

1 IN THE CIRCUIT COURT OF MISSOURI
2 COLE COUNTY, DIVISION 4
3 HONORABLE CHRISTOPHER K. LIMBAUGH

4 MERRIE LUTHER ET AL,)
5 PETITIONERS,)
6 vs.) Case No. 25AC-CC06964
7 DENNY HOSKINS,)
8 Defendant.)

9 -----
10 TRANSCRIPT OF PROCEEDINGS
11 11-12-2025
12 -----

13 On November 12, 2025, the above cause came on for
14 hearing before the HONORABLE CHRISTOPHER K. LIMBAUGH,
15 Judge of Division 4 of the Circuit Court of Cole County,
16 Missouri, at Kansas City.

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24 Candice K. Perez, Certified Court Reporter
25 Official Court Reporter, Division 9
16th Judicial Circuit, Kansas City

1 APPEARANCES

2 Petitioner: Merrie Luther appears by:
3 CHARLES HATFIELD,
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6 STINSON, LLP
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8 Jefferson City, MO 65101

9 Defendant: Denny Hoskins appears by:
10 LOUIS CAPOZZI,
11 JOSEPH KIERNAN
12 ATTORNEY GENERAL
13 450 Massachusetts Avenue Northwest,
14 Washington, DC 20001

15 Intervenor: Missouri Republican State Committee appears by:
16 MARC ELLINGER,
17 JOHN GORE
18 ELLINGER and ASSOCIATES, LLC
19 428 East Capitol Avenue,
20 Jefferson City, MO 65101

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PETITIONER'S EXHIBITS

2 Official Court Document Not an Official Court Document Not an Official Court Document

3 EXHIBIT Introduced Admitted

4 Exhibit A: Official Court Document Not an Official Court Document Not an Official Court Document

5 Exhibit B: 6 7

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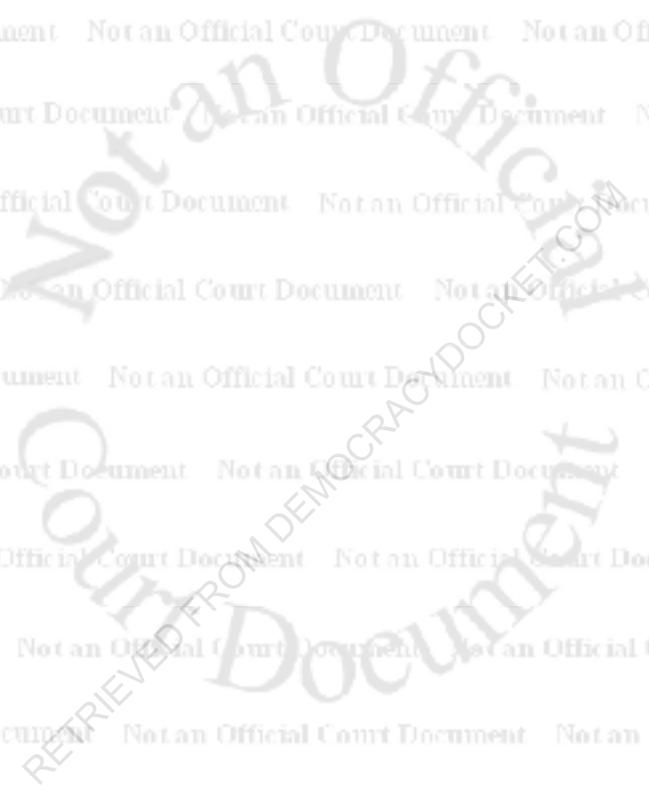
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DEFENDANT'S EXHIBITS

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INTERVENOR'S EXHIBITS

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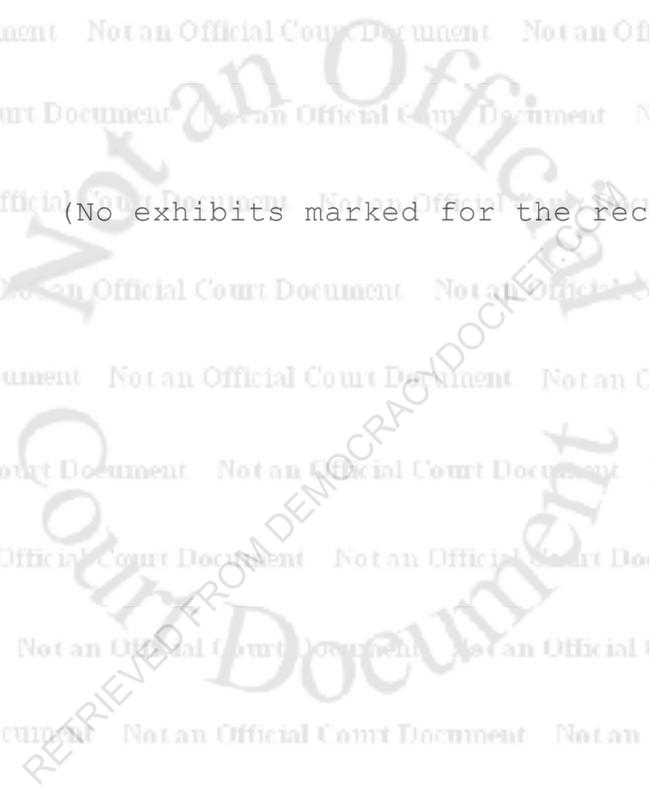
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1 11/12/2025

2 THE COURT: The Court calls case No. 25AC-CC06964.

3 This is Merrie Luther versus Denny Hoskins. Would the
4 attorneys please introduce themselves and whom they represent.

5 MR. HATFIELD: Good morning, Your Honor. Chuck
6 Hatfield and Alix Cossette from -- from Stinson for the
7 plaintiffs. We'll also be joined shortly by Denise Lieberman.
8 She is also entered, but got a flat tire.

9 THE COURT: Oh.

10 MR. CAPOZZI: Good morning, Your Honor. Louis
11 Capozzi, the Solicitor General for the state, along with Joe
12 Kiernan the Assistant Solicitor General.

13 MR. ELLINGER: Good morning, Judge. Marc Ellinger at
14 Ellinger Bell and John Gore with Jones Day on behalf of the
15 intervenor, Missouri Republican State Committee.

16 MR. HART: Good morning. Ryan Hart and Jacqueline
17 Bryant with the Secretary of State.

18 THE COURT: Okay. Thank you. We are here today for
19 a trial in this matter. And with that said, is there anything
20 preliminary we need to take up before we present and we start
21 with evidence?

22 MR. HATFIELD: Not from plaintiff, Judge.

23 MR. CAPOZZI: No, Your Honor.

24 MR. ELLINGER: No, Judge.

25 THE COURT: Okay. Petitioners, you may proceed.

1 MR. HATFIELD: Thank you, Your Honor. On Casenet a
2 few days ago, the parties filed joint stipulations of fact and
3 exhibits. That is the only evidence that the plaintiff will
4 rely on.

5 So if I could just walk you through that real
6 quickly; again, filed on Casenet are 19 paragraphs of
7 stipulated facts; there are two Exhibits A and B as well.
8 Paragraphs 1 through 8 discuss the plaintiffs in the case,
9 and the stipulations about that; paragraph 9 is about the
10 Secretary of State; paragraphs 10, 11, and 12 are about
11 House Bill 1, and that's Exhibit A. House Bill 1, Your
12 Honor, as you can see from that exhibit is a bill to
13 redraw Missouri's congressional districts; then in
14 paragraphs 13 through 18, there's -- I'm sorry, through
15 19, there's a discussion of facts surrounding the census;
16 and then in paragraph 17, we reference House Bill 2909 of
17 2022, which is Exhibit B. So Exhibit B is the law that
18 House Bill 1 replaced. Right? So the -- the -- the
19 congressional districts, that would be replaced by House
20 Bill 1.

21 Your Honor, I think we have agreement on all of this,
22 but just for-the-record, I would move the admission of the
23 joint stipulation, which is 19 paragraphs, as well as the
24 two Exhibits A and B.

25 THE COURT: Any objection?

1 MR. CAPOZZI: No, Your Honor.

2 MR. ELLINGER: No, Judge.

3 THE COURT: Okay. Exhibit A and B will be admitted,
4 along with the stipulations.

5 (Exhibit A and B admitted into evidence.)

6 MR. HATFIELD: So plaintiff rests in terms of
7 evidence, Judge.

8 THE COURT: Any evidence for the defendants?

9 MR. CAPOZZI: No, Your Honor.

10 MR. ELLINGER: No evidence for intervenors.

11 THE COURT: Okay. Well, I think it's time to proceed
12 with arguments if everybody is ready.

13 MR. HATFIELD: Should I stand here, Judge?

14 THE COURT: It's your case, you try it however you
15 want.

16 MR. HATFIELD: I understand. I wasn't sure if I
17 should stand at the podium.

18 THE COURT: That's just fine. It's whatever you're
19 comfortable with.

20 MR. HATFIELD: Thank you. Well, thank you, Judge. I
21 also -- I'm a little remiss, our lead plaintiff Ms. Suzanne
22 Luther lives here in Jefferson City and she has joined us today
23 as well just for the record.

24 So, Your Honor, we've got an usually full courtroom
25 for a case like this. I noticed the press is here.

1 Nevertheless, from our standpoint this is just a normal
2 challenge to a series of statutes and whether those
3 statutes comply with the Missouri Constitution. You know,
4 this Court is familiar with those kind of cases. We do
5 them all the time. It's no different than Judge Stumpe's
6 recent decision that outlawing backyard chickens is
7 unconstitutional in that particular context.
8 So in spite of what the Attorney General and
9 intervenor have said in their briefing, there's nothing
10 particularly unusual about congressional redistricting
11 either. It's simply a bill of the legislature, Exhibit A,
12 that was passed. The United States Supreme Court has
13 actually spoken on whether congressional redistricting
14 needs to comply with state laws. In a case called Moore
15 versus Harper, which I think both of the parties -- or all
16 of the parties have cited in their case, the North
17 Carolina Supreme Court struck congressional maps and
18 actually appointed a special master to draw the maps
19 instead of the legislature, and there was an objection to
20 that. In a 6-3 majority opinion, Chief Justice Roberts
21 wrote that there can be no doubt that state -- that
22 congressional redistricting is subject to state laws, and
23 that congressional districting must comply with other
24 normal state laws, such as state constitutions.

25 I was going to redo the current, but I put it

1 somewhere else -- well, there it is.

2 So Justice Roberts said in that case, "Were there any

3 doubt, historical practice confirms that state

4 legislatures remain bound by state constitutional

5 restraints when exercising authority under the elections

6 clause." As Your Honor has read, the elections clause

7 talks about congressional redistricting and involvement of

8 state legislatures. He also said later, "The election

9 clause does not exempt state legislators from the ordinary

10 constraints imposed by state law." So again, just a

11 normal case. Missouri courts have regularly reviewed

12 congressional redistricting. If you go back through the

13 case law, you can see that it seems like almost every ten

14 years, if not every ten years, there is some litigation

15 about congressional redistricting. The Supreme Court has

16 said that many of those cases state claims, including one

17 of the cases we're going to talk a little bit about today,

18 which is Pearson versus Koster.

19 So this is totally normal to do and there's no doubt

20 that this Court has authority to review House Bill 1 to

21 see if it complies with the Missouri Constitution. The

22 issue here then as plaintiffs have raised, when may the

23 Missouri legislature conduct congressional redistricting.

24 We've quoted you some case law on that, but if I could

25 approach, Your Honor, I've got just a handout that

1 everyone has.

2 THE COURT: Yes, sir.

3 MR. HATFIELD: This is simply law. There's no Do
4 citations to evidence or anything like that. If you turn to
5 that first page, we've pulled out the language of the provision
6 that we rely on, which is Article 3, Section 45. So if the
7 question is when may the legislature do congressional
8 redistricting, we start with this article that says, "When the
9 number of representatives to which the state is entitled in the
10 House of Congress of the United States, under the census of
11 1950 and each census thereafter, is certified to the governor"
12 And then it goes on, but we shortened it up for purposes of
13 this, "when that happens, then the legislature may redistrict."
14 So again, when do you do it? When you get the census of 1950,
15 and then at each census if it's been certified to the governor.
16 That is the clear plain language of the Constitution. You see
17 in joint stipulation 14, 15, and 18, that when the census for
18 2020 was certified to the governor -- that's stipulation 15 --
19 the General Assembly drew congressional districts based on that
20 census. That is joint stipulation 16. The United States
21 Census Bureau has not certified census results since then. And
22 in stipulation 19, no census has been certified to the governor
23 since that 2020 census that was certified back when Exhibit B
24 was adopted. So Exhibit B was adopted, congressional districts
25 were put in place. When can the -- the legislature redo it?

1 When they get new census data. That is the plain reading.
2 Now we looked in -- and the parties have discussed
3 all of this, but just to review the language, that is
4 quite a bit different than the language on the next page
5 of the slide that I gave you. Article 3, Section 10,
6 discusses how we do state level redistricting. Right? So
7 state representatives and state senators. Article 3,
8 Section 10, says, "The last decennial census of the United
9 States shall be used in apportioning representatives and
10 determining the population of senatorial and
11 representative districts. Such districts may be altered
12 from time to time as public convenience may require." So
13 in Article 3, Section 10, the drafters of the Constitution
14 specifically said you can alter the districts as public
15 convenience required, but that language is not in Article
16 3, Section 45, which uses the "when" language and says
17 that when you get a census. So it's obvious to Your
18 Honor, I know, but I think it's important to just point
19 out that these were both adopted in the 1945 Constitution
20 of the Constitutional Convention. The same people who
21 voted to adopt Article 3, Section 10, and put in the
22 language "Such districts may be altered from time to
23 time," also voted to adopt Article 3, Section 45, which
24 does not contain that language. These are not sections
25 that were adopted at different points in time. They were

1 the same people, at the same Congressional Convention.

2 Now we think that language is pretty clear on its

3 face, but were there any doubt about it, we've brought to

4 your attention the Missouri Supreme Court case law on the

5 issue. So you'll see in the next -- in the next slide

6 there on your deck that in Pearson versus Koster, the

7 Missouri Supreme Court looked at Article 3, Section 45,

8 and this is the quote from their 2012 decision. This was

9 congressional redistricting and a challenge to

10 congressional redistricting. We've got it quoted there,

11 "Article 3, Section 45, was triggered when the results of

12 the 2010 United States Census revealed that the population

13 of the state of Missouri grew, et cetera." And then on

14 the last one it says, "The new districts will take effect

15 for the 2012 election and remain in place for the next

16 decade, or until a census shows that the districts should

17 change." That is obviously what the Constitution says and

18 it is what the Missouri Supreme Court has held about

19 Article 3, Section 45. The new districts that were drawn

20 for the legislature in this case in 2022, remain in place

21 for the decade or until there's a new census. Now if

22 there had been a new census certified to the governor,

23 we -- we would have a different issue here; but because

24 there has been no census, we think the issue is pretty

25 straightforward.

1 And then we also gave you in the slide deck, and this
2 is the last one because there weren't really many we
3 needed to talk about, some discussion of a case called
4 Preisler versus Doherty. Now, Judge, Preisler is actually
5 talking about Article 3, Section 10, which is the
6 state-level. This is the one that says, "May be altered
7 from time to time." When you read Preisler, they conclude
8 that in spite of that language in Article 3, Section 10,
9 that you still have to wait for new census data and that
10 is the quote that you have in that last slide, "We think
11 only one valid apportionment is intended for each
12 decennial period." That is the Missouri Supreme Court in
13 1955, after the Census of 1950.
14 This reading that you saw in Preisler, is the law in
15 most other states. The -- the courts there -- the -- the
16 parties talk about different cases in different
17 jurisdictions. I don't know that we cited the South
18 Dakota Supreme Court decision certification -- this is the
19 title of the case believe it or not -- Certification of a
20 Question of Law From the United States District Court of
21 South Dakota. They're one of those states where the feds
22 can ask the State Supreme Court to weigh in. This is 615
23 N.W.2d 590. This is a 2000 decision. In there the
24 Supreme Court of South Dakota served a bunch of other
25 states, and they concluded that other jurisdictions

1 examining state constitutions with provisions similar to
2 the South Dakota 1982 Amendment, that is with no express
3 prohibition of apportionment at a time other than that
4 constitutionally prescribed have reached the same
5 conclusion. "It is the general rule that once a valid
6 apportionment law is enacted, no future act may be passed
7 by the legislature until after the next regular
8 apportionment period prescribed by the Constitution."
9 They cite the Kansas Supreme Court, the Massachusetts
10 Supreme Court, the Alabama Supreme Court, the Oklahoma
11 Supreme Court, the New York Supreme Court, and amateur.
12 It's been a while since I've read amateur. Also, I think
13 he mentioned the decision of the Colorado Supreme Court in
14 In Re -- well, that's not the right one, but the Colorado
15 Supreme Court has similarly said in their case -- I'm
16 sorry. People Ex Rel. Salazar versus Davidson, which is
17 79 P.3d 1221 2003 case, and this case is really
18 interesting. It's very similar to Missouri. The quote,
19 "The congressional redistricting found in their
20 Constitution has always provided that general assembly
21 shall redistrict congressional seats when a new
22 apportionment shall be made by Congress." There is no
23 language empowering the General Assembly to redistrict
24 more frequently or at any other time. That language is
25 almost identical to the language that we see in Missouri.

1 So plaintiff's request here is very simple; the Court
2 should follow the Missouri Supreme Court precedent in
3 Pearson versus Koster and in Preisler, which interprets
4 the Missouri Constitution in its plain language and should
5 acknowledge that congressional redistricting can only
6 occur when there is a new census. It is only then that
7 the districts can be replaced.
8 Now the state and the intervenors ask you to depart
9 from that precedent. Judge, I bet you've seen it; but in
10 case you haven't, there's a movie called Air Bud. And in
11 Air Bud, the kid wants his dog to play basketball. They
12 put the dog in the suit and they -- they go in and try to
13 play basketball. There's a famous scene where the referee
14 says, "Ain't no rule says a dog can't play basketball,"
15 and they allow the dog to play. It's farcical and it's
16 kind of ridiculous. We don't do Air Bud rules in Missouri
17 for very good reason, but that is essentially what the
18 argument is from the state here, that well, ain't no rule
19 says a dog can't play basketball. There's no specific
20 language that says "Thou shall not redistrict in between
21 census." And therefore, the legislature has kind of like
22 a -- like a power up. They can kind of just do whatever
23 they want to do and not worry about the rules. The -- the
24 state argues that there must be express prohibition, but
25 express prohibition simply means a stated prohibition

1 versus an implied prohibition. That doesn't mean that you
2 have to have some extremely strong statement that you can
3 never do it. The Supreme Court seems to think the
4 statement is clear. We think the rules of statutory
5 construction and constitutional construction are pretty
6 similar. Finding a state of limitation involves the
7 normal rules. So for example, Judge, in the state's
8 brief, I think on the first or second page when they talk
9 about the express prohibition, they cite a case called
10 Blaske B-L-A-S-K-E, and I -- I read that case again last
11 night. That's an Article 1, Section 14, case. Article 1,
12 Section 14, is The Open Courts Provision.
13 And so the Supreme Court has many times taken up
14 whether the statute violates The Open Courts Provision of
15 the Missouri Constitution. And here's what the -- here's
16 what Article 3, Section 14 -- I got it wrong -- Article 1,
17 Section 14 -- I'm sorry -- says that, "That the courts of
18 justice shall be opened to every person and certain remedy
19 afforded for every injury to person, property, or
20 character, in that right in justice shall be administered
21 without sale, denial, or delay." There is no language in
22 there about what the legislature cannot do. There is no
23 language in there that addresses the general assembly in
24 any way. The states brief says you have to find language
25 that says the general assembly cannot do something, but

1 based on Article 3, Section 14, in Fowler versus Missouri
2 Sheriff's Retirement System, the Missouri Supreme Court
3 found that the legislature could not impose court costs
4 that go to sheriff's retirement because they read this
5 section implying that ordinary rules of construction, and
6 found it to prohibit that. This is also well before any
7 of our time. This is also a provision that the Supreme
8 Court relied upon to find unconstitutional, a dramshop law
9 that said you can only bring civil suits in certain
10 circumstances where a criminal act had been involved.
11 Yet, all we do -- all they did to do that was read the
12 provision and use ordinary rules. You don't look for some
13 sort of thou shall not. It's just like everything else we
14 do in the courts. We have to look at the -- the rules of
15 construction.
16 So how do you do that? Number one, you look at plain
17 language of the Constitution, which we just walked through
18 a minute ago. That's the first thing. And I struggled to
19 try to find an analogy that kind of fits here to make it
20 clear that the language to everyday people I think means
21 what it says. You know, our lead plaintiff here Ms.
22 Luther was a school teacher for many years. When I was in
23 school, they would say when the bell rings you may change
24 classes, and then we would change classes, and then you
25 would sit there until the bell rings again. So it says,

1 "When you get the census data, you shall wait until you
2 get more census data." That's the ordinary meaning of it.
3 You don't get to get up and walk around in the middle of
4 class and say, "Oh well. I changed classes when the bell
5 rang, so now I can do whatever I want." That's not the
6 plain language of the Constitution; it's pretty clear of
7 it.
8 The second rule of construction you would look at is
9 what's known as empowering material. Right? You look at
10 other provisions of the Constitution in order to get a
11 sense of what this language means. That's why we brought
12 to your attention Article 3, Section 10, which tells you
13 that the legislature clearly notes how to say that
14 redistricting can be done when convenience requires or
15 when politics necessitate, but that language is not
16 contained in Article 3, Section 45.
17 The other one that I just wanted to bring to Your
18 Honor's attention, I don't think we mentioned it in
19 this -- in the brief, but in looking through the
20 Constitution last night to prepare for this, I noticed
21 Article 3, Section 34, which is not related to the
22 congressional redistricting at all; but in Article 3,
23 Section 34, the framers of the 1945 Constitution said, "In
24 the year of 1949, and at least every ten years thereafter,
25 all general statutes shall be revised, digested, and

1 propagated as may be provided by law." So this language
2 tells you that you have to do it at least every ten years,
3 meaning at least you could do it more often than that. But
4 that language is not in Article 3, Section 45.

5 And then finally, the rule of construction that
6 expression of the one is the exclusion of the other. The
7 fact that the power is specifically as expressed as it is,
8 excludes the ability to do others. And I'm sure the state
9 and the intervenor are going to talk to you as they should
10 about the fact that the legislature's power is plenary,
11 and that does -- that's not a talisman; again, that means
12 they can do whatever they want, but it does raise the
13 question of what is Article 3, Section 45, doing in the
14 Constitution? What is the point of having it there if the
15 legislature's power is plenary? What -- what is happening
16 in that section? Well, what's happening is a limitation
17 on the authority and requirements of the legislature. If
18 it wasn't there, the legislature could pass laws as they
19 normally do, and we wouldn't be here.

20 So as I started, I know this is a case with a lot of
21 attention, but I think the Court's options are pretty
22 limited here. There are two Missouri Supreme Court cases
23 that tell you what to do, and those are binding on this
24 Court. Missouri has always followed that rule. Missouri
25 has never done a voluntary redistricting in between census

1 in the history since 1945 -- since the 1945 Constitution.
2 That's what everyone has always understood the law to be.
3 The state talks a little bit I think about some cases
4 where it was done after court orders, but of course when a
5 redistricting is done and a court orders it
6 unconstitutional, it never happened. The Supreme Court
7 has said that in Kehoe versus Normandy and other cases.
8 So there have been some redistricting, particularly in the
9 60s when everybody was trying to figure out what one
10 person, one vote meant. But those were all done because
11 of court orders that invalidated earlier months. So it's
12 never been done voluntarily without having a previous one
13 voided. This -- neither the state nor the intervenor will
14 give you a single case that tells you that Missouri
15 legislatures for the last 80 years have simply missed this
16 power and ability, and it's always been there. They have
17 not missed it. The power is not there.
18 So plaintiffs would ask that you rule that House Bill
19 1 is unconstitutional because the legislature is not
20 authorized to redraw congressional districts until they
21 have received new census data. Unless you have questions.
22 THE COURT: I don't have any questions at this time.
23 Thank you.
24 MR. HATFIELD: Thank you, Judge.
25 THE COURT: Argument for the defendants.

1 MR. CAPOZZI: Good morning, Your Honor. Whenever
2 you're ready.

3 THE COURT: You may proceed.

4 MR. CAPOZZI: This case, frankly, is an easy one.
5 The Missouri Supreme Court has law, and repeatedly instructed
6 that the General Assembly has the power to act, unless the
7 Missouri Constitution expressly takes a particular power away.
8 The Missouri Constitution says nothing about mid-decade
9 redistricting. Thus, plaintiffs state constitutional plan
10 fails, and this Court should enter in favor of the state.

11 I agree with my friend on the other side. Let's
12 start with the text, which he has helpfully provided part
13 of the text of Article 3, Section 45. The text says that
14 the General Assembly wants -- they shall redistrict when
15 decennial census numbers are certified to the governor.
16 That language imposes a duty on the General Assembly to
17 redistrict at the start of the decade, but that's all it
18 says. The General Assembly has a duty to redistrict at
19 the start of the decade. That language says nothing about
20 whether they have the option to redistrict at other times.
21 My friend relies heavily on the negative implication
22 candor; he calls it the *expressio unius canon*. And the
23 theory is, well, the state Constitution says that the
24 General Assembly has to redistrict at the start of the
25 decade, so that implies -- that implies that they can not

1 redistrict at other times. Now there's lots of case law,
2 including in State v Clay from the Missouri Supreme Court,
3 which we cite. State v Clay says specific data that
4 negative implication can -- cannot provide a clear
5 statement to divest the General Assembly of its plenary
6 power. But the Court doesn't even need to rely on that
7 principle because with respect, my friend is misapplying
8 the negative implications canon in this case.

9 As the Missouri Supreme Court explained in the power
10 of decision, that's 227.S.W.2d at 723, "An express
11 enumeration of legislative powers and privileges in the
12 Constitution cannot be considered as the exclusion of
13 others not named, unless the company by negative terms."
14 And there's no negative terms here. Properly deployed,
15 the negative implication canon suggest that the General
16 Assembly does not have the obligation to redistrict at any
17 time other than at the start of the decade. In other
18 words, I could not sue the General Assembly because it
19 didn't redistrict in 2024. That is the correct way to
20 employ the negative implication canon.

21 Now my friend offered a hypothetical to try to
22 illustrate how this works, and he gave the example of the
23 bell in school. And as a student, you know that you're
24 not allowed to change classes until the bell rings and not
25 at other points. My friend is smuggling context into that

1 hypothetical, which is very different than the context
2 here. That hypothetical works because there is a
3 background understanding that students are supposed to do
4 what they're told in school, and that their movements and
5 activities are strictly controlled by their teachers. So
6 they're expected to stay where they are until the bell
7 rings. Here the context is quite different. The default
8 rule is that the General Assembly has the power to act.
9 They have preliminary power, until that power is taken
10 away. And so here is a more accurate hypothetical for
11 this case. Imagine you have a lease term that says you
12 have to pay your rent by the fifth day each month. Now
13 what -- what is the implication? If you will apply the
14 negative implication like my friend does, you cannot be
15 found in breach of the lease if you pay your rent by the
16 3rd of the month. Right? The fact that you have to pay
17 the rent by the 5th, implies that you don't have to pay it
18 by the 3rd of the month, but no one would say that you
19 can't voluntarily pay your rent on the 3rd of the month.
20 Everyone agrees that you can do that. And so with
21 respect, plaintiffs misemploy the negative implication
22 canon here.

23 Next I want to talk about history. My friend asks,
24 you know, what is the point of Article 3, Section 45, what
25 is it doing here if not to limit when redistricting

1 happens? Well, if you read the entirety of Article 3,
2 Section 45, you'll see there's a bunch of other stuff in
3 the provision. I want to address, what is the function of
4 the specific language in the slideshow. Article 3,
5 Section 45, was enacted in 1945, as my friend explained.
6 In the prior decades, as the state discusses in detail of
7 its brief, the General Assembly had failed altogether to
8 pass redistricting maps. I think it was -- you know, for
9 40 years the General Assembly just didn't pass a
10 redistricting map. What happened is the state had to use
11 at-large congressional districts. You know, basically the
12 statewide vote determines how congressional districts are
13 allocated. That's no longer constitutional. It was back
14 then, but even back then, nobody liked that. Everybody
15 agreed that that was a bad thing, and that it was frankly
16 a scandal in Missouri politics that the legislature was
17 not doing its job. And so this extensive discussion at
18 the 1940s Missouri Constitutional Convention about "We
19 need to make sure that the legislature actually does
20 redistrict once per decade," which is why we have this
21 provision. That is meant to solve the prior problem of no
22 redistricting. And notably, if you read the convention
23 records, there is no discussion of mid-decade
24 redistricting, none. That's not really a surprise. The
25 delegates didn't think mid-decade redistricting was a

1 problem. That point is significant because as the state
2 detailed in its brief, the General Assembly had in the
3 late 1800s, engaged in mid-decade redistricting. Thus,
4 the framers of the 1945 Constitution knew about the
5 prospect of mid-decade redistricting, yet they didn't
6 debate it or include any language prohibiting it. That
7 silence speaks volumes, and confirms the framers did not
8 intend to prohibit mid-decade redistricting.

9 Precedent confirms what texted history clearly
10 demonstrate. In *Pearson v Koster*, which my friend also
11 talked about, except I think we read *Pearson v Koster*
12 quite differently. The Missouri Supreme Court considered
13 whether the Missouri Constitution prohibits political
14 gerrymander, and that's what the case was about. In
15 answering that question in the negative, the court
16 considered the limits of Article 3, Section 45, imposed on
17 the General Assembly. Here is what the court said in
18 *Pearson*, "Article 3, Section 45, of the Missouri
19 Constitution sets about only -- only three requirements
20 for the redistricting of states in Missouri. The
21 districts shall be composed of continuous territory as
22 compact and as nearly equal in population as may be."
23 Those are the three requirements. And *Pearson* says quite
24 explicitly, "If the General Assembly complies with those
25 three requirements, courts must defer to their political

1 and policy judgments in adopting a particular
2 congressional map." Now my friend invites the Court to
3 adopt a fourth limit on congressional redistricting. That
4 invitation is foreclosed by Pearson.
5 Now what did plaintiffs have to say in response to
6 all this? First they say that their rule is dictated by
7 precedent, but that is simply not true. We already talked
8 about Pearson v Koster, which directly forecloses their
9 arguments. They quote some language from Pearson in their
10 slides. This language is descriptive dictum. It's
11 certainly not holding as my friend claims. There's
12 absolutely no discussion of mid-decade redistricting in
13 Pearson; and so there's no holding about mid-decade
14 redistricting in Pearson, but that -- the descriptive
15 dictum that my friend quotes from Pearson is accurate. It
16 is true that we all agree the General Assembly must
17 redistrict at the start of the decade. You know, a lot of
18 what my friend said proved that point; which the state
19 agrees, they must do it at the start of the decade. The
20 Pearson dictum also said that when the General Assembly
21 enacts a redistricting bill, the bill will be in effect
22 for 10 years until the next decennial census. That is
23 typically how redistricting bills work. That is the
24 default rule. The Missouri Supreme Court did not
25 consider, let alone speak to the possibility of a new

1 redistricting bill. So Pearson again forecloses and does
2 not support plaintiff's case.

3 The same is true of Preisler v. Hearn, which they
4 cited in their brief. Once again, it's the same
5 descriptive dictum that they cite from Pearson. "The
6 General Assembly has to redistrict at the start of the
7 decade." And typically, redistricting bills last for ten
8 years, but there's certainly no holding in Preisler v.
9 Hearn, and they just didn't consider the possibility of
10 mid-decade redistricting because it wasn't at issue in the
11 case.

12 And finally my friend invokes the Missouri Supreme
13 Court in Preisler v. Doherty, and quotes some language on
14 that case in the slides. I'm grateful that my friend
15 brought this up because Preisler is actually very helpful
16 in illustrating one of the state's points here. My friend
17 points to state constitutional language about state
18 legislative districts and how those can be adjusted from
19 time to time. And he says, well, you don't have that
20 similar language in Article 3, Section 45, so maybe that
21 implies that the General Assembly can't redistrict from
22 time to time; but we're dealing with different contexts.
23 State legislative districts are drawn by a redistricting
24 commission. Under well-established Missouri law, which
25 Missouri Supreme Court talks about in Preisler and I'll

1 quote the language in a minute, redistricting commissions
2 or commissions in general can only exercise the powers
3 specifically delegated to them. With the General
4 Assembly, it is the opposite assumption. They have
5 preliminary power until the power is specifically taken
6 away, and indeed Preisler v. Doherty itself says this a
7 couple of pages before the language my friend quotes. And
8 I want to read this language because I think it's quite
9 important. So this is from Preisler, "In this case we are
10 not dealing with the law enacted by our General Assembly."
11 They are dealing with state legislative districts enacted
12 by a commission. Returning to the quote, "In this case we
13 are not dealing with the law enacted by our General
14 Assembly, which as a coordinate branch of our government
15 has all of the legislative power of the state, except that
16 denied it by express limitations of the Constitution."
17 And so Preisler itself explains the difference -- explains
18 why that case is different than this case. That case
19 dealt with a commission, which exercises delegated powers.
20 This case involves the General Assembly, which has
21 reserved plenary power. And as Preisler said, you need
22 express language taking that authority away.

23 My friend also cites some out-of-state cases, which
24 of course are not binding on this Court. He didn't cite
25 any of them in his brief and so it's hard to know whether

1 these cases are different. The Colorado case that he
2 cited in particular is different though. As my friend
3 admitted, the Colorado Supreme Court said that the
4 legislature needed specific authority to act and to do
5 mid-decade redistricting. If that is the law in Colorado,
6 that's simply not the law in Missouri. I mean we've cited
7 at least five or six cases in our brief, and we could cite
8 dozens more saying that the General Assembly has the power
9 to act, unless the power is specifically taken away. So
10 unlike in Colorado, the General Assembly does not need a
11 permission slip to do mid-decade redistricting.

12 In closing, this Court should heed the Missouri
13 Supreme Court's instruction in Pearson that redistricting
14 is, "predominantly a political question." This is a
15 political question, this is a political case. Plaintiffs
16 obviously disagree with the General Assembly's political
17 and policy aims in adopting the new congressional map, but
18 this Court cannot wave into that political fight and deny
19 the General Assembly's authority to act without an express
20 textual warrant in the Missouri Constitution. No such
21 warrant exists, and the question is not close. The Court
22 should enter judgment in favor of the state.

23 Thank you, unless Your Honor has question.

24 THE COURT: Not at this time. Thank you.

25 MR. CAPOZZI: Thank you.

1 THE COURT: Will there be any argument for
2 intervenors?

3 MR. GORE: Yes, Your Honor, briefly.

4 THE COURT: You may proceed.

5 MR. GORE: Good morning, Your Honor. John Gore for
6 intervenor, Missouri Republican State Committee. I thank the
7 Court for allowing me to be here today and present argument.

8 THE COURT: And for the record, pro hac vice status
9 has been granted to Mr. Gore, and I don't think that was
10 opposed by anybody. So --

11 MR. GORE: Thank you.

12 THE COURT: -- you may proceed.

13 MR. GORE: I thank my friend on the other side for
14 not opposing. The Court should enter judgment for the state
15 because plaintiffs cannot carry their heavy burden to show that
16 mid-decade congressional redistricting clearly and undoubtedly
17 contravenes the Constitution. The Missouri Constitution does
18 not even address, much less prohibit mid-decade congressional
19 redistricting. Moreover, the elections clause and the US
20 Constitution empowers the General Assembly to perform
21 congressional redistricting, including mid-decade.

22 I would like to read to the Court the standard -- the
23 legal standard that applies in this case. As the Supreme
24 Court held in Liberty Oil Company, "The Constitution is
25 not a grant, but a restriction upon the powers of the

1 legislature. Consequently, the General Assembly has the
2 power to do whatever is necessary to perform its
3 functions, except as expressly restrained by the
4 Constitution." That's at 813S.W.2d at page 297. This
5 rule alone requires judgment for the state. Nothing in
6 Article 3, Section 45, or any other provision of the
7 Constitution, expressly prohibits the General Assembly
8 from conducting mid-decade congressional redistricting.
9 Plaintiffs haven't pointed to anything. They've
10 pointed to nothing in section 45, and nothing in any of
11 the other provisions of the Constitution. So this case is
12 over. This is an easy case, but let me briefly address a
13 few of the arguments they have made. They point to the
14 language in Section 45, that the General Assembly shall
15 redistrict when census results are certified to the
16 government -- to the governor. That's correct. That
17 imposes a duty -- a minimum mandatory duty to redistrict
18 after those results are certified. Prior to 1945,
19 formerly, the General Assembly had authority to decline to
20 redistrict -- to decline to draw out congressional
21 districts, even when the census results were certified to
22 the governor. That's the problem that framers were
23 attempting to solve. If anything, Section 45 requires
24 the -- the General Assembly to redistrict more often, not
25 less often, than it had prior to 1945. And if the framers

1 had wanted to prohibit mid-decade redistricting anywhere
2 in the Constitution, including in Section 45, they would
3 have used language expressly digesting the General
4 Assembly of that power. And for example, look at Article
5 3, Section 39; it states, "Limitation of power of General
6 Assembly. The General Assembly shall not have power."
7 And then it lists several things the General Assembly
8 can't do. There are similar provisions elsewhere in
9 Article 3, that you shall not or shall have no power. No
10 such language appears in Section 45 or anywhere with
11 respect to mid-decade congressional redistricting.
12 In fact under the Clay decision that General Capozzi
13 cited earlier, the framers were required to use those
14 kinds of negative terms because a negative implication on
15 the General Assembly's authority, its legislative power,
16 simply cannot be drawn.
17 Now let's go to Article 3, Section 10. They point
18 out that has different language than Section 45, but of
19 course it does because the redistricting commission does
20 not inherently have any authority to do anything. It has
21 to be granted that authority under the Constitution. So
22 it makes sense that the Constitution authorized it to
23 alter districts from time to time; but by contrast, the
24 General Assembly has all legislative power, except
25 expressly restrained in the Constitution. So Section 45's

1 silence on mid-decade congressional redistricting
2 underscores that the General Assembly retains that
3 authority. That alone proves our point.
4 Now they pointed to decisions from the Missouri
5 Supreme Court. They pointed to Pearson; the statement
6 they lift from Pearson is in the background and it's
7 indicative; it's not holding. Pearson addressed only
8 compactness claims and other issues. In fact, if
9 anything, we cite, Your Honor, to pages 39 and 40 of
10 Pearson. There Pearson made clear that the courts must
11 defer to the General Assembly's political judgments in
12 redistricting. So if anything, Pearson supports judgment
13 for the state here as well.
14 Counsel for the other side has cited a few cases from
15 other states, but none of the states and none of those
16 courts are bound by the Liberty Oil Company. They do not
17 apply the Expressly Restrains Rule, which is the rule for
18 adjudicating the General Assembly's legislative power here
19 in Missouri. They didn't view the Constitution as a
20 limitation rather than a grant of authority, they viewed
21 it exactly the opposite. Well, that explains Colorado,
22 South Dakota, and all of the other cases that they've
23 cited.
24 They've also cited some rules of construction, but
25 the most important rule of construction in Missouri is

1 plain language, and they haven't pointed to any plain
2 language divested in the General Assembly's authority to
3 conduct mid-decade redistricting. Not an Official Court Document
4 All of this, Your Honor, and for all of these official
5 reasons, the Court should enter judgment for the state.
6 And if there is any doubt on that score, the Elections
7 Clause in the US Constitution requires that as a result as
8 well. Counsel cited to Moore versus Harper. Moore --
9 Moore versus Harper makes it clear that the courts must
10 respect the Election Clause's delegation of authority to
11 legislatures. That means courts, including this Court, do
12 not have free reign to review and invalidate state
13 legislative enactments on federal elections, including
14 congressional redistricting plans. Courts are bound by
15 the ordinary rules of judiciary review and may not
16 transgress those bounds without violating the elections
17 clause. And here that is precisely what would happen if a
18 court were to conclude that the Missouri Constitution
19 precludes the General Assembly from engaging in the
20 mid-decade congressional redistricting. The law in
21 Missouri is clear; the General Assembly has all authority,
22 except as expressly restrained by the Constitution; and
23 nothing in the Constitution expressly restrains it from
24 conducting mid-decade congressional redistricting. Any
25 other conclusion would violate the elections clause in the

1 United States Constitution.

2 The Court should enter judgment for the state. Does
3 the Court have any questions?

4 THE COURT: Not at this time. Thank you.

5 MR. GORE: Thank you, Your Honor.

6 THE COURT: Okay. Is there anything else we need to
7 take up on-the-record?

8 MR. HATFIELD: Judge, would you entertain just a
9 brief reply?

10 THE COURT: Brief.

11 MR. HATFIELD: So we gave you the language. I
12 read -- plain language is where you start. Right? So in the
13 slide you have, I highlighted some words kind of anticipating
14 how the argument might go. So the first one we have is "when,"
15 and then you could skip down to each census thereafter
16 recertified. So we need census thereafter recertified, and the
17 General Assembly shall redistrict, and that's essentially our
18 argument.

19 The state seemed and the intervenor seemed to say
20 that you need a "thou shall not," sentence in here, and
21 that's never been the law in Missouri. And if it was the
22 law in Missouri, then several Supreme Court cases were
23 wrong; including the ones I cited to you earlier in Fowler
24 versus Missouri Sheriff, et cetera. The law has always
25 been in that you look to see what the meaning of the

1 languages using the regular -- regular rules. So we both
2 told you about Pearson versus Koster, and I would urge you
3 to read that. I haven't heard anybody explain why they --
4 a plain language of what the Supreme Court said there is
5 wrong, and why you can disregard that language. I urge
6 you to read it.
7 I urge you also, in light of what intervenor just
8 said, to take a look at that Moore case. I mean that
9 was -- if we all remember back, that was the independent
10 state legislature theory, and the Supreme -- the United
11 States Supreme Court rejected that with a 6-3 decision.
12 Written by -- Judge Roberts said that state courts have
13 the authority to review state enactments of congressional
14 redistricting. It does not say, but I'll let you read it,
15 that the state court cannot invalidate a legislatively
16 enact of congressional redistricting. This -- this Court
17 has done it. Pearson actually -- the Supreme Court there
18 in congressional redistricting remanded it back to the
19 trial court for additional findings because what Pearson
20 is discussing is the compactness contiguous as one person,
21 one vote standards when it sends the remand back. And
22 when it says that there are three requirements for
23 redistricting, it's talking about when you do
24 redistricting, these are the three requirements; but it
25 clearly says when you do it is when you have new census

1 data.

2 Thank you, Judge.

3 THE COURT: Okay. Thank you. Is there anything else
4 we need to put on-the-record or is there any response to that?

5 MR. CAPOZZI: No, Your Honor. We will rest on our
6 arguments.

7 MR. ELLINGER: Likewise, Your Honor. Thank you.

8 MR. HATFIELD: Nothing further from plaintiff, sir.

9 THE COURT: Okay. The Court is going to take this
10 matter under advisement. If I do end up having any other
11 questions for the parties, I may order additional briefing. At
12 this time we are not there, so we are adjourned.

13 PLAINTIFF: Would you like proposed judgments or not,
14 Judge?

15 THE COURT: It's really up to you all. If you all
16 want to submit proposed judgments, we can do that.

17 MR. HATFIELD: I mean I think we were planning to do
18 it. I don't know that they need to be long since we have
19 stipulated facts.

20 THE COURT: Okay. Why doesn't everybody submit
21 proposed judgments within the next ten days?

22 MR. HATFIELD: Thank you, Judge.

23 MR. CAPOZZI: Thank you, Your Honor.

24 THE COURT: Thank you all. We are adjourned.

25 (Trial concluded.)

1 REPORTER'S CERTIFICATE

2 I, Candice Perez, Certified Court Reporter, hereby
3 certify that I am the official court reporter for Division
4 of the Cole County Circuit Court, that on 12th of
5 November, 2025, I was present and reported all of the
6 proceedings in MERRIE LUTHER ET AL V. DENNY HOSKINS. I
7 further certify that the foregoing *39 pages contain a
8 true and accurate reproduction of the ordered portions of
9 the proceedings transcribed.

23 /s/ Candice Perez
24 Candice Perez, C.C.R
25 Official Court Reporter, Division 4