IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MO STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et. al.	)	
Petitioners,	)	
v.	)	**Case No. 25AC-CC06724**
MIKE KEHOE et.al.	)	
Respondents	)	

PETITIONERS' PRETRIAL BRIEF

I. Introduction

There is a simple question at issue in this case: Is the Governor's authority in Art. IV Sec. 9 dependent on the existence of an extraordinary occasion and did he properly state one? In this case, Petitioners challenge the authority of the Governor and the General Assembly to act, as they have, under the limits of Article IV of the Missouri Constitution. Petitioners specifically challenge the Constitutionality of Governor Kehoe's August 29, 2025 Proclamation convening an extraordinary session of the Missouri General Assembly, challenge the General Assembly's actions in response, and challenge constitutionality of HB1 and HJR3. This case presents important questions of constitutional interpretation regarding the Governor's authority under Article IV, Section 9. This question is one of first impression in this State as it is the first time the issue of whether the Governor has properly issued a Proclamation has been brought. Previous challenges around extraordinary sessions have been related to other questions such as the ability of the

legislature to act outside of the issues referred by the Governor. *See e.g. State ex rel. Department of Penal Institutions v. Becker*, 47 S.W.2d 781 (1932).

I. This Court has the authority (jurisdiction, standing, ripeness) to decide this question because it is a Constitutional question regarding an action by the Governor with the force of law current and continuing consequences brought by taxpayers who are impacted by the action and are seeking injunctive relief.

The courts are the proper venue to seek clarity over the provisions of the Constitution and to determine if a Government entity has exceeded their authority under the Constitution. Art. II Sec. 1 of the Missouri Constitution gives specific powers and authority to each Branch of the Government. However, the separation of powers doctrine "does not erect an impenetrable wall of separation between the departments of government." *Chastain v. Chastain*, 932 S.W.2d 396 (1996). Applying constitutional principles, the judiciary has exclusive jurisdiction and authority to determine whether a Branch of Government has exceeded its constitutional authority. This is a non-delegable power of the judiciary. *State ex rel. Praxair, Inc. v. Mo. Pub. Serv. Comm'n*, 344 S.W.3d 178, 186 (2011). "The Missouri Supreme Court shall have exclusive appellate jurisdiction in all cases involving the validity of a statute or provision of the constitution of Missouri." Mo. Const. Art. V, § 3. "[I]t is emphatically the province and duty of the judicial department to say what the law is," *Mo. Coal. for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (1997), quoting *Marbury v. Madison*, 5 U.S. 137 (1803). This power is foundational to our system of government and the separation of powers doctrine.

Specifically, the courts have determined they have jurisdiction to determine the appropriateness of Gubernatorial proclamations and executive orders when they are specifically authorized by statute or the Constitution. *Kinder v. Holden*, 92 S.W.3d 793 (2002). The Governor's proclamation in this case is specifically authorized, within limits, by the Constitution and is

therefore reviewable by the courts. *Id.* This Proclamation is more than a ceremonial recognition or executive recommendation. It is a mandate for action by the General Assembly and carries the force of law, subject to the limits of the Constitution and judicial review.

In this case, the Court is being asked to address a question of law; specifically regarding the limits of the authority granted by the Constitution. This is not a political question that would evade judicial review. To the contrary, it is clearly in the province of the court to answer. "Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." *Baker v. Carr*, 369 U.S. 186 (1962), 210. The Governor's authority under Art. IV Sec. 9 is no different from any other Constitutional grant of authority. It is subject to review and interpretation by the courts.

The public interest strongly favors judicial oversight and clarification of the Constitutional limits on the Governor's power to convene extraordinary sessions. Without it, Governors may continue to circumvent the Constitutional requirements and waste taxpayer resources on unnecessary legislative sessions. Consistent with the Constitutional Principle that determining the extent of authority granted by the Constitution is the sole jurisdiction of the courts, the legislature has granted authority to the courts to make determinations regarding rights and remedies and to grant injunctive relief accordingly. §§527.010 and 526.050 RSMo.. These two statutory provisions work together to grant the courts the authority to prevent government overreach.

Petitioners are taxpayers or the representative of taxpayers who are directly affected by the Governor's Proclamation convening the General Assembly. The Missouri Supreme Court "has repeatedly held that taxpayers do, in fact, have a legally protectable interest in the proper use and

expenditure of tax dollars." *LeBeau v. Comm'rs of Franklin Cnty.*, 422 S.W.3d 284 (Mo. 2014). The taxpayer's interest does not arise from any direct, personal loss. "[I]t is the public interests which are involved in preventing the unlawful expenditure of money raised by taxation" that give rise to taxpayer standing." I*d., citing E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 46 (Mo. banc 1989).

A party must have standing to bring an action in a Missouri court. Standing, at its most basic level, simply means that the party or parties seeking relief must have some stake in the litigation. *Ste. Genevieve Sch. Dist. v. Bd. of Aldermen of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002).

Finding taxpayers had standing the Missouri Supreme Court in LeBeau further held:

> The taxpayer's interest in the litigation ultimately derives from the need to ensure that the government officials conform to the law. [*Citing E. Mo. Laborers, at 46; see also Manzara*, 343 S.W.3d at 659.] "Missouri Courts allow taxpayer standing so that ordinary citizens have the ability to make their government officials conform to the dictates of the law when spending public money." *Ste. Genevieve Sch. Dist.* 66 S.W.3d 6, 11 (Mo. banc 2002).] Taxpayer standing gives taxpayers the opportunity to challenge certain actions of government officials that the taxpayer alleges are unauthorized by law, and it permits challenges in areas where no one individual otherwise would be able to allege a violation of the law. As this Court previously has declared, "[P]ublic policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts.... Taxpayers must have some mechanism of enforcing the law." *E. Mo. Laborers Dist. Council,* 781 2d at 47.
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> Giving taxpayers a mechanism for enforcing the procedural provisions of Missouri's constitution is of particular importance because these provisions are designed to assist the citizens of Missouri by providing legislative accountability and transparency. These constitutional provisions also serve to "defeat surprise within the legislative process. [They prohibit] a clever legislator from taking advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of a pending bill." *Hammerschmidt v. Boone Cnty,* 877 S.W.2d 98, 101 (Mo. banc 1994).

In *LeBeau*, the Missouri Supreme Court recognized resident taxpayer standing to challenge legislation adopted in violation of single subject provision of the Missouri Constitution.

"Permitting taxpayers to challenge bills enacted in violation of the procedural constitutional provisions where the taxpayer's interests are affected assists in the enforcement of these procedural constitutional mandates." Id. at 289-290. Petitioners also contend that Petitioners also have standing due to Respondents' direct expenditure of funds generated through taxation. *Manzara*, 343 S.W.3d at 659. The Petitioners contend that they have interests that are being harmed including:

A. Financial Harm: The extraordinary session cost taxpayers in excess of $25,000 per day based on per diem and mileage payments authorized by §§21.140 and 21.145 RSMo.. These costs are in addition to the regular salaries and operating expenses of the General Assembly. They are costs that would not be incurred without the convening of the General Assembly outside of the regular legislative session. Additionally, there is a prospective cost of defending the actions of the General Assembly and placing the joint resolution on the ballot that would not have been incurred in this fiscal year without the extraordinary session.

B. Procedural Harm: The undue burden on interested parties to travel to Jefferson City for public hearings and participation in the legislative process outside of the usual timeframe and without Constitutional authority. The short notice and unusual timing of extraordinary sessions are de facto burdens on the members of the public monitoring legislative activity.

C. Public Interest Harm: Uncertainty in district boundaries for constituents and potential candidates for office. Constituents reaching out to their Representative may suddenly find that they are faced with a new office staff and Representative who they had no opportunity to vote for and who may have never visited their area of the State. Likewise, people who

may have been preparing to file for elective office may suddenly find themselves required to run in a different part of the State than they were preparing for.

These impacts themselves may not be considered harmful when created by an extraordinary session that conforms to the law, for good cause, but certainly create a situation that gives rise to unlawful use of taxpayer dollars when brought about by gubernatorial overreach.

These impacts are continuing and as the legislation and resolution General Assembly enacted during the extraordinary session are now fully enacted or in preparation for placement on the ballot and there are multiple lawsuits pending against them. Even if these impacts were not ongoing, the nature of an extraordinary session is such that the Constitutionality of any particular session will evade review due. The legislative process at issue here moved so quickly that by the time meaningful judicial review could occur, the session will have concluded. This is precisely the type of case where the principal of capable of repetition yet evading review should apply. The courts have long recognized "an exception to the mootness doctrine ... exists '[w]here the issue raised is one of general public interest and importance, recurring in nature and will otherwise evade appellate review unless the court exercises its discretionary jurisdiction.'" *State ex rel. AG Processing, Inc.*, 276 S.W.3d 303, 306 (Mo.App.W.D.2008) (quoting *Mo. Cable Television Ass'n v. Mo. Pub. Serv. Comm'n*, 917 S.W.2d 650, 652 (Mo.App.W.D.1996)). *See also Jackson County Bd. of Election Comm'rs ex rel. Brown v. City of Lee's Summit*, 277 S.W.3d 740, 745 (Mo.App.W.D.2008); *Gramex Corp. v. Von Romer*, 603 S.W.2d 521, 523 (1980); *Massey v. Normandy Sch. Collaborative*, 492 S.W.3d 189 (Mo. App. 2016).

II. No grant of authority is so absolute as to escape Constitutional scrutiny.

The subject provisions of the Missouri Constitution are mandatory, and the requirements therein should be interpreted and applied by courts as such. Article IV, section 9 provides in part: "On

extraordinary occasions he [the Governor] may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary." While the ability to convene the legislature on "extraordinary occasions" is granted to the Governor, this authority is not boundless and absolute. In fact, the plain language of the provision limits the Governor's authority to when an "extraordinary occasion" occurs. There is no other reasonable reading of the provision. The only question is whether the courts have jurisdiction. As discussed above, the courts have exclusive jurisdiction over Constitutional questions. As discussed below, there is no basis for making an exception in long held judicial interpretation of text in its plain meaning based on separation of powers doctrine for this particular Constitutional provision.

Art. II, Sec. 1 of the Missouri Constitution creates delineates the three branches of government and their separate areas of authority. However, that provision does not create and "impenetrable wall" between the branches. *Chastain, supra,*, 932 S.W.2d at 398. The Separation of Powers doctrine gives discretion to the executive branch, but it does not make their decisions beyond review for compliance with the Constitution. *See e.g. Dames Moore v. Regan*, 453 U.S. 654 (1981); *Sawyer v. Youngstown Sheet Tube Co*, 343 U.S. 579 (1952); *United States v. Export Corporation*, 299 U.S. 304 (1936). "The doctrine of the separation of powers [is not meant to] promote efficiency but to preclude the exercise of arbitrary power. The purpose [is] not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." *Missouri Coalition for Environment v. Joint Committee on Administrative Rules*, 948 S.W.2d 125 (Mo. 1997) Quoting (*Myers v. United States*, 272 U.S. 52, 293, 47 S.Ct. 21, 85, 71 L.Ed. 160 (1926) (Brandeis, J., dissenting)). All of these cases taken together mean actions of the Governor are subject to Constitutional review.

III. The plain language of the provision requires an extraordinary occasion before convening the legislature.

As discussed, the judiciary has exclusive jurisdiction to interpret the Missouri Constitution and apply its limits. Art. IV Sec. 9 requires that the Governor may only convene the legislature on an "extraordinary occasion." There is apparently no Missouri decision interpreting the meaning of an "extraordinary occasion," which is a limitation on the Governor's authority under Art. IV, Sec. 9 of the Missouri Constitution. This is a case of first impression and is a question that is likely to appear again as the Governor's calls in recent administrations for a special session have become more loose and tenuous.

The Constitution should be interpreted based upon the plain meaning of the words and phrases used. *Wright-Jones v. Nasheed*, 368 S.W.3d 157 (2012). Where terms are not otherwise defined, the plain meaning is derived from the dictionary. *Cox v. Dir. of Revenue*, 98 S.W.3d 548 (2003). The dictionary provides the following definitions:

A. Extraordinary

- Out of the ordinary; exceeding the usual, average, or normal measure or degree; beyond or out of the common order, method or rule; not usual, regular, or of a customary kind; remarkable; uncommon; rare; employed for an exceptional purpose or on a special occasion. (Black's Law Dictionary Sixth Edition)
- Beyond what is common or usual: remarkable. (Webster's II Revised Edition)

B. Occasion

- That which provides an opportunity for the causal agency to act. Meaning not only particular time but carrying idea of opportunity, necessity or need, or even cause in a

limited sense. Condition of affairs; juncture entailing need; exigency; or juncture affording ground or reason for something. (Black's Law Dictionary Sixth Edition)

- An event, especially a notable event. The time at which something occurs. A favorable moment: opportunity. Something that brings on an event. A need created by particular circumstances. (Webster's II Revised Edition)

Combining these definitions, term "extraordinary occasion" requires both an unusual set of circumstances and an event or opportunity to act. This means that continued status quo without a precipitating event or unexpected opportunity to act is not sufficient to authorize the Governor to convene the General Assembly under Art. IV Sec. 9.

In previous Art. IV Sec. 9 proclamations, the Governor has either provided a specific statement of these extraordinary occasions in the proclamation or in an accompanying message. For example, the need to respond to COVID-19 or major changes in Federal lending laws. *See* Executive Order, Governor's Proclamation, Special Message, November 12, 2020, MO Register Vol. 45 No. 24 (pp. 1949-1998); 1974-1975 House Journal, Second Regular, Veto and Second Extraordinary Session, Volume 2 (pp. 2056-2058). Other states, such as Kentucky, have concluded that "extraordinary occasion" means an emergency threatening public health and welfare like the 2020 pandemic. *Beshear v. Acree*, 615 S.W.3d 780 (Ky. 2020). These examples are a far cry from the reasons stated for the Proclamation at issue in this case.

IV. The text of the proclamation and accompanying press release fail to state an extraordinary occasion.

As laid out in the Petitioners' Petition, the Governor's Proclamation states eleven "Whereas" statements before simply stating that an "extraordinary occasion" exists. The whereas statements do not provide examples of extraordinary circumstances or activities that would create

a need for legislative action prior to the next regularly scheduled session. Instead, they are a combination of sentences comprised: re-statements of the provisions of existing laws and statutes, ideological statements, speculation over potential non-specific future legal action, and re-statements of the provisions of existing laws and statutes.

The matters referred to the General Assembly by the proclamation are almost all current law. The legislature passed House Bill 2909 in 2022 designated Congressional districts under the most recent decennial census. No new census or court case has occurred that would require a new designation of Congressional districts. Most of the initiative petition reforms sought were passed into law by Senate Bill 152(2025). The only matter referred that is not already in the law is a change to the election results needed to pass an Amendment to the Constitution by initiative petition. This particular provision has been repeatedly debated by the Missouri General Assembly during its regular sessions and there is no stated reason for requiring an additional session limited to that topic.

Nowhere in the proclamation is there anything resembling a statement of a change in the status quo of Missouri that would equate to an "extraordinary occasion." The Governor's own statements reveal the political rather than extraordinary nature of the Proclamation. The press release refers to the need to have Missouri's "conservative" values represented and to protect the Constitution from "out of touch" policies. (Exhibit B, Original Petition). Press reports indicate that President Trump has been pressuring Governor Kehoe as well as Republicans around the country to call for special sessions to re-designate Congressional districts to dilute Democratic voting power in the United States House of Representatives. ("Missouri Governor Begins Redistricting Process After Trump Pressure. Kansas City is the Target, " KCUR, NPR in Kansas City, August 29, 2025; "Trump White House Pressing Missouri Republicans to Redraw Congressional Map,"

Missouri Independent, July 25, 2025; Missouri Governor Calls Special Redistricting Session Amend Trump Pressure," CNN, August 29, 2025, Exhibits A, B and C[1].) Political ambitions of national figures and partisan politics are the status quo and do not constitute an "extraordinary occasion" under the Missouri Constitution.

V. No extraordinary occasion was provided -- the session and any action taken during it is void.

It is Petitioners' contention that a mere declaration that an "extraordinary occasion" exists is not sufficient under Art. IV Sec. 9 to allow the Governor to convene an extraordinary session of the General Assembly. Even if the court was willing to accept the Governor's statements as his attempt to justify the call, they are not sufficient. Applying the plain language of the Missouri Constitution, including the mandatory provisions, no "extraordinary occasion" has occurred to justify the Governor's call for a special session of the General Assembly. The circumstances described by the Proclamation and the accompanying Press Release are the status quo or existing law. They do not describe a change since the adjournment of the last regular session of the General Assembly nor do they present an unusual opportunity for the General Assembly to act.

The Proclamation was invalid, thus, the General Assembly was not properly convened and did not have the authority to act. Any legislative action taken during the improperly convened

[1] Plaintiff requests that the Court take judicial notice of the attached news articles, reports and found at readily available public websites. readily found at. *Whitmoor Realty, LLC v. Beckerle*, 588 S.W.3d 573 (Mo.App. E.D. 2019) (judicial notice may be taken "of a fact, not commonly known, but which can be reliably determined by resort to a readily available, accurate and credible source.") See links, https://www.kcur.org/politics-elections-and-government/2025-08-29/missouri-redistricting-special-session-kehoe-cleaver ; https://missouriindependent.com/2025/07/25/trump-white-house-pressing-missouri-republicans-to-redraw-congressional-map/ ; https://www.cnn.com/2025/08/29/politics/missouri-redistricting-special-session-cleaver

session would be likewise improper and should be declared void. As they court has previously recognized, legislation enacted during an unlawfully called extraordinary session is invalid. *Sate ex rel Department of Penal Institutions v. Becker*, 47 S.W.2d 781 (1932). This would presumably also apply to legislatively adopted joint resolutions.

VI. Conclusion

For the reasons discussed above, the Governor's Proclamation exceeds the authority entrusted to his office under Art. IV Sec. 9 because it does not properly declare an extraordinary occasion. The Court should declare the Proclamation to be in excess of the Governor's Constitutional authority and any action taken by the General Assembly pursuant thereto to be void.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 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/ *Sharon Geuea Jones*