

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

NATIONAL ASSOCIATION FOR THE )  
ADVANCEMENT OF COLORED )  
PEOPLE MISSOURI STATE )  
CONFERENCE, et al., )

*Plaintiffs,*

Case No. 25AC-CC06724

MICHAEL KEHOE, et al., )

*Defendants.*

**DEFENDANTS' PRETRIAL BRIEF AND OPPOSITION TO PLAINTIFFS'**  
**MOTION TO STRIKE DEFENDANTS' SIX AFFIRMATIVE DEFENSES OR,**  
**IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT,**  
**AND MEMORANDUM OF LAW IN SUPPORT**

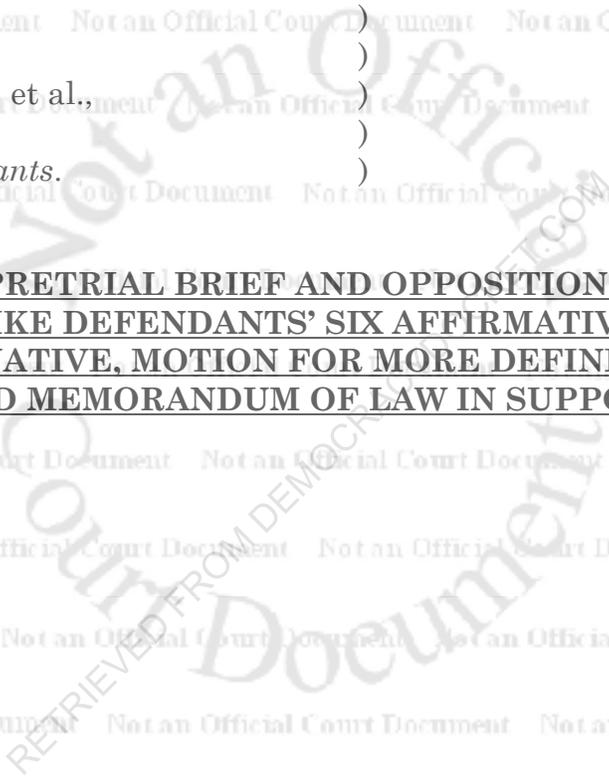


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## INTRODUCTION

“Judicial intervention is not an appropriate substitute for the give and take of the political process.” *Brown v. Carnahan*, 370 S.W.3d 637, 669 (Mo. banc 2012) (Fischer, J., concurring) (quoting *State ex rel. Humane Soc’y of Mo. v. Beetem*, 317 S.W.3d 669, 674 (Mo. App. W.D. 2010)). This maxim of Missouri—and American—law could not be truer than in this case. Plaintiffs’ suit is a vehicle—a highly improper and frivolous one—to collaterally attack the duly-passed legislation of the Missouri General Assembly—already upheld as substantively constitutional by this Court. See *Luther v. Hoskins*, case no. 25AC-CC06964 (Cole County), Judgment at \*6 (“Therefore, in this case, in the absence of an express prohibition, the legislature had the plenary authority to enact House Bill 1, the second redistricting legislation.”). Plaintiffs’ attempt to depict their patently *political* maneuver as a *constitutional* claim against the ironclad gubernatorial proclamation power strains credulity. Worse still, Plaintiffs would deploy Missouri’s judiciary as a hammer against its coordinate political branches, derailing the fundamental, well-established, and fully constitutional legislative processes which underpin this State’s representative democracy.

As a threshold matter, Plaintiffs’ suit is not justiciable for three independently sufficient reasons. The suit is moot. Plaintiffs lack standing. And, Missouri’s political question doctrine bars adjudication of this suit. The same defects which defeat justiciability infect the rest of Plaintiffs’ assertions—riddled with nonexistent harms and requests for this Court to improperly review the purely political decisions of coordinate branches.

Beyond justiciability, Plaintiffs utterly fail on the merits. The Governor has discretion to call a special session of the General Assembly. His proclamation was constitutionally sufficient; no extra-textual restrictions exist. Despite their strenuous acrobatics, Plaintiffs cannot find *any* constitutional language, case law, or slightest indication to the contrary.

*First and foremost*, Article IV, § 9 is crystal clear. It confers unreviewable political discretion upon the Governor to determine *when* to issue a proclamation for those actions which *he deems necessary*.

*Second*, the unilateral executive discretion of the U.S. Constitution's parallel special session clause substantiates the executive discretion of § 9.

*Third*, the great weight of state precedents interpreting special session clauses confirms, again and again, that the Governor has the discretion to determine what is an extraordinary occasion and what is necessary for the legislature to consider—not the courts.

*Fourth*, even entertaining Plaintiffs' theories, the Governor had good reason to call the session. Plaintiffs would create extra-textual and unworkable substantive requirements for special sessions which do not exist in Missouri, or any other American, law.

*Fifth*, gubernatorial discretion—explicitly conferred by §§ 1 and 9 of Article IV—aligns with Missouri's separation-of-powers doctrine. Instead, Plaintiffs would create an exotic, extra-constitutional mechanism of judicial review of quintessentially executive (and legislative) political decisions, an affront to the separation-of-powers

doctrine and centuries of convoking power firmly established under Anglo-American law since the thirteenth century.

Beyond justiciability and merits—where the Defendants prevail—Plaintiffs also fail on the basics of their requested declaratory and injunctive remedy. Their amorphous harms and misplaced injuries reveal the inappositeness of either form of requested relief. Moreover, Plaintiffs fail to appreciate the gravity of what they ask. They entreat this Court to unwind duly-passed legislation, rendering an unprecedented permanent injunction on utterly unprecedented grounds. Bereft of any precedential support or basis in law, Plaintiffs ask this Court to ignore their complete lack of any concrete harms. This alone forecloses the availability of injunctive relief and renders their declaratory judgment purely advisory and, therefore, impermissible.

This Court rightly denied Plaintiffs' unprecedented motion to incapacitate the Missouri General Assembly. Now, this Court should rule in favor of Defendants and relegate Plaintiffs' specious complaints to the proper realm of politics.

### FACTS

On August 29, 2025, Governor Mike Kehoe issued a Proclamation and associated Press Release convening the Missouri General Assembly into an extraordinary session pursuant to Article IV, § 9 of the Missouri Constitution. Joint Stipulation at ¶ 9. The Missouri General Assembly truly agreed and finally passed House Joint Resolution 3 (2025-2) and House Bill 1 (2025-2) on September 12, 2025. *Id.* at ¶ 10, 12. On September 28, 2025, Governor Kehoe signed HB 1. *Id.* at ¶ 14.

On September 3, 2025, Plaintiffs brought this suit challenging the Governor's proclamation and the special session of the General Assembly. On September 4, 2025, they moved to preliminarily enjoin and temporarily restrain the General Assembly from meeting. On September 8, 2025, they moved for a change of judge. On September 14, 2025, shortly before the September 15 hearing, Plaintiffs filed their First Amended Petition ("FAC") which reduced their claims to a declaratory judgment and preliminary injunction alleging that the Governor's proclamation was insufficient. The FAC excluded the old Count II from Plaintiffs' initial petition which contended that Article III, § 45 "does not grant authority to create new congressional boundaries without a decennial census certification." Plaintiffs' Complaint ("Complaint") at 14–15. On September 15, this Court held a hearing on the motion for a temporary restraining order and preliminary injunction. Less than an hour before the commencement of this hearing, Plaintiffs filed their reply to Defendants' motion to dismiss.

On October 1, Plaintiffs filed a motion for an expedited decision with this Court. On October 8, Plaintiffs filed a petition for a writ of mandamus with the Missouri Supreme Court to compel this Court to rule on their pending motions. The Missouri Supreme Court denied the writ on October 10. On October 31, this Court denied Plaintiffs' motion for a temporary restraining order and preliminary injunction. The Court took Defendants' motion to dismiss under advisement.

On November 4, this Court set a two-hour bench trial for December 15 and directed Defendants to file their answer, which they did on November 10, 2025. On

December 8, less than a week before the bench trial, Plaintiffs filed a motion to strike Defendants' six affirmative defenses.

Case proceeds to bench trial on December 15.

## ARGUMENT

### **I. Plaintiffs' suit is not justiciable.**

Plaintiffs' suit is moot. And Missouri courts do "not decide questions of law disconnected from the granting of actual relief." *State ex rel. Chastain v. City of Kansas City*, 968 S.W.2d 232, 237 (Mo. App. W.D. 1998). The proclamation and the special legislative session have come and gone and Missouri courts do not permit constitutional collateral attacks on duly-passed legislation for alleged procedural defects after enactment. *Brown v. Morris*, 290 S.W.2d 160, 164 (Mo. banc 1956). Plaintiffs' suit immediately fails at this "threshold question," *Braveheart Real Estate Co. v. Peters*, 157 S.W.3d 231, 233 (Mo. App. E.D. 2004) (quoting *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001)), seeking relief foreclosed by the intervening event of the General Assembly's adjournment.

Even entertaining that this case is not moot, Plaintiffs' suit is not justiciable for two other independently sufficient reasons. *First*, Plaintiffs lack standing under even the most generous interpretations of Missouri law. *See Mathews v. FieldWorks, LLC*, 696 S.W.3d 382, 391 (Mo. App. W.D. 2024) ("A justiciable controversy exists where (1) the plaintiff has a legally protectable interest at stake, (2) a substantial controversy exists between parties with genuinely adverse interests, and (3) that controversy is ripe for determination.") (quoting *Schweich v. Nixon*, 408 S.W.3d 769,

773–74 (Mo. banc 2013)). They cannot establish taxpayer standing nor traditional standing due to their vague, speculative, self-inflicted, and third-party injuries. *Second*, Plaintiffs’ requested relief is a textbook violation of Missouri’s political question doctrine. Plaintiffs repurpose a political objection into a groundless lawsuit aimed to roll back the fully discretionary, democratic decisions of the Governor and the General Assembly.

As a last-ditch effort to support their meritless case mere days before trial, Plaintiffs attack Defendants’ affirmative defenses as “legally insufficient.” Plaintiffs’ Motion to Strike Defendants’ Six Affirmative Defenses Or, in the Alternative, Motion for More Definite Statement and Memorandum of Law in Support (“Pls. Mot. to Strike”) at 1. Plaintiffs’ motion is, at best, frivolous and a waste of judicial resources. Their motion boils down to serial assertions characterizing Defendants’ affirmative defenses as “legal conclusions.” Pls. Mot. to Strike at 1–6, 9–10. However, any economy of facts in the affirmative defenses is purely derivative of the factual paucity of Plaintiffs’ FAC. Plaintiffs’ deficient pleading is sufficiently defective to permit numerous affirmative defenses which concisely “present, define, and isolate the issues so that the trial court and all of the parties have notice of the issues.” *Rosales v. Benjamin Equestrian Ctr., LLC*, 597 S.W.3d 669, 685 (Mo. App. W.D. 2019) (quoting *Peterson v. Discover Property & Casualty Ins. Co.*, 460 S.W.3d 393, 410 (Mo. App. W.D. 2015)).

**A. Plaintiffs' suit is moot.**

Failing to have thrown a wrench in Missouri's legislative process, Plaintiffs seek to unwind duly-enacted legislation—House Bill 1 (congressional redistricting) and House Joint Resolution 3 (proposing the “Protect Missouri Voters” amendment). Put another way, failing to halt the convocation of the General Assembly, Plaintiffs now seek to invalidate Missouri's duly-passed congressional map and block a proposed constitutional amendment from the popular vote. Their politically-driven collateral attack is moot and, “[a]s a general rule, moot cases must be dismissed.” *Friends of 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)).

Missouri courts have foreclosed invalidation of duly-passed legislation for procedural errors during the course of its adoption. *Brown v. Morris*, 290 S.W.2d 160, 164 (Mo. banc 1956). In *Brown v. Morris*, the Missouri Supreme Court considered a declaratory judgment action attacking the constitutionality of a Missouri cigarette tax law passed by the General Assembly and then approved pursuant to a General Assembly-ordered referendum. *Id.* at 162. Just as here, the challengers sought to invalidate the law on purely procedural grounds, “that the legislative bill was not signed by the speaker of the house of representatives in according with the provisions of” Article III, § 30 of the Missouri Constitution. *Id.* The Supreme Court held that “[a]s a general rule, after a legislative measures has been passed by the general assembly, approved by the voters on referendum and proclaimed by the governor to be in full force and effect as a law of the State of Missouri, the courts will not hold such act invalid because of procedural errors or defects occurring the course of its

adoption.” *Id.* at 164 (citing *Moore v. Brown*, 165 S.W.2d 657, 663 (Mo. banc 1942); *State v. Burns*, 172 S.W.2d 259, 265 (Mo. 1943); Mo. Const. art. III, §§ 31, 52(b)).

Since Plaintiffs lack any “substantive” complaints about the passed legislation, Plaintiffs’ requested—and extraordinary—equitable and declaratory relief “would not have any practical effect upon any existing controversy between the parties.” *Ruzicka v. Hart Printing Co.*, 21 S.W.3d 67, 75 (Mo. App. E.D. 2000) (citing *In re B.S. and P.S. v. State of Missouri*, 966 S.W.2d 343, 344 (Mo. App. E.D. 1998)). Instead, it is moot and tantamount to improper rescission of duly-passed, substantively-sound legislation. Plaintiffs’ motions for preliminary injunctive relief and a temporary restraining order failed. Their mandamus action before the Missouri Supreme Court also failed. These were targeted at arresting the procedural process. Plaintiffs did not prevail. “There was a time to raise procedural questions, but it was before the votes were cast and not after the law had been proclaimed to be the law of the state.” *Id.* at 165 (quoting *State ex rel. Graham v. Bd. of Examiners*, 239 P.2d 283, 289 (Mont. 1952)). That time has passed.

#### **B. Plaintiffs lack standing.**

Second, Plaintiffs do not have standing and “unless the parties to the action have proper standing, a court may not entertain the action.” *Lee’s Summit License, LLC v. Office of Administration*, 486 S.W.3d 409, 416 (Mo. App. W.D. 2016) (quoting *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 45–46 (Mo. banc 1989)). Plaintiffs must show “some threatened or actual injury resulting from the putatively illegal action.” *Mathews*, 696 S.W.3d at 392 (quoting *Harrison v. Monroe*

*Cnty.*, 716 S.W.2d 263, 266 (Mo. banc 1986)). “To establish injury in fact, a plaintiff must show that he or she has suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Id.* (quoting *Courtright v. O’Reilly Auto.*, 604 S.W.3d 694, 700 (Mo. App. W.D. 2020)). Plaintiffs cannot demonstrate standing either through (1) taxpayer standing *or* through (2) traditional standing analyses.

### 1. Plaintiffs cannot establish taxpayer standing.

To prove taxpayer standing, “the plaintiff must establish that one of three conditions exists: ‘(1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality.’” *State ex rel. Mo. Automobile Dealers Ass’n v. Mo. Dept. of Revenue & Its Dir.*, 541 S.W.3d 585, 592 (Mo. App. W.D. 2017) (quoting *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011)). Here, Plaintiffs only rely on the first condition, a “direct expenditure of funds.” See FAC at ¶¶ 73, 77. Plaintiffs’ foundation for this conditions is *extremely* narrow—and ultimately doomed: Plaintiffs rest their argument on legislators’ compensation as their one and only hook for standing. See FAC at 3. In fact, they even eliminated the paragraph discussing the alleged costs of the session from their FAC. Compare Pet. at ¶ 83, with FAC at ¶¶ 65–77. Likely they recognize that this extrapolation of the taxpayer standing doctrine is untenable.

In any case, Plaintiffs cannot use taxpayer standing to attack the standard operations of the General Assembly. “A series of cases holds that ‘general operating expenses which [an agency] incurs regardless’ of the allegedly illegal activity are not

‘direct’ expenditures, and are insufficient to establish taxpayer standing.” *City of Slater v. State*, 494 S.W.3d 580, 587 (Mo. App. W.D. 2016), *abrogated on other grounds, Goodman v. Saline Cnty. Comm.*, 2024 WL 1392392 (Mo. App. W.D. Apr. 2, 2024) (quoting *John T. Finley, Inc. v. Mo. Health Facils. Review Comm.*, 904 S.W.2d 1, 3 (Mo. App. W.D. 1995)). In *City of Slater*, the Western District explained that “salaries for staff time of [agency] employees, correspondence and telephone calls’ used to engage in the allegedly unlawful activity are ‘not the type of expenditure of public funds which would give standing, as they are general operating expenses which were incurred whether or not the challenged transaction took place.” *Id.* (quoting *Ours v. City of Rolla*, 965 S.W.2d 343, 346 (Mo. App. S.D. 1998)).

Missouri case law forecloses Plaintiffs’ claims of taxpayer standing because expenditures for legislators conducting their standard business, such as *per diem* payments, the “general operating expenses” of the General Assembly, *id.*, are not “direct expenditures.” *State ex rel. Mo. Auto. Dealers Ass’n*, 541 S.W.3d at 592. The wisdom of this restriction on taxpayer standing is clear. To hold otherwise would pose grave public policy consequences moving forward. By Plaintiffs’ logic, any time a prospective litigant sought to derail *any* legislative session for *any reason*, that litigant would have standing. That is not the law.

## **2. Plaintiffs’ alleged injury in fact is speculative, manufactured, and illusory.**

To the extent that Plaintiffs assert any alternative grounds for standing, they fail to satisfy Missouri’s standing requirements. Missouri’s standing doctrine is the “state analogue to the federal ‘case or controversy’ requirement.” *Mathews*, 696

S.W.3d at 392 (quoting *Schweich*, 408 S.W.3d at 774); see *Howland v. Truman Med. Ctr.*, 719 S.W.3d 98, 105 (Mo. App. W.D. 2025) (reiterating similarities between federal and Missouri standing analyses). An injury must be “particularized” and “concrete.” *Mathews*, 696 S.W.3d at 392 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016)); *Campbell v. Adecco USA, Inc.*, 561 S.W.3d 116, 121 (Mo. App. W.D. 2018)). Even a cursory examination of their FAC reveals that Plaintiffs fail on all fronts.

Plaintiffs’ list of alleged harms in their FAC is wildly insufficient and largely mooted. See generally FAC at 3 (listing costs of voluntary *lobbying* and “uncertainty” regarding a legislative session that has *already* passed). They list “confusion” and “costs to the taxpayers” without any explanation, and “undue burden to participants in the process” again without explanation. FAC at ¶ 73. Plaintiffs allege “[n]on-monetary harms such as the undue burden on interested parties in the filing of legal challenges to the language of House Bill 3 [sic]” and “uncertainty.” *Id.* at ¶ 74. Regardless of whether Plaintiffs reference House Bill 1 or House Joint Resolution 3, Plaintiffs discuss *hypothetical*, *third-party* harms which are not even injuries at all. *Id.* “[A] speculative or hypothetical risk is insufficient’ to allege a concrete injury.” *Campbell v. Adecco*, 561 S.W.3d at 123 (quoting *Braitberg v. Charter Commc’ns*, 836 F.3d 925, 930 (8th Cir. 2016)). “Confusion” over the maps is entirely speculative and hard to believe.

*First*, alleged, “undue burden” to legislators, even if it existed, is *not* an injury to Plaintiffs; it implicates third parties *and Defendants*. *Second*, “uncertainty” and the speculative travel expenditures of parties seeking to lobby the government are

exactly the type of theoretical, self-manufactured “injuries” that are impermissible for standing. And even if Plaintiffs could identify concrete travel or lobbying expenses, they “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future that is not certainly impending.” *Murthy v. Missouri*, 603 U.S. 43, 73 (2024) (quoting *Clapper v. Amnesty International USA*, 568 U.S. 398, 416 (2013)). Plaintiffs’ manufactured injuries are patently insufficient as an injury for standing.

**C. The political question doctrine requires ruling for Defendants.**

Plaintiffs’ suit, requesting the State’s judicial branch supervise political decisions by the Governor and General Assembly over when the legislature can meet, is *not justiciable* under Missouri’s political question doctrine. Plaintiffs, inserting extra-textual restrictions into Article IV, § 9, ask this Court to sit in review of a completely discretionary political gubernatorial decision enshrined in the Constitution. They would destabilize Missouri’s separation of powers. And, under any healthy separation of powers, “[t]he Governor is the exclusive judge of the facts requiring an extraordinary session of the Legislature.” *Newsom v. City of Rainier*, 185 P. 296, 298 (Or. 1919) (citing *Farrelly v. Cole*, 56 P. 492 (Kan. 1899)) (interpreting the Oregon Constitution’s materially identical language to Mo. Const. art. IV, § 9).<sup>1</sup>

<sup>1</sup> Compare Mo. Const. art. IV, § 9 (“On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary.”), with Or. Const. art. V, § 12 (“He may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall state to both houses when assembled, the purpose for which they shall have been convened.”).

There is substantial overlap between Plaintiffs' failure on the political question doctrine and failure on the merits. The language of § 9 and analogous special session clauses across the country so clearly establish that it is the discretionary, *political* preserve of the Governor to call special sessions that courts do not just render judgment in favor of gubernatorial prerogative, but deem challenges to that exercise nonjusticiable political questions.

**1. Missouri law demonstrates Plaintiffs' challenge is a nonjusticiable political question.**

In Missouri, “[t]he political question doctrine establishes a limitation on the authority of the judiciary to resolve issues, decidedly political in nature, that are properly left to the legislature. If a case actually involves the resolution of a political question, the matter is immune from judicial review.” *Bennett v. Mallinckrodt, Inc.*, 698 S.W.2d 854, 865–66 (Mo. App. E.D. 1985). Missouri courts have adopted the justiciability guidelines from the U.S. Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962). A court should dismiss as nonjusticiable a case if:

[P]rominent on the surface of any case held to involve a political question [there] is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

*Bennett*, 698 S.W.3d at 864 (quoting *Baker v. Carr*, 396 U.S. at 217).

Here, Plaintiffs' suit is *exactly* the type of case which should be dismissed as nonjusticiable under *Bennett*. The Missouri Constitution expressly and

unambiguously reserves the discretion to the Governor, or three-fourths of the members of each house . . . [to call] . . . the General Assembly into session. Mo. Const. art. III, § 20(b); art. IV, § 9; Art. III, § 39(7). Here, Section 9 is a “textually demonstrable constitutional commitment of the issue”—calling a special session—to a coordinate political department—the Governor. *Bennett*, 698 S.W.3d at 864. The final clause of § 9 reads: “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.” Mo. Const. art. IV, § 9.

In any case, Plaintiffs cannot identify any “judicially discoverable and manageable standards for resolving it” because it is “an initial policy determination of a kind clearly for nonjudicial discretion.” *Id.* The text lacks any content-based or temporal restriction on the Governor’s exercise of the power. To challenge this “nonjudicial” discretionary decision exceeds the scope of this Court’s—or any court’s—jurisdiction and “express[es] lack of the respect due coordinate branches of government.” *Id.* Missouri’s history and analogous special session clauses across the U.S. reinforce why Plaintiffs’ suit is a political question.

## 2. The Governor’s unilateral, unreviewable power to call special sessions is well-established in Missouri.

Missouri has a long history of gubernatorial discretion to call special sessions.<sup>2</sup> In fact, this power *preexists* the contemporary Missouri Constitution of 1945,

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<sup>2</sup> Over two decades from the early 1990s to the late 2010s, the Governor of Missouri called *thirteen* special sessions on a wide range of legislative matters: September 1993 (flood recovery funding); September 1994 (impeachment of the Secretary of State); May 1997 (completing work on the budget after a legislative impasse over abortion funding); September 1997 (economic development, including allocating with funds for

stretching back to the accession of Missouri to the Union in 1821. For example, the Missouri Constitution of 1875 contained materially identical language. *See, e.g., City of St. Louis v. Withaus*, 16 Mo. App. 247, 249 (Mo. App. 1884) (“The state constitution provides (art. V., sect. 9), that the governor may convene the general assembly on extraordinary occasions by proclamation ‘wherein he shall state specifically each matter concerning which the action of that body is deemed necessary. . . .’”).

Despite that long history, Plaintiffs cite *zero* precedent suggesting the Missouri Constitution allows courts to second-guess the Governor’s use of the power to call special sessions. To the contrary, the Missouri Supreme Court has characterized the Governor’s power as *completely discretionary*: “The Governor, under the Constitution, can call a special session of the General Assembly . . . . *If he finds the occasion to exercise this prerogative*, he must ‘state specifically each matter concerning which the action of that body (General Assembly) is deemed necessary.’” *State ex rel. Rice v. Edwards*, 241 S.W 945, 948 (Mo. banc 1922) (quoting Mo. Const. (1875) art. 5, § 9) (emphasis added). The phrase, “if he finds the occasion to exercise this prerogative,”

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historic buildings); September 2001 (prescription drug program for low-income seniors and meatpacking law revisions); June 2003 (revenue raising); September 2003 (raising taxes and revenues for education; nursing home legislation); September 2005 (abortion restrictions; drunk driving restrictions; workers’ compensation; prescription drugs at schools; public information availability); August 2007 (economic development); June 2010 (tax incentives for automakers; state pension system); September 2011 (business incentives; natural disaster aid; delay presidential primary; give St. Louis control over its police; teacher-student social media prohibition); December 2013 (tax breaks for Boeing); May 2017 (electricity legislation). The Associated Press, *A historical look at Missouri special legislative sessions*, AP, (May 18, 2017), <https://apnews.com/a-historical-look-at-missouri-special-legislative-sessions-39c25ec9c8544673aa5a96f0c0e74a41>.

both indicates that the Governor wields discretion to determine when and if he will call a special session. Plaintiffs' illusory requirements constraining the Governor's authority here simply do not exist.

**3. Other States interpreting identical clauses have determined that legal challenges are nonjusticiable.**

State after State with similar or identical “extraordinary occasion” special session clauses has determined that legal challenges to this discretionary, executive power are nonjusticiable.<sup>3</sup> In interpreting whether the Kansas Governor held complete power to determine an “extraordinary occasion” under the Kansas Constitution, the Kansas Supreme Court ruled that it did not have jurisdiction to review political, discretionary decisions of the Governor and state legislature, such as calling the special session. *Farrelly v. Cole*, 56 P. 492, 497 (Kan. 1899) (contrasting such discretion with the “[m]inisterial acts” that “do not flow from the exercise of discretion” and which are reviewable). In Washington, another State whose constitution features identical “extraordinary occasion” language, its supreme court stated that it is the “exclusive province of the governor, under the Constitution, to determine whether an occasion existed of sufficient gravity to require an extra session of the Legislature, and *his conclusion in that regard is not subject to review by the*

<sup>3</sup> See, e.g., *State ex rel. Andrews v. Quam*, 7 N.W.2d 738, 738–9 (N.D. 1943) (holding that the question of what merits an “extraordinary occasion . . . is to be determined by the governor alone and is not subject to challenge or review by the courts”); *Herzberger v. Kelly*, 7 N.E.2d 865 (Ill. 1937). The *Herzberger* court reviewed the “extraordinary occasion” special session provision of the 1870–1970 Illinois Constitution, and held that “no authority to review the exercise of the discretionary power vested in the Governor by the Constitution was, by that instrument, seated in the judiciary. The only remedy provided for a violation by an executive of his constituted authority is by impeachment.” *Id.* at 866–67.

courts.” *State v. Fair*, 76 P. 731, 732 (Wash. 1904) (emphasis added). South Carolina has too. See *McConnell v. Haley*, 711 S.E.2d 886, 887 (S.C. 2011) (citing *Farrelly*, 56 P. 492) (averring that, as in Missouri, “there is no indication in the Constitution as to what constitutes an ‘extraordinary occasion’ to justify an extra session of the General Assembly, this matter must be left to the discretion of the Governor and this Court may not review that decision”).

In the same refrain, the Supreme Court of Georgia commanded that “[t]he Governor is thus invested with extraordinary powers, and in the exercise of such powers and prerogatives neither the legislative nor the judicial department of the government *has any power to call him to account*, nor can they or either of them review his action in connection therewith.” *Bunger v. State*, 92 S.E. 72, 73 (Ga. 1917). The Supreme Court of Idaho reiterated, “[t]he determination as to whether facts exist as to constitute ‘an extraordinary occasion’ is for him [the governor] alone to determine. The responsibility and the discretion are his, not to be interfered with by any other co-ordinate branch of the government.” *Idaho State AFL-CIO v. Leroy*, 718 P.2d 1129, 1133 (Idaho 1986) (quoting *Diefendorf v. Gallet*, 10 P.2d 307, 314–315 (Idaho 1932)).

The weight of authority against Plaintiffs’ claim is overwhelming. States across the Union have held that judicial challenges to gubernatorial discretion to determine “extraordinary occasion[s]” are nonjusticiable political questions.

**II. The Governor has discretion to call for a special session under art. IV, § 9 of the Missouri Constitution.**

Since Missouri joined the Union in 1821, the Governor has wielded authority to call special sessions. This includes matters relating to the representation of Missouri voters. For example, in *State ex rel. Rice v. Edwards*, 241 S.W 945 (Mo. banc 1922), the Governor called a special session to “permit the division of cities of six hundred thousand or over into districts for justices of the peace, by such officers as your body may specify.” 241 S.W. at 946.

Time and time again, when Missouri courts have considered Article IV, § 9 of the Missouri Constitution, or its analogues in prior constitutions harkening back to 1821, they focus upon interpreting the General Assembly’s compliance with the Governor’s message, not the Governor’s discretionary choice to issue a proclamation and designate matters for legislative consideration. *See, e.g., Lauck v. Reis*, 274 S.W. 827, 831 (Mo. 1925) (“[T]his much having been said regarding the purpose and effect of the special message of the Governor, let us proceed to analyze the particular paragraph of that message above . . .”). The Missouri Supreme Court has *never* second-guessed the Governor’s prerogative to call special sessions. Here, Plaintiffs would jettison (A) plain text, (B) federal authorities, (C) compelling state precedents, (D) logic, and (E) Missouri’s foundational separation-of-powers principles to force this Court to countermand a purely political decision of a coordinate branch.

**A. The plain text of Article IV, § 9 confirms gubernatorial discretion to call a special session.**

The plain text of the Missouri Constitution unmistakably establishes the Governor's individual political prerogative to issue proclamations. The constitutional text is undeniably clear:

The governor shall, at the commencement of each session of the general assembly, at the close of his term of office, and at such other times as he may deem necessary, give to the general assembly information as to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On *extraordinary occasions* he *may convene* the general assembly by proclamation, wherein he shall state specifically each matter on which action is *deemed necessary*.

Mo. Const. art. IV, § 9 (emphasis added). And “[w]hen interpreting a constitutional provision,” this Court “must consider the words used in their plain and ordinary meaning.” *Great Rivers Habitat Alliance v. City of St. Peters*, 384 S.W.3d 279, 295 (Mo. App. W.D. 2012) (citing *In re Finnegan*, 327 S.W.3d 524, 526 (Mo. banc 2010)).

Section 9's final sentence is straightforward: the Governor can call special sessions by proclamation wherein he must state the matters he deems necessary for the General Assembly to consider. This conclusively resolves this case in favor of Defendants. However, apparently, this plain text evades the comprehension of Plaintiffs. So, to parse this conclusion in finer terms, “we start with the text of the Constitution.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). That “text” establishes the meaning of the operative words and phrases: (1) “extraordinary occasions” meaning non-regular times determined *by the Governor*; (2) “may” refers to a discretionary power vested in the Governor as opposed to the mandatory requirements of “shall”; and (3) “deem[ ] necessary” vests the *political choice* to decide

what is or is not “necessary” solely in the hands of the Governor. The plain text of § 9 establishes the Governor’s unreviewable, discretionary political decision-making power to call a special session.

1. **“Extraordinary occasions” simply means special, rather than regular, sessions initiated by the Governor.**

The commonsense, obvious understanding of “extraordinary occasions,” Mo. Const. art. IV, § 9, is simply to mean convening General Assembly (or any other convened legislative body) outside of its “regular session[s].” *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 190, 190 n.6 (1972) (observing that under the Minnesota Constitution, similar to the U.S. Constitution, “[p]ower is vested in the Governor to convene both houses of the legislature on ‘extraordinary occasions’”). The examples are legion. *See, e.g.*, U.S. Const. art. II, § 3 (the President “may, on extraordinary Occasions, convene both Houses, or either of them”); *State ex inf. Hulen ex rel. McDonnell v. Brown*, 274 S.W. 965, 967 (Mo. App. 1925) (discussing special sessions of the Columbia City Council and holding that “[w]hether or not there existed an extraordinary occasion for calling an extra session of the council will not be inquired into by this court”); *Withaus*, 16 Mo. App. at 250 (discussing how extra sessions can be called “upon extraordinary occasions”).

Dictionaries reinforce this understanding of “extraordinary occasions.” Noah Webster’s American Dictionary of the English Language (1828), capturing how “extraordinary” would have been understood in the governmental context when it was first inserted into the Missouri Constitution in 1820, defines “extraordinary” as “[s]pecial; particular; sent for a special purpose, or on particular occasion; as an

*extraordinary* courier or messenger; an ambassador extraordinary; a gazette extraordinary.”<sup>4</sup> This definition, describing how “extraordinary” was used in the context of government, fits squarely with the contemporary, plain text reading of the Constitution. “Extraordinary” simply means a session “for a special purpose.” This is exactly what Article IV, § 9 describes. The Constitution’s requirements that the Governor proclaim the “purpose” of the special session buttresses this. Despite Plaintiffs’ efforts to obfuscate, the Constitution is exceptionally clear.

Things get worse for Plaintiffs. Interpreting Kansas’s identical “extraordinary occasions” language, the *Farrelly* court notes that “the words ‘extraordinary occasion,’ employed in the [U.S. and Kansas], have been construed, by long-continued custom and practical usage, not to be synonymous with ‘over-powering and urgent necessity.’” *Farrelly*, 56 P. at 497. Far from Plaintiffs’ protestations that the Constitution has invisible requirements for “extraordinary occasions,” the Missouri Constitution simply means non-regular sessions.

The South Carolina Supreme Court tackled this exact definitional issue. It interpreted a portion of the South Carolina Constitution—materially identical to § 9—which reads, “[t]he Governor may on extraordinary occasions convene the General Assembly in extra session.” *McConnell v. Haley*, 711 S.E.2d 886, 887 (S.C. 2011) (quoting S.C. Const. art. IV, § 19). Like in Missouri, the term “extraordinary

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<sup>4</sup> *Extraordinary*, *American Dictionary of the English Language* (1828), <https://webstersdictionary1828.com/Dictionary/extraordinary>, accessed Dec. 10, 2025.

occasions' is not defined by the [South Carolina] Constitution.” *Id.* Yet, the South Carolina Supreme Court was crystal clear:

State constitutional provisions will not be construed to impose limitations beyond their clear meaning. Because there is no indication in the Constitution as to what constitutes an “extraordinary occasion” to justify an extra session of the General Assembly, this matter *must be left to the discretion of the Governor and this Court may not review that decision.*”

*Id.* (citing *Segars-Andrews v. Judicial Merit Selection Comm’n*, 691 S.E.2d 453 (S.C. 2010); *Farrelly*, 56 P. 492) (emphasis added). Constitutional silence, as in the Missouri Constitution, safeguards gubernatorial discretion. Courts “may not add words by implication when the plain language is clear and unambiguous.” *Gray v. Taylor*, 368 S.W.3d 154, 156 (Mo. banc 2012) (citing *State ex rel. Young v. Wood*, 254 S.W.3d 871, 873 (Mo. banc 2008)).

To evade the plain text, Plaintiffs contrive a new definition for “extraordinary occasions” to suit their argument. Cobbling together disparate dictionary components, Plaintiffs’ definitional Frankenstein’s Monster somehow “appear[s] to mean a set of circumstances that require action or bring about an event.” FAC at ¶ 56. In light of the overwhelming weight of commonsense understandings, practice, and persuasive precedent, Plaintiffs’ invented definition cannot hold any water.

Even entertaining Plaintiffs’ definition, § 9 clearly vests the power to determine whether “circumstances that require action or bring about an event” in *the Governor*. Just as the Governor may at “such other times as he may deem necessary give to the general assembly information as to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient,” the Governor has the exclusive authority to designate “other times” when

“circumstances that require action or bring about an event” where he deems a special session “necessary.” *Id.* Therefore, even adopting Plaintiffs’ (incorrect) reading of “extraordinary occasion,” it is the Governor—and the Governor alone—who gets to decide whether the “circumstances” have arisen which, in his mind, “require action.” FAC at ¶ 56.

**2. “May” indicates the Governor’s discretionary, political decision-making authority.**

Section 9’s repeated use of the word “may” is dispositive, demonstrating the unilateral discretionary authority which the Constitution grants to the Governor: “On extraordinary occasions he *may* convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary.” Mo. Const. art. IV, § 9 (emphasis added).

Again and again, Missouri courts have repeated this basic interpretive principle. “Use of the word ‘may’ in a statute implies alternative possibilities and that the conferee of the power has discretion in the exercise of the power.” *In re Estate of Parker*, 25 S.W.3d 611, 616 (Mo. App. W.D. 2000) (quoting *State ex rel. Nixon v. Boone*, 927 S.W.2d 892, 897 (Mo. App. W.D. 1996)) (emphasis added); *see also Star Development Corp. v. Urgent Care Assoc., Inc.*, 429 S.W.3d 487, 495 (Mo. App. W.D. 2014) (echoing the same principle). Section 9 clearly states that the Governor “may convene” the General Assembly. Mo. Const. art. IV, § 9. It is his discretion, just as he may deliver a state of the State address at “other times as he may deem necessary.” *Id.*

In contrast to the discretion of “may,” § 9 uses the word “shall” to state the *sole requirement* for the Governor. See *Am. Fed’n of State, Cnty. & Mun. Emps. v. State*, 653 S.W.3d 111, 120 (Mo. banc 2022) (“[T]he word ‘shall’ imposes a mandatory duty.”). Under § 9, the Governor “shall state specifically each matter on which action is deemed necessary.” Mo. Const. art. IV, § 9. Parties do not dispute that Governor Kehoe complied with this *sole requirement* for special sessions under § 9. *State v. Adams*, 19 S.W.2d 671, 737 (Mo. banc 1929) (citations omitted). There is no “shall” mandatory language attaching *any* conditions, requirements, or obligations to the Governor’s decision to “convene.” To entertain Plaintiffs’ assertions that such imaginary language exists would utterly mangle the plain meaning of the Missouri Constitution.

### 3. The Governor “deems” what is “necessary.”

The plain text of “deemed necessary” reveals further support for gubernatorial discretion. The subordinate phrase, “on which action is deemed necessary,” Mo. Const. art. IV, § 9, buttresses the Governor’s discretionary authority because the power to “deem[] necessary” an action *solely lies with the Governor*. *Id.* No other authority, textual or otherwise, indicates to the contrary. *Id.* Unmoored from common readings of constitutional text, Plaintiffs contend that “the Proclamation fails because none of the actions are ‘necessary’ as required by Article, IV, Section 9.” FAC at ¶ 58. That may be their opinion, but that does not justify a judicial countermand of the Governor’s purely political, discretionary decision. Just as § 9 also “provides the governor ‘shall recommend to [the general assembly’s] consideration such measures *as he shall deem necessary and expedient,*” *In re*

*McGaugh*, 705 S.W.3d 535, 547 (Mo. banc 2025) (quoting Mo. Const. art. IV, § 9) (emphasis added), Section 9 grants sole authority for the Governor to “deem necessary” actions for the General Assembly in the proclamation.

**4. Constitutional context reinforces the Governor’s discretionary power.**

Section 9’s context also reinforces the Governor’s discretionary power to issue the proclamation and deem what is “necessary.” Article III, § 20(b) permits the General Assembly, *sua sponte*, to convene in special session:

Upon the filing with the secretary of state of a petition stating the purpose for which the session is to be called and signed by three-fourths of the members of the senate and three-fourths of the members of the house of representatives, the president pro tem of the senate and the speaker of the house shall by joint proclamation convene the general assembly in special session. The proclamation shall state specifically each matter contained in the petition on which action is deemed necessary . . . .

Mo. Const. art. III, § 20(b). Section 9—housed *within article IV*, which reads, “[t]he supreme executive power shall be vested in a governor.” Mo. Const. art. IV, § 1.

Without any textual restriction to the contrary, this background rule places untrammelled discretion in the Governor’s hands to call a special session. Similarly

Article III, § 20(b) places analogous special session discretion in the hands of the General Assembly. Neither section contains *any* content-based triggering limitation.

Neither section reserves the power to determine what is “necessary” to any non-political entity. The Plaintiffs “do[] not analyze the actual language in the constitution but, instead, graft[] language into the constitution that does not exist.”

*Cope v. Parson*, 570 S.W.3d 579, 587 (Mo. banc 2019) (Draper, J., concurring in part, dissenting in part).

**B. Unilateral, discretionary executive convening authority is well-established under the analogous provision of the U.S. Constitution.**

Article IV, § 9 of the Missouri Constitution consciously follows the U.S. Constitution, where the executive prerogative to convene legislative sessions has never been doubted. The history of this core executive power is even older and more fundamental, harkening back to the thirteenth century and the royal prerogative to summon Parliament. See Paul Brand, *The Development of Parliament, 1215–1307*, in *A Short History of Parliament* (Clyve Jones, ed., 2009), at 11 (describing how English kings summoned representatives in 1254, 1265, and 1295). Plaintiffs would rubbish this hallmark feature of our system of separation of powers.

Article II, § 3 of the U.S. Constitution authorizes that the President “may, on extraordinary Occasions, convene both Houses, or either of them.” The U.S. Supreme Court treats this convening power, housed in Article II (executive powers) as fully discretionary and at the disposal of the President. See, e.g., *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 808 (2025) (Thomas, J., dissenting) (citations omitted) (“That provision means that he [the President] can *make* Congress meet . . .”).

Since the Republic’s foundation, when President Washington convened the U.S. Senate under Art. II, § 3, he did so “without in any manner disclosing what was the ‘extraordinary occasion.’” He did so on at least three subsequent occasions, and since his day at least nine other presidents have done the same thing.” *State ex rel. Andrews v. Quinn*, 7 N.W.2d 738, 739 (N.D. 1943). “In 1898 the governor of Kansas followed the same rule, under the same circumstances, and in *Farrelly v. Cole*, the court held that such question is to be determined by the governor alone and is not

subject to challenge or review by the courts.” *Id.* On the contrary, neither the U.S. Supreme Court nor presidential practice have *ever* intimated that any restrictions on this power exist within the Constitution or without. Under the *Youngstown* framework the President’s, like the Governor’s, “authority is at its maximum.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring). Here, Plaintiffs would desynch Missouri from the basic, tripartite model of American government and the entire arc of Anglo-American democracy.

**C. Gubernatorial discretion to determine “extraordinary sessions” is well-established across the States.**

If plain text, constitutional context, the U.S. Constitution, and eight centuries of Anglo-American practice were not enough, the clear gubernatorial prerogatives enshrined in States across the U.S. is a dispositive indication of the Governor’s unfettered convening power.

Almost all States have special sessions, sometimes called “extraordinary” sessions. Other state constitutions generally vest the power to call a special session in the governor’s hands, just like in Missouri. Other than Missouri, at least twenty-nine other States use the phrase “extraordinary occasion[s],”<sup>5</sup> authorizing the

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<sup>5</sup> See Ala. Const. art. V, title 122 (“The governor may, by proclamation, on extraordinary occasions, convene the legislature at the seat of government. . . .”); Ark. Const. art. VI, § 19 (“The Governor may, by proclamation, on extraordinary occasion, convene the General Assembly at the seat of government. . . .”); Cal. Const. art. IV, § 3(b) (“On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session.”); Colo. Const. art. IV, § 9 (“The governor may, on extraordinary occasions convene the general assembly, by proclamation, stating therein the purpose for which it is to assemble. . . .”); Del. Const. art. III, § 16 (“He or she may on extraordinary occasions convene the General Assembly by proclamation. . . .”); Idaho Const. art. 4, § 9 (“The governor may, on extraordinary

occasions, convene the legislature by proclamation, stating the purposes for which he has convened it. . . .”); Kan. Const. art. I, § 5 (“The governor may, on extraordinary occasions, call the legislature into special session by proclamation. . . .”); Ky. Const. § 80 (“He may, on extraordinary occasions, convene the General Assembly at the seat of government. . . .”); Iowa Const. art. IV, § 11 (“He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.”); Maine Const. art. V, § 13 (“The Governor may, on extraordinary occasions, convene the Legislature; and in case of disagreement between the 2 Houses with respect to the time of adjournment, adjourn them to such time, as the Governor shall think proper, not beyond the day of the next regular session. . . .”); Md. Const. art. II, § 16 (“The Governor shall convene the Legislature, or the Senate alone, on extraordinary occasions. . . .”); Mich. Const. art. V, § 15 (“The governor may convene the legislature on extraordinary occasions.”); Minn. Const. art. V, § 4 (“He may on extraordinary occasions convene both houses of the legislature.”); N.C. Const. art. III, § 9 (“The Governor shall have power, on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation. . . .”); Neb. Const. art. IV, § 8 (“The Governor may, on extraordinary sessions, convene the Legislature by proclamation, stating therein the purpose for which they are convened. . . .”); Nev. Const. art. V, § 9 (“Except as otherwise provided in Section 2A of Article 4 of this Constitution, the Governor may, on extraordinary occasions, convene the Legislature by Proclamation. . . .”); N.Y. Const. art. IV, § 3 (“The governor shall have power to convene the legislature, or the senate only, on extraordinary occasions.”); Ohio Const. art. III, § 8 (“The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called. . . .”); Okla. Const. art. VI, § 7 (“The Governor shall power to convoke the Legislature, or Senate only, on extraordinary occasions.”); Or. Const. art. V, § 12 (“He may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall state to both houses when assembled, the purpose for which they shall have been convened.”); Pa. Const. art. IV, § 12 (“He may, on extraordinary occasions, convene the General Assembly. . . .”); R.I. Const. art. IX, § 7 (“The governor may, on extraordinary occasions convene the general assembly at any town or city in this state. . . .”); S.C. Const. art. IV, § 19 (“The Governor may on extraordinary occasions convene the General Assembly in extra session.”); Tenn. Const. art. III, § 9 (“He may, on extraordinary occasions, convene the General Assembly by proclamation, in which he shall state specifically the purposes for which they are to convene. . . .”); Tex. Const. art. IV, § 8 (“The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government. . . .”); W. Va. Const. art. VII, § 7 (“The governor may, on extraordinary convene, at his own instance, the Legislature; but when so convened it shall enter upon no business except that stated in the proclamation by which it was called together.”); Wash. Const. art. III, § 7 (“He may, on extraordinary occasions, convene the legislature by proclamation, in which shall be stated the purposes for

Governor to call for special sessions. And again and again, courts have *refused to place extra-constitutional restrictions* on the governor's prerogative to call special sessions, the same extra-constitutional restrictions the Plaintiffs ask this Court to impose in a sweeping and unprecedented exercise of its equitable powers. For example, the Constitution of Kansas states: "The governor may, on extraordinary occasions, call the legislature into special session by proclamation. . . ." Kan. Const. art. I, § 5. This clause is materially identical to article IV, § 9 of the Missouri Constitution.

Plaintiffs in *Farrelly v. Cole*, 56 P. 492 (Kan. 1899), in almost exactly the same fashion as Plaintiffs here, challenged the validity of a special session called by the governor on grounds that no extraordinary occasion existed and the governor lacked sufficient reason to issue the proclamation. The Kansas Supreme Court was clear in utterly rejecting this challenge:

This is a power the exercise of which the framers of the constitution have seen fit to intrust to the chief executive officer of the state *alone*. As they have not defined what shall be deemed an extraordinary occasion for this purpose, nor referred the settlement of the question to any other department or branch of the government, *the governor must necessarily be himself the judge, or he cannot exercise the power.*

*Farrelly v. Cole*, 56 P. at 498 (emphasis added). "He may err, but this court has no jurisdiction to review his decision or to correct his error." *Id.* Put simply, the Governor of Kansas, like the Governor of Missouri, has ultimate discretion to deem what is an extraordinary occasion, full stop.

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which the legislature is convened."); Wisc. Const. art. V, § 4 ("He shall have power to convene the legislature on extraordinary occasions. . . ."); Wyo. Const. art. IV, § 4 ("He shall have power to convene the legislature on extraordinary occasions.").

As early as 1899, the *Farrelly* court recognized that other States with “extraordinary occasion” special session constitutional provisions reached the same conclusion: Colorado, New York, and Rhode Island. *Farrelly*, 56 P. at 498–499 (citing *In re Governor’s Proclamation*, 19 Colo. 33, 33 P. 530 (Colo. 1894); *People ex rel. Carter v. Rice*, 20 N.Y.S. 293 (Gen. Term), *aff’d*, 135 N.Y. 473, 31 N.E. 921 (N.Y. 1892); *In re Legislative Adjournment*, 18 R.I. 824, 27 A. 324 (Mem.) (R.I. 1893)). The Washington Supreme Court adopted *Farrelly’s* reasoning that “[i]t was the *exclusive province* of the governor, under the Constitution, to determine whether an occasion existed of sufficient gravity to require an extra session of the Legislative, and his conclusion in that regard is not subject to review by the courts.” *State v. Fair*, 76 P. 731, 732 (Wash. 1904) (citing *Farrelly*, 56 P. 492). More recently, the Nebraska Supreme Court held that the Nebraska Constitution (also featuring an “extraordinary occasion” special session clause) “permits the Governor to determine when an extraordinary occasion exists, necessitating convention of a special session of the Nebraska Legislature.” *Jaksha v. State*, 385 N.W.2d 922, 927 (Neb. 1986).

As noted *supra* at 27, the *Farrelly* court also ruled that the challenge was *nonjusticiable*. The court explained that it would be “an unseemly and unprecedented proceeding for this court, or any court, to entertain a controversy where, by proof obtained from witnesses sworn in the cause, it sought to ascertain judicially whether an extraordinary occasion existed, of sufficient gravity to authorize the governor to convene the legislature in extra session.” *Farrelly*, 56 P. at 497.

Plaintiffs have not found *any case* where *any American court* has enjoined a legislature from meeting, or invalidated subsequent, duly-passed legislation because it found that gubernatorial powers to call such a session were restricted. They point to one Kentucky case, *Beshear v. Acree*, 615 S.W.3d 780 (Ky. 2020), which, if at all persuasive, *reinforces* Defendants' argument. In *Beshear*, the Kentucky Supreme Court interpreted the meaning of § 80 of the Kentucky Constitution which reads, "He [the Kentucky Governor] may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that should have become dangerous from an enemy or from contagious diseases." Ky. Const. § 80. First, that case addressed totally separate statutory state-of-emergency and legislative delegation questions. *Beshear*, 615 S.W.3d at 787 (discussing that "our Constitution, which provides for a part-time legislature incapable of convening itself, tilts toward emergency powers in the executive branch").

Second, to the extent the *Beshear* court discussed gubernatorial special session convening powers, it *bolsters* their unilateral, discretionary executive quality. The *Beshear* court observed that "Section 80 contains the permissive 'may . . . convene' as opposed to the mandatory 'shall . . . convene.'" Even in times when the Commonwealth is confronted with something extraordinary, to include enemies and contagious diseases, *the decision to convene the General Assembly in a special session is solely the Governor's.*" *Beshear*, 615 S.W.3d at 806. In fact, the Governor's discretion is so absolute, so inherently "executive in nature," *Beshear* 615 S.W.3d at 809, that even extreme exigency cannot divest it.

This Court should reject Plaintiffs' invitation to undertake such an inquiry.

**D. The Governor had good reasons to call a special session.**

Even if Missouri courts could somehow second-guess a gubernatorial call for a special session, there is no basis to do so here. At least two events justified a special session to draw a new federal congressional map ahead of the 2026 midterm elections. Moreover, returning to the core political question defects with Plaintiffs' suit, they can point to *no* textual or judicially workable standard for what would merit a sufficient justification.

*First*, the U.S. Supreme Court is poised to issue a ruling before the 2026 midterm elections that would put Missouri's current federal congressional map in legal jeopardy. When the General Assembly drew the last federal legislative map, the federal Voting Rights Act was widely understood to require state legislatures to intentionally consult racial data to maximize the number of majority-black districts. *See Abbott v. Perez*, 585 U.S. 579, 587 (2018) (“[U]nder certain circumstances, States must draw “opportunity” districts in which minority groups form “effective majorit[ies].”). Consistent with that understanding, the General Assembly intentionally provided for a majority-minority district in the Missouri First Congressional District—centering on St. Louis. *See Census Reporter, Congressional District 1, MO* (2023), <http://censusreporter.org/profiles/500000US2901-congressional-district-1-mo/>.

However, it now appears likely that the U.S. Supreme Court will reverse its prior precedent—and declare the intentional drawing of majority-minority districts

unconstitutional under the U.S. Constitution's Equal Protection Clause. Four current Justices have already declared that to be their understanding of federal law. *Allen v. Milligan*, 599 U.S. 1, 79 (2023) (Thomas, J., dissenting) ("Therefore, if complying with a federal statute would require a State to engage in unconstitutional racial discrimination, the proper conclusion is not that the statute excuses the State's discrimination, but that the statute is invalid."). A fifth Justice—Justice Kavanaugh—suggested he has the same view, but that particular litigants in 2022 failed to make the correct argument. *See id.* at 45 (Kavanaugh, J., concurring) ("Justice THOMAS notes, however, that even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future. But Alabama did not raise that temporal argument in this Court. . . .") (citations omitted). Justice Kavanaugh restated that view again during oral arguments earlier this year in *Louisiana v. Callais*. Transcript of Oral Argument at 10:1-12, *Louisiana v. Callais*, No. 24–109 (U.S. Mar. 24, 2025). And after that argument, the Supreme Court took the unusual step of rescheduling the case for the 2025 Term and explicitly asked for briefing on whether state legislatures violate the U.S. Constitution when they intentionally create federal congressional districts on the basis of race. Order in Pending Cases, *Louisiana v. Callais*, Nos. 24–109, 24–110 (Aug. 1, 2025). Unsurprisingly, many U.S. Supreme Court observers expect the Justices to answer that question in the affirmative. *See* Erwin Chemerinsky, *The*

future of voting rights, SCOTUSblog (Aug. 27, 2025), <https://www.scotusblog.com/2025/08/the-future-of-voting-rights/>.

If the U.S. Supreme Court prohibits race-based redistricting, then Missouri's current federal congressional map would be legally jeopardized. Failing to act could result in last-minute litigation over the current map in mid-2026—just months before the 2026 midterm elections. *Cf.* Order Granting Stay, *Ardoin v. Robinson*, No. 21-1596 (U.S. June 28, 2022) (acknowledging similar last-minute litigation against Louisiana congressional voting map). Understanding that risk, Governor Kehoe logically asked the General Assembly to get out in front of that risk and draw a new, race-neutral map. If the General Assembly had not done so, it risked mid-2026 litigation over the legality of the current federal congressional map.

*Second*, Governor Kehoe and the General Assembly could logically seek to redraw Missouri's federal congressional in response to mid-decade redistricting efforts in other States. The Democratic minority in Missouri has substantially more federal congressional representation than Republican minorities in other States—with Illinois being a particularly notable example that the NAACP apparently is not bothered by.<sup>6</sup> Now, in recent moves, other States have moved to redistrict mid-decade, with California poised to limit Republicans—who won 38.3 percent of the vote in the 2024 presidential election—to just likely 7.7 percent of the seats. Associated

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<sup>6</sup> Illinois earns an 'F' from the Gerrymandering Project's Redistricting Report Card. Gerrymandering Project, Redistricting Report Card: Illinois 2021 Congressional – Enacted (May 28, 2025), <https://gerrymander.princeton.edu/redistricting-report-card/?planId=receAu6OJuYEKxKjG>.

Press, *California President*, (Nov. 5, 2024), <https://apnews.com/projects/election-results-2024/california/?r=0>; NBC News, *Democrats release plan to boost party's California House seats in fight for Congress*, (Aug. 15, 2025), <https://www.nbcnews.com/politics/2026-election/california-democrats-plan-boost-house-seats-congress-redistricting-rcna225332>; see also Sarah J. Eckman & L. Paige Whitaker, Cong. Rsch. Serv., Report No. IF13082, *Mid-Decade Congressional Redistricting: Key Issues* (2025). If Missouri does not respond to such aggressive tactics in other States, the political strength of a majority of Missouri voters will be diluted in Washington D.C. compared to the political strength of majorities in other States.

As the Missouri Supreme Court has recognized, redistricting is—at least in part—an inherently political process whereby majorities seek to ensure they are adequately represented in Washington D.C. *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012) (per curiam) (“[R]edistricting is predominately a political question.”). Here, the Governor and General Assembly could logically seek to implement a new federal congressional map in response to California’s recent aggressive actions.

Somehow, Plaintiffs take issue with the Governor’s explanations concerning the risk of potentially transformative federal law changes. They conjure the extra-constitutional idea that the Governor has to “provide[] support for this claim.” FAC at ¶ 59. That is simply not what the Missouri Constitution says. Yet, Plaintiffs ask that “the Court should require a minimum showing of some set of circumstances or events outside of the normal course of business to justify the convening of the

legislature. . . .” FAC at ¶ 64. That “minimum showing” is an invention of the Plaintiffs—it is not the law.

Even worse, Plaintiffs rewrite § 9 to prevent the Governor from calling special sessions to have the General Assembly address issues that are threatened, but have yet to “transpire[ ].” FAC at ¶ 59. This is a baffling, and unprecedented restriction—in Missouri and across the U.S.—on the legislative process. Taking a step back, consider the gravity of the Plaintiffs’ bizarre interpretation. They ask this Court to impose an extra-textual limitation on gubernatorial (and arguably legislative under art. III, § 20(b)) authority to initiate legislative sessions *unless* the Governor (or the General Assembly) can *prove* that the session is to address what the courts consider is a “legitimate threat.” FAC at ¶ 59. This would anoint the courts as a “super-legislature,” a vehicle for aggrieved participants in the political process to destroy the tenets of bicameralism and presentment. This Court should not entertain such destructive suggestions.

**E. Plaintiffs seek to shatter Missouri’s separation of powers.**

Plaintiffs “decr[y] an imperial Executive while embracing an imperial Judiciary.” *Trump v. CASA, Inc.*, 606 U.S. 831, 858 (2025). The Missouri Constitution’s separation-of-powers principle, enshrined in Article II, § 1 and reinforced, again and again, in Missouri precedent, is pellucid: “That neither this Court nor any other branch of the judiciary can interfere with the exercise of a purely political power, confided by the constitution to the Executive . . . .” *State ex rel. Atty. Gen. v. Vail*, 53 Mo. 97, 114 (Mo. 1873). According to Plaintiffs, the Constitution’s

explicit conferral of the power to “deem necessary” and “convene” is actually an invitation for judicial intervention.

Again and again, Plaintiffs fumble the basics of Missouri’s constitutional structure. *See* FAC at ¶ 63. The Constitution vests the governor with “supreme executive power.” Mo. Const. art. IV, § 1. He is coequal to, not subordinate to, the General Assembly nor the courts. For example, even Plaintiffs contend that “[b]road discretion given to the Governor under the doctrine of separation of powers does not need to be limitless.” FAC at ¶ 62. Here, the discretion is *given by the plain language of the Missouri Constitution*: the Governor “may.” The “doctrine of separation of powers” is designed to bar exactly the type of judicial aggrandizement which Plaintiffs seek.

### III. Beyond fatal justiciability and merits defects, Plaintiffs’ requested relief still fails.

Even assuming that Plaintiffs could prevail on justiciability *and* the merits, their requested declaratory and injunctive relief is unavailable to them.

#### A. Plaintiffs fail the requirements for a declaratory judgment.

Plaintiffs’ declaratory judgment claim fails because they cannot meet the necessary requirements for a declaratory judgment outlined in *Northgate Apartments, L.P. v. City of North Kansas City*, 45 S.W.3d 475, 479 (Mo. App. W.D. 2001) (citing § 527.020 RSMo). “[I]n order to maintain a declaratory judgment action a petition must satisfy four requirements.” *Kinder v. Holden*, 92 S.W.3d 793, 804 (Mo. App. W.D. 2002) (quoting *Northgate Apartments*, 45 S.W.3d at 479). “First, there

must be a justiciable controversy.” *Id.* “A justiciable controversy ‘presents a real, substantial, presently-existing controversy as to which specific relief is sought, as distinguished from an advisory decree offered upon a purely hypothetical situation.’” *Id.* “Second, the petitioner must demonstrate a legally protected interest consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.” *Id.* “Third, the issue presented must be ripe for judicial determination.” *Id.* “A mere difference of opinion or disagreement on a legal question is insufficient, but parties must show that their rights and liabilities are affected.” *Id.* at 805 (quoting *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 298 (Mo. banc. Ct. 1996)). “Finally, [a] petitioner who satisfies all three of these elements must also demonstrate that he or she does not have an adequate remedy at law.” *Id.* (quoting *Northgate*, 45 S.W.3d at 479).

Plaintiffs fail to establish a “justiciable controversy” or an issue “ripe for judicial determination.” *Id.* Even if the Plaintiffs could satisfy these *required* prongs, they cannot show any “legally protected interest consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.” *Northgate Apartments*, 45 S.W.3d at 479 (citing *City of St. Louis v. Milentz*, 887 S.W.2d 709, 711 (Mo. App. E.D. 1994)). Their harms are completely illusory ranging from “confusion” to alleged harm to legislators not party to this suit. *See* FAC at ¶ 73, 74, 77. “A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff’s interest is conferred by statute.” *Sunshine and Gov’t Accountability Project v. Mo. House of*

*Representatives*, 668 S.W.3d 704, 714 (Mo. App. W.D. 2024) (quoting *LeBeau v. Comm’rs of Franklin Cnty.*, 422 S.W.3d 284, 288 (Mo. banc 2014)). And, “[a] party has standing to challenge the constitutionality of a statute (or rule or directive as the case may be) only insofar as it has an adverse impact on his own rights.” *Id.* at 715 (quoting *Williston v. Vasterling*, 536 S.W.3d 321, 340 (Mo. App. W.D. 2017)).

Plaintiffs’ collateral attack upon the validity of duly-enacted state statutes is unavailing. Plaintiffs cannot point to how the *gubernatorial proclamation* “directly and adversely affect[s]” them. *Sunshine*, 668 S.W.3d at 714. They cannot show either. Any effect is hardly direct, but rather highly attenuated. It runs afoul of the same prohibition against using an “extraordinary and harsh remedy,” *Zoological Park Subdistrict of the Metropolitan Park Museum Dist. v. Smith*, 561 S.W.3d 893, 896 (Mo. App. E.D. 2018) (citing *Beauchamp v. Monarch Fire Prot. Dist.*, 471 S.W.3d 805, 813 (Mo. App. E.D. 2015)), to invalidate statutes “presumed constitutional,” *Spradlin v. City of Fulton*, 924 S.W.2d 259, 262–63 (Mo. banc 1996) (citing *Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 102 (Mo. banc 1994)), when the only alleged defect is procedural before the actual passage of the law.

The Governor *chose* to issue a proclamation on certain actions. Then both houses of the General Assembly *introduced* and *passed* legislation. Next, the Governor *signed* HB 1. In terms of adverse effect, Plaintiffs cannot point to any concrete harm from the enacted legislation other than vague assertions of “confusion.” To the extent the enacted legislation—which complied with all procedural requirements from introduction to debate to passage to gubernatorial

assent—is materially identical to any legislation passed by any regular session of the General Assembly.

**B. Plaintiffs fail the requirements for permanent injunctive relief.**

With the denial of their motion for preliminary injunctive relief and a temporary restraining order, presumably, Plaintiffs are now requesting *permanent* injunctive relief and proceeding to a trial which will serve as a “final disposition of the merits of the case.” *Zoological Park*, 561 S.W.3d at 896 (Mo. App. E.D. 2018) (citing *Cook v. McElwain*, 432 S.W.3d 286, 289 (Mo. App. W.D. 2014)); see FAC at 3.

For Plaintiffs “[t]o be entitled to an injunction,” they “must demonstrate: 1) no adequate remedy at law; and 2) irreparable harm will result if the injunction is not awarded.” *Zoological Park*, 561 S.W.3d at 896 (Mo. App. E.D. 2018) (citing *Beauchamp*, 471 S.W.3d at 813). “Similar to summary judgment, a permanent injunction is an extraordinary and harsh remedy.” *Id.* “It should only be granted sparingly and in clear cases.” *Id.* (citing *Neaf v. Malloy*, 622 S.W.2d 372, 373 (Mo. App. E.D. 1981)). Plaintiffs fall short of their burden.

Plaintiffs simply cannot show irreparable harm to warrant permanent injunctive relief. As noted above, they make vague assertions of harm, ungrounded in any law or fact, namely “confusion,” alleged costs to taxpayers from the regular expenditures of the General Assembly, and “undue burden” to third parties not among the Plaintiffs in this suit. FAC at ¶ 73. Their other purported harms are completely self-inflicted and voluntary, *id.* at ¶ 74, or illusory. *Id.* at ¶ 75. Again,

Plaintiffs' endeavor to characterize their political objections as legal arguments falls apart under an iota of scrutiny.

#### IV. The balance of harms and public policy strongly favor the State.

To the extent they even exist, Plaintiffs' harms are vastly outweighed by the damage which would ensue from their requested relief. Congressional redistricting is not the only legislation the General Assembly enacted during special session. The legislature passed a vital reform to the initiative process too.<sup>7</sup> Since Plaintiffs request permanently enjoining all "legislation arising" from the special session, not just the redistricting measure, permitting Plaintiffs' relief would derail that unchallenged legislative process too as collateral damage. Meanwhile, nothing bars Plaintiffs from challenging the substance of the proposed redistricting measure *once it is enacted*. Moreover, other States are pursuing mid-decade redistricting in parallel, and it will injure Missouri's attempt to adequately represent its interests in the House of

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<sup>7</sup> The Governor announced legislation amending the initiative petition process that:

Bans foreign nationals from contributing to committees for or against a statewide ballot measure; [e]stablishes a criminal election offense for fraudulently signing or gathering signatures for a statewide ballot measure; [p]rovides a statewide ballot measure be passed only if a majority of voters statewide and a majority of voters in each congressional district vote to adopt the proposed measure; [r]equires that before a statewide ballot measure is certified for signatures to be gathered, there shall be an opportunity for public comment; [and] [r]equires that the full text of a statewide ballot measure be printed and available to voters at all election sites and polling places.

Governor of Missouri, *Governor Kehoe Announces Special Session on Congressional Redistricting and Initiative Petition Reform* (Aug. 29, 2025), <https://governor.mo.gov/press-releases/archive/governor-kehoe-announces-special-session-congressional-redistricting-and>.

Representatives if this Court needlessly and groundlessly thwarts the General Assembly's entitlement to redistrict. Both HB 1 and HJR 3 are *critical* legislation for the upcoming 2026 general election. Missouri's compliance with Article III, § 45 of the Missouri Constitution and the federal Elections Clause require the implementation of a congressional map. Ironically, the only "confusion" harm at play here is the confusion stemming from Plaintiffs' unmoored lawsuit.

**CONCLUSION**

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

Dated: December 14, 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 December 14, 2025.

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