 U.S.1, 19 (2023) ("Since early in our Nation's

² The Secretary's first two affirmative defenses are the same as Intervenor's—failure to state a claim and lack of standing. The Joint Stipulation of Facts and Exhibits resolves any question of standing (although it is plain that Plaintiffs have standing). *See* Jt. Stip. ¶¶ 1-8. Plaintiffs do not address failure to state a claim or Intervenor's other two affirmative defenses as they do not comply with Rule 55.08 and therefore fail as a matter of law. Rule 55.08 ("A pleading that sets forth an affirmative defense . . . shall contain a short and plain statement of the facts showing that the pleader is entitled to the defense[.]); *Williams v. City of Kansas City*, 641 S.W.3d 302, 318 (Mo. App. 2021) ("Where a party pleads only conclusory statements without pleading the specific facts required to support the affirmative defense, the party has failed to adequately raise the affirmative defense, and it fails as a matter of law.").

history, courts have recognized their duty to evaluate the constitutionality of legislative acts.”). This Court should reject the invitation to expand the reach of the political question doctrine.

The Secretary’s other affirmative defense is precluded by the United States Supreme Court’s decision in *Moore v. Harper*. The Elections Clause of the United States Constitution does not give unfettered power to state legislatures, as the Supreme Court affirmed in *Moore*. “Were there any doubt, historical practice confirms that state legislatures remain bound by state constitutional restraints when exercising authority under the Elections Clause.” *Moore*, 600 U.S.1 at 32. Put simply, “the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law.” *Id.* at 34. The Missouri Constitution and Missouri Supreme Court, as discussed above, have made clear that redistricting can occur only *when* a census is certified to the governor. That hasn’t happened here, so House Bill 1 is unconstitutional. The Elections Clause does not change that analysis.

VI. Conclusion

House Bill 1 is unconstitutional because the Missouri Constitution and Missouri Supreme Court command that redistricting shall occur *when* the census is certified to the Governor. Plaintiffs respectfully request this Court declare House Bill 1 unconstitutional and enjoin the Secretary of State and anyone acting in concert with him from conducting any elections based on the districts in such bill.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2025, I electronically filed the foregoing with the Clerk of the Court via the Court's electronic filing system which sent notification to all counsel of record.

/s/ Charles W. Hatfield

