IN THE
MISSOURI SUPREME COURT

No. 101412

MERRIE SUZANNE LUTHER, et al.,
Plaintiffs/Appellants,

v.

DENNY HOSKINS,

Defendant/Respondent

and

MISSOURI STATE REPUBLICAN COMMITTEE,
Intervenor/Respondent.

Appeal from the Circuit Court of Cole County
The Honorable Christopher K. Limbaugh
Case No. 25AC-CC06964

AMICI CURIAE BRIEF FOR *HEALEY* PLAINTIFFS IN SUPPORT OF PLAINTIFFS/APPELLANTS

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INTERESTS OF *AMICUS CURIAE*

Elizabeth Healey, Giselle Anatol, Marques Bussey, Mary Sapp, Louie Wright, Sarah Beagle, Kyle Heard, Tom Self, Janet Sorrells, Margaret Wolf Freivogel, Sorin Nastasia, Morton Todd, Colleen Coble, Beverly Rollings, Lane Nichols-Elliott, and Randal McCallian (collectively "*Healey* Plaintiffs") are Missouri voters who filed a lawsuit in Jackson County Circuit Court on September 28, 2025, alleging that House Bill 1 ("HB 1") violates Article III, Section 45 of the Missouri Constitution as both an unlawful mid-decade redistricting map (Count I) and a violation of constitutional compactness requirements (Count II).

Following the Cole County Circuit Court's decision in this case, the Jackson County Circuit Court adjudicating the *Healey* Plaintiffs' action stayed all proceedings on their Count I on the ground that the claim was "similar if not identical to" the claim litigated—and now on appeal—in this case. *See* Order, *Healey v. Missouri*, No. 2516-CV31273 (Dec. 10, 2025).

Because of the stay, the *Healey* Plaintiffs were never given any opportunity to have their mid-decade redistricting claim heard or decided by any court. Thus, they file this amicus brief to ensure that they can protect their substantial interest in advocating for an injunction of HB 1. The *Healey* Plaintiffs are composed of sixteen registered voters residing in every congressional district across the state, including in the communities most fractured by HB 1's new district lines. These voters will be forced to vote in newly configured districts that were drawn in violation of the Missouri Constitution and, for many of them, tear them apart from their longtime communities with whom they share local

interests. Absent an order permanently enjoining Defendants from enforcing HB 1, these voters will experience severe and irreparable harm to their constitutional and representational interests, for which there is no adequate remedy at law.

CONSENT OF PARTIES

Pursuant to Missouri Supreme Court Rule 84.05(f), all parties consent to the filing of this *amicus* brief.

JURISDICTIONAL STATEMENT

The *Healey* Plaintiffs hereby adopt the Jurisdictional Statement of Appellants.

STATEMENT OF FACTS

The *Healey* Plaintiffs hereby adopt the Statement of Facts of Appellants.

ARGUMENT

The Missouri Constitution is unequivocal: the General Assembly's authority to redraw congressional districts is triggered only once a decade, and only after census results are certified to the governor. Mo. Const. art. III, § 45. This plain reading has been affirmed by the Missouri Supreme Court, is reinforced by surrounding constitutional text, and is confirmed by the drafting history of Section 45 itself. Missouri followed this constitutional directive when it enacted a congressional map in 2022, after certification of the 2020 census. Three years later, without any new census results, Governor Mike Kehoe and Republican lawmakers rushed to enact *another* congressional map—HB 1—which drastically changes the boundaries of several of the state's pre-existing congressional districts. This new map stands in clear violation of the Missouri Constitution, which forbids

this unprecedented, ungrounded, and undemocratic mid-decade redistricting. The Circuit Court's denial of Appellants' claim and requested relief must be reversed.

I. The Constitution's plain text prohibits mid-decade congressional redistricting.

Article III, Section 45 speaks in clear and unambiguous terms about *when* the General Assembly is authorized to engage in congressional redistricting. It provides:

> **When** the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and **each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts** corresponding with the number of representatives to which it is entitled . . . .

Mo. Const. art. III, § 45 (emphases added). Based on the plain text of this provision, the Constitution empowers the General Assembly to engage in congressional redistricting upon a single triggering event: the certification of decennial census results to the governor. The General Assembly acted pursuant to that authority when it enacted the 2022 congressional map. Because no new federal census has occurred since, that congressional map remains operative until the next nationwide census, slated to occur in 2030.

The General Assembly has *no* authority under the Missouri Constitution to reconstitute congressional districts at some other time. In redrawing congressional district lines in 2025 without a new decennial census trigger, the General Assembly disregarded the clear procedural and textual limitations in Section 45. This overreach renders HB 1 unconstitutional.

The Circuit Court's contrary conclusion rests on a fundamental misapprehension of constitutional interpretation. The lower court presumed that because Section 45 does not "specifically *prohibit*" the General Assembly from engaging in mid-decade redistricting,

the legislature has unbounded power to redistrict at will. *See* Appellants' Appendix ("App") 3–4. But this reasoning is incompatible with longstanding Missouri constitutional doctrine. As this Court has made clear, constitutional prohibitions on legislative power need not be express; instead, "the general grant of the legislative authority of the state found in [the Constitution] is . . . *subject to all the limitations, express or implied, contained in the Constitution*." *State v. Becker*, 49 S.W.2d 146, 147 (Mo. banc 1932) (emphasis added).

Accordingly, the fact that Section 45 does not explicitly use any magic words to expressly prohibit mid-decade redistricting is not dispositive. *See* App 4–5. To the contrary, for over a century, this Court has recognized that "affirmative prescriptions" in the Constitution—such as the one found in Section 45—"are far more fruitful [as] restraints upon the legislature" because "[e]very positive direction" in the Constitution "*contains an implication against anything contrary to it*, or which would frustrate or disappoint the purpose of that provision." *Marx & Haas Jeans Clothing Co. v. Watson*, 67 S.W. 391, 394 (Mo. banc 1902) (emphasis added) (citation omitted); *see also id.* ("The expression of one thing in the constitution is necessarily the exclusion of things not expressed. This [is regarded] as especially true of constitutional provisions declaratory in their nature."); *cf. State v. Clipper*, 44 S.W. 264, 265 (Mo. 1898) ("Where authority is given to do a particular thing, and the mode of doing it is prescribed, it is limited to be done in that mode" such that "[a]ll other modes are excluded." (citation omitted)). For instance, where the Missouri Constitution expressly sets forth when the General Assembly "shall" exercise its power to suspend a state officer, "it is beyond the power of the legislature to remove such officer or suspend him from office for any other reason or in any other mode than the constitution

itself has furnished." *State ex inf. Shartel v. Brunk*, 34 S.W.2d 94, 95 (Mo. 1930). In such a context, the Framers are presumed to have "fully considered" the subject and "intended, by embodying said provisions in the constitution . . . to place the subjects to which they relate altogether beyond legislative control." *Id.*; *see also id.* (collecting cases coming to same conclusion). Likewise here, where Section 45 expressly prescribes the time at which the General Assembly "shall" exercise its powers to redraw congressional districts, it necessarily excludes legislative action outside of that framework.

The plain text of Section 45 thus fully contemplates the metes and bounds of legislative authority over congressional redistricting. By spelling out precisely when and under what circumstances the General Assembly has authority to engage in congressional redistricting, the Framers deliberately confined the legislature's power to one set of circumstances and foreclosed alternative timing or mechanisms. The lack of an "express prohibition," App 4, is of no consequence. The Circuit Court's failure to recognize this limitation led it to uphold a statute that the Constitution does not permit. This Court should correct that error.

II. The broader constitutional context further supports the conclusion that mid-cycle congressional redistricting is forbidden by the Constitution.

Section 45's limitation on mid-decade congressional redistricting is also undeniable when read in conjunction with Article III, Section 10, which governs state legislative redistricting. Unlike Section 45, Section 10 does *not* include a temporal trigger; it merely instructs that "[t]he last decennial census of the United States shall be used" in redrawing senatorial and representative districts. Mo. Const. art. III, § 10. Section 10 *also* allows state

legislative district lines to be "altered from time to time as public convenience may require." *Id.* This express grant of authority to redraw state house and senate districts between censuses is conspicuously absent from Section 45, the provision governing congressional redistricting.

The difference in the temporal scope of these provisions is glaring. The fact that the Constitution allows redistricting "from time to time" for state legislative districts while authorizing congressional redistricting only "[w]hen" federal census results are certified to the governor demonstrates that the Framers deliberately chose to preclude mid-decade congressional redistricting. The Circuit Court's summary conclusion that the language in Section 10 has no bearing on the analysis, *see* App 6, is simply wrong. *Cf. State v. Moore*, 303 S.W.3d 515, 520 (Mo. banc. 2010) (concluding that legislature's use of differing phrases in different subsections of the same statute "is presumed to be intentional and for a particular purpose"); *see also Robust Mo. Dispensary 3, LLC v. St. Louis County*, 721 S.W.3d 135, 138 (Mo. 2025) ("Constitutional provisions are subject to the same rules of construction as other laws . . . . "), *reh'g denied* (Nov. 4, 2025).[1] Indeed, even with respect to the more permissive language in Section 10, this Court has interpreted it to mean "only one *valid* apportionment is intended for each decennial period," reasoning that "[t]his must be true because the decennial census is made the basis of reapportionment." *Preisler v.*

[1] Although the Circuit Court's decision refers to Article III, Section 14 of the Missouri Constitution, the "from time to time" language the Circuit Court cites and discusses is found in Article III, Section 10.

Doherty, 284 S.W.2d 427, 436–37 (Mo. banc 1955) (emphasis added).[2] It would be completely illogical to conclude that the far more restrictive language of Section 45 could or should be read more broadly to allow the General Assembly to redraw congressional maps multiple times each decennial period.

Indeed, even before Section 45 was introduced expressly tying legislative authority to the decennial census, this Court observed as a matter of law and logic that legislative reapportionment necessarily "refer[s] to decennial periods for the exercise of such power." *State ex rel. Major v. Patterson*, 129 S.W. 888, 890 (Mo. banc 1910); *see also id.* ("[U]nder the Constitution, the Legislature could not act oftener than once in 10 years, and . . . it had no power to act oftener than once in 10 years . . . ."). As this Court observed, "[i]t was never intended by our constitutional provisions that these changeable bodies," such as the General Assembly, "should be vested with the right to change representative districts . . . as might be demanded by the whims and caprices of the individual members of such body." *Id.*; *cf. id.* at 889 ("Under this section it is claimed that the county court can rearrange the legislative districts at any time. Indeed, if full latitude be given to their contention such districts might be remoulded at each session of the county court, a thing unreasonable

[2] Relatedly, federal courts have held that where the General Assembly's congressional map is rendered invalid by court order, the General Assembly has an opportunity to enact a lawful remedial map. *See Preisler v. Sec'y of State of Mo.*, 257 F. Supp. 953, 982 (W.D. Mo. 1966) (ruling Missouri's congressional district map was constitutionally null and void and allowing the General Assembly to enact a remedial map), *aff'd sub nom. Kirkpatrick v. Preisler*, 385 U.S. 450 (1967) (per curiam); *Preisler v. Sec'y of State of Mo.*, 279 F. Supp. 952, 970 (W.D. Mo. 1967) (same), *aff'd sub nom. Kirkpatrick v. Preisler*, 394 U.S. 526 (1969).

within itself."). Under the Circuit Court's logic, Section 45 would not only grant the General Assembly more authority to redraw congressional districts than it has ever had over state legislative districts, it would allow that body to re-redistrict every two years, throwing Missouri citizens into perpetual instability and uncertainty about the districts in which they will vote and the communities they must vote with. *But see id.* at 890 ("The Constitution, as far as could be done by the use of general terms, has undertaken to safeguard the interests of the public.").

Consistent with the constitutional text and structure, this Court more recently recognized during the 2010 redistricting cycle that the state's congressional redistricting power under Section 45 is "triggered when the results of the . . . United States Census [are] revealed." *Pearson v. Koster*, 359 S.W.3d 35, 37 (Mo. banc 2012). The Court reasoned that once new congressional districts are enacted based on decennial census data, "new districts will take effect . . . and remain in place for the next decade or until a Census shows that the districts should change." *Id.* at 37–38. Contrary to the Circuit Court's conclusion that *Pearson* is not "instructive" here, App 6, *Pearson* squarely reflects the "plain, ordinary, and natural meaning" of Section 45 as interpreted by this Court, App 3 (quoting *Faatz v. Ashcroft*, 685 S.W.3d 388, 400 (Mo. banc 2024)). In other words, upon reviewing the plain text of Section 45, this Court observed that congressional redistricting was authorized upon a new census or once a decade.

III. Section 45's history eliminates any doubt as to the unconstitutionality of mid-cycle congressional redistricting.

The drafting history of Section 45 further confirms what its text already makes plain: the provision was designed to prescribe—and limit—the timing of congressional redistricting authority. Examination of a constitutional provision's historical development is appropriate where, as here, it illuminates the Framers' intent. *See State ex rel. Smith v. Atterbury*, 270 S.W.2d 399, 405 (Mo. banc 1954).

A provision governing congressional redistricting first appeared in the 1945 Constitution. As the Circuit Court acknowledged, Section 45 arose out of frustration with the General Assembly's repeated failure to draw congressional maps after each census. *See* App n.1. The first proposed iteration of the provision read in relevant part:

> **At its first session following the adoption of this Constitution, and after each decennial census of the United States**, the General Assembly shall by law divide the State into districts corresponding with the number of Representatives to which it may be entitled in the House of Representatives of the Congress of the United States . . . .

See Proposal No. 170 in the Constitutional Convention of Missouri (Nov. 9, 1943) (emphasis added), https://babel.hathitrust.org/cgi/pt?id=umn.319510020300015&seq=491.[3] This language would have authorized a map in 1945 and then again in 1950—in other words, two maps in five years. Delegates rejected this approach. Instead, they

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3 This Court has recognized that "[i]t is competent for us to judicially notice the history of legislation as reflected by the record thereof in the legislative journals of the state." *State ex rel. Karbe v. Bader*, 78 S.W.2d 835, 838 (Mo. banc 1934).

amended the proposed language with a different version that removed all references to the census and instead generally granted the General Assembly apportionment power without any temporal condition or limitation. The proposal read in relevant part:

> The general assembly shall by law apportion the state into districts corresponding with the number of representatives to which it may be entitled in the house of representatives of the Congress of the United States . . . .

See File No. 21, Supplemental Report at 13 (June 28, 1944), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=255&q1=congress.

But this version was quickly cast aside too. Just a few months later, delegates suggested a third version of the provision which added back into Section 45 a specific temporal trigger to the General Assembly's congressional redistricting authority—the decennial census. This decision signaled an unwillingness to allow the legislature to redistrict unprompted and at its convenience. The amended version read:

> **The General Assembly immediately following the decennial census of 1950 and the General Assembly immediately following each succeeding decennial census** and the determination of the number of representatives in Congress to which the state is entitled shall by law apportion the state into districts corresponding with the number of representatives to which it may be entitled in the house of representatives of the Congress of the United States . . . .

Journal of the Constitutional Convention of Missouri—1943-1944, at 10 (Sep. 6, 1944) (emphasis added), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=844&q1=congress. The convention's Committee on Phraseology, Arrangement, and Engrossment then further edited the provision to its current form, which reads:

> **When** the number of representatives to which the state is entitled in the house of the congress of the United States **under the census of 1950 and**

> **each census thereafter is certified to the governor**, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled . . . .

File No. 21, Report No. 1 of Committee No. 23 on Phraseology, Arrangement and Engrossment, Article IV, Legislative Department, Congressional, State Senatorial and Representative Districts at 22–23 (Sep. 19, 1944) (emphasis added), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=1086&q1=congress. Importantly, this change aligned the state's congressional redistricting process with federal law, under which the final step of the decennial census culminates in apportionment information being delivered to each state's governor. *See id.* at 23 (citing 13 U.S.C. §§ 201-202 and 2 U.S.C. § 2(a)-(b) as they existed in 1944).

In parallel, the Framers also amended what is now Section 10, but there they chose to take an entirely different approach. Rather than prescribing a precise timeframe for "when" the General Assembly must undertake state legislative redistricting, the Framers simply amended Section 10 to require that "[t]he last decennial census of the United States shall be used in apportioning representatives and determining the population of senatorial and representative districts." *See* Journal of the Constitutional Convention of Missouri—1943-1944, at 6 (June. 28, 1944), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=248. The Framers also retained the "from time to time" language that had previously appeared in the legislative redistricting provision. *Id.* The Framers' decision to pinpoint the timeframe for congressional redistricting in Section 45 while simultaneously allowing more flexibility on timing in Section 10 further demonstrates their intent to proscribe congressional redistricting more than once a decade.

This history is conclusive. Delegates to the constitutional convention considered—and then rejected—language that would have allowed the General Assembly unfettered authority to engage in congressional redistricting whenever it sees fit. Instead, the delegates drafted text that tethers the General Assembly's authority to a single, decennial trigger—census certification. This choice was neither accidental nor semantic.

This interpretation of Section 45's legislative history is further supported by this Court's own jurisprudence. In *Pestka v. State*, the Court was asked to decide the scope of the General Assembly's powers to override a gubernatorial veto under Article III, Section 32 of the constitution. 493 S.W.3d. 405, 408 (Mo. banc 2016). The plain text of Section 32 establishes a specific, time-bound process: when the governor vetoes a bill within the last five days of a legislative session, that veto triggers the General Assembly's authority to reconvene a special session to consider vetoed legislation. *See* Mo. Const. art. III, § 32. The law at issue in *Pestka*, however, had been vetoed by the governor outside that five-day period. Nevertheless, the General Assembly proceeded to consider, and enact, the law during the special session, arguing—much as Appellees do here—that because the relevant constitutional provision did not expressly prohibit its conduct, it had plenary powers to legislate as it sees fit. *Pestka*, 493 S.W.3d. at 408.

This Court correctly rejected the General Assembly's position. Examining the historical evolution of Section 32, this Court observed that when the provision was first adopted, the legislature possessed broad authority to "consider any bill vetoed by the governor, regardless of when the governor vetoed the bill, at its convenience." *Id.* at 412. Subsequent amendments to the provision, however, gradually imposed narrower

restrictions on the legislature's powers—limiting first when bills could be reconsidered, and then which bills were subject to such reconsideration. *Id.* Because this Court sought to give these amendments meaning, it concluded that the General Assembly no longer has plenary power to address any vetoed bills as it so chooses. *Id.* Instead, if the legislature wanted to override a gubernatorial veto, it must strictly adhere to the precise framework provided by Section 32. *Id.*

The same reasoning applies here. When the constitutional Framers sought to introduce a provision outlining the General Assembly's authority over congressional redistricting, it drafted, considered, but then *rejected* a version of Section 45 which would have granted the legislature unbounded discretion to act. In its place, the Framers adopted a *different* version of the provision that explicitly created temporal boundaries around the legislature's authority to redistrict by tying such power to a triggering event—the decennial census. This Court must presume that these intentional changes to the language of Section 45, like those to Section 32, "have meaning." *Id.* Indeed, these amendments clearly show an intent to "strip[] the legislature of its power" to redistrict "at its convenience." *Id.* at 410. Section 45's legislative history demonstrates how the Framers sought to limit—not broaden—the General Assembly's authority with regards to congressional redistricting.[4]

[4] This Court further observed in *Pestka* that neither the parties nor the dissent in that case could identify a single prior instance in which the legislature had attempted to override a gubernatorial veto in the manner at issue—despite asserting that Section 32 conferred "clear-cut plenary power[s]" to act as it did. *Pestka*, 493 S.W.3d at 413. The same is true in this case. Throughout this litigation, Appellees have failed to identify *any* evidence demonstrating that the General Assembly has engaged in voluntary redistricting between censuses since the adoption of Section 45, fatally undercutting their own claim that the

Because HB 1 disregards these restrictions, it is unconstitutional.

CONCLUSION

The plain language, context, and historical development of Article III, Section 45 all speak with one voice: The General Assembly is authorized to engage in congressional redistricting only upon certification of a decennial census, not whenever it deems it politically expedient. Because no such trigger has occurred since the General Assembly enacted the 2022 Map, its attempt to redraw a congressional map in HB 1 is unconstitutional. For these reasons, the *Healey* Plaintiffs respectfully submit that the Circuit Court's denial of Appellants' claim and requested relief be reversed and the case remanded for judgment consistent with such an order.

Dated: January 12, 2026

Respectfully submitted,

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legislature has always possessed unfettered and plenary powers to redistrict at any time and under any circumstance.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06(c), the undersigned hereby certifies that: (1) this Brief complies with and includes the information required by Rule 55.03; (2) this Brief complies with the limitations contained in Rule 84.06(a) and (b); and (3) this Brief contains 4,125 words as calculated by the Microsoft Word software used to prepare this brief.

/s/ J. Andrew Hirth
J. Andrew Hirth, #57807

CERTIFICATE OF SERVICE

The undersigned certifies that the forgoing document was filed with the Court's electronic filing system, on January 12, 2026, which pursuant to rule 43.01(c) will send notice to the attorneys of record for all parties.

/s/ J. Andrew Hirth
J. Andrew Hirth, #57807