

SC101412

IN THE SUPREME COURT OF MISSOURI

MERRIE SUZANNE LUTHER, et al.,

Appellants,

v.

MISSOURI SECRETARY OF STATE

Respondent,

and

MISSOURI REPUBLICAN STATE COMMITTEE

Intervenor-Respondent.

INTERVENOR-RESPONDENT'S BRIEF

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TABLE OF CONTENTS

	Page
STATEMENT OF FACTS	1
POINTS RELIED ON	3
INTRODUCTION	4
LEGAL STANDARD	4
ARGUMENT	6
I. APPELLANTS CANNOT CARRY THEIR HEAVY BURDEN BECAUSE MID-DECADE CONGRESSIONAL REDISTRICTING IS CONSTITUTIONAL	16
A. Section 45 Does Not Expressly Prohibit Mid-Decade Congressional Redistricting	6
B. Appellants Identify No Express Prohibition On Mid- Decade Redistricting	9
C. The Elections Clause Authorizes The General Assembly To Conduct Mid-Decade Congressional Redistricting	18
II. THE COURT SHOULD NOT ORDER ANY CHANGES TO THE GENERAL ASSEMBLY'S DULY ENACTED MAP FOR THE ONGOING 2026 ELECTION.	22
CONCLUSION	27
CERTIFICATE OF SERVICE AND COMPLIANCE	28

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Abbott v. League of United Latin American Citizens</i> , 607 U.S. ----, 2025 WL 3484863 (2025)	22, 23, 24, 26
<i>Abbott v. Mexican Am. Legis. Caucus, Tex. House of Representatives</i> , 647 S.W.3d 681 (Tex. 2022)	18
<i>Alpert v. State</i> , 543 S.W.3d 589 (Mo. banc 2018)	10, 22
<i>Am. Fed’n of State, Cnty. & Mun. Emps. v. State</i> , 653 S.W.3d 111 (Mo. banc 2022)	7
<i>Ardoin v. Robinson</i> , 142 S. Ct. 2892 (June 28, 2022)	23
<i>Ariz. State Legis. v. Ariz. Ind. Redistricting Comm’n</i> , 576 U.S. 787 (2015)	24
<i>Blum v. Schrader</i> , 637 S.E.2d 396 (Ga. 2006)	17
<i>Bohrer v. Toberman</i> , 227 S.W.2d 719 (Mo. banc 1950)	4, 8, 10, 22
<i>Bost v. Ill. State Bd. of Elections</i> , 607 U.S. ----, 2026 WL 96707 (Jan. 14, 2026)	23, 26
<i>Brooks v. State</i> , 128 S.W.3d 844 (Mo. banc 2004)	9
<i>Callais v. Landry</i> , 732 F. Supp. 3d 574 (W.D. La. Apr. 30, 2024)	23

Conservation Commission v. Bailey,
 669 S.W.3d 61 (Mo. banc 2023) 11, 12

Cook v. Gralike,
 531 U.S. 510 (2001)..... 18, 21

Democratic Nat’l Comm. v. Wis. State Legislature,
 141 S. Ct. 28 (2020)..... 23, 24, 25, 26

Ex parte Arnold,
 30 S.W. 768 (Mo. banc 1895) 10

Fowler v. Missouri Sheriffs’ Retirement System,
 623 S.W.3d 578 (Mo. banc 2021)..... 10, 11

Harris v. Shanahan,
 387 P.2d 771 (Kan. 1963) 17

Harrison v. Monroe County,
 716 S.W.2d 263 (Mo. banc 1986) 11

In re Below,
 855 A.2d 459 (N.H. 2004) 16

*In re Certification of a Question of Law from U.S. Dist. Court,
 Dist. of South Dakota, Western Division*, 615 N.W.2d 590 (S.D.
 2000) 15

Johnson v. State,
 366 S.W.3d 11 (Mo. banc 2012) 4, 5, 8, 18

Lamson v. Sec’y of Commonwealth,
 168 N.E.2d 480 (Mass. 1960)..... 17

League of United Latin Am. Citizens v. Abbott,
 2025 WL 3215715 (W.D. Tex. Nov. 18, 2025)..... 23

League of United Latin American Citizens v. Perry,
 548 U.S. 399 (2006)..... 4, 19, 20

Legislature v. Deukmejian,
669 P.2d 17 (Cal. 1983)..... 17

Liberty Oil Co. v. Director of Revenue,
813 S.W.2d 296 (Mo. banc 1991)*passim*

Merrill v. Milligan,
142 S. Ct. 879 (2022)..... 26

Mo. Prosecuting Att’y’s v. Barton Cnty.,
311 S.W.3d 737 (Mo. banc 2010)5

Moore v. Harper,
600 U.S. 1 (2023)..... 20, 21, 22

Opinion of the Justices,
47 So. 2d 714 (Ala. 1950) 16

Pearson v. Koster,
359 S.W.3d 35 (Mo. banc 2012)*passim*

People ex rel. Mooney v. Hutchinson,
50 N.E. 599 (Ill. 1898)..... 16

People ex rel. Salazar v. Davidson,
79 P.3d 1221 (Colo. 2003) 16

Pestka v. State,
493 S.W.3d 405 (Mo. banc 2016) 10, 11

Preisler v. Doherty,
284 S.W.2d 427 (Mo. banc 1955) 14

Purcell v. Gonzalez,
549 U.S. 1 (2006)..... 3, 22, 24

Rebman v. Parson,
576 S.W.3d 605 (Mo. banc 2019) 10, 11

Robinson v. Ardoin,
 37 F.4th 208 (5th Cir. 2022) 23, 26

Robinson v. Callais,
 144 S. Ct. 1171 (May 15, 2024) 23

Shartel v. Brunk,
 34 S.W.2d 94 (Mo. banc 1930) 10

Slauson v. City of Racine,
 13 Wis. 398 (1861) 17

Smiley v. Holm,
 285 U.S. 355 (1932) 19, 20

State ex rel. Carroll v. Becker,
 45 S.W.2d 533 (Mo. banc 1932) 19, 21

State ex rel. City of St. Louis v. Seibert,
 27 S.W. 624 (Mo. banc 1894) 10

State ex rel. Gordon v. Becker,
 49 S.W.2d 146 (Mo banc 1932) 10, 13

State ex rel. Mathewson v. Bd. of Elec. Comm’rs of St. Louis Cnty.,
 841 S.W.2d 633 (Mo. banc 1992) 5, 8, 10, 22

State ex rel. Teichman v. Carnahan,
 357 S.W.3d 601 (Mo. banc 2012) 12

State ex rel. Thomson v. Zimmerman,
 60 N.W.2d 416 (Wis. 1953) 17

State v. Clay,
 481 S.W.3d 531 (Mo. banc 2016) *passim*

State v. Shelby,
 64 S.W.2d 269 (Mo. banc 1933) 10

Tex. Democratic Party v. Benkiser,
459 F.3d 582 (5th Cir. 2006)..... 26

U.S. Term Limits, Inc. v. Thornton,
514 U.S. 779 (1995)..... 19

Wesberry v. Sanders,
376 U.S. 1 (1964).....7

OTHER AUTHORITIES

Erik J. Engstrom, *Stacking the States, Stacking the House: The Partisan Consequences of Congressional Redistricting in the 19th Century*, 100 AM. POL. SCI. REV. 419 (Aug. 2006).....7

House Bill 1 (2025).....*passim*

House Bill 2909 (2022).....1

Ill. Const. Article IV, § 6..... 16

Lloyd M. Short, *Congressional Redistricting in Missouri*, 25 AM. POL. SCI. REV. 634 (1931) 7

Mo. Const. Article III, § 2(c).....9

Mo. Const. Article III, § 10 12, 14

Mo. Const. Article III, § 37.....9

Mo. Const. Article III, § 38.....9

Mo. Const. Article III, § 39.....9

Mo. Const. Article III, § 409

Mo. Const. Article III, § 419

Mo. Const. Article III, § 439

Mo. Const. Article III, § 45.....*passim*

Mo. Const. Article IV, § 7 (1875) 14

Mo. Const. Article X, §109

N.H. Const. pt. II, art. 9 16

S.D. Const. Article III, § 5 15

U.S. Const. Article I, § 4, cl. 1*passim*

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STATEMENT OF FACTS

The United States Census Bureau conducted a decennial census in 2020 and certified the results to the Governor of Missouri on August 12, 2021. D4:P2-3 ¶¶ 14-15. “Thereafter, the General Assembly drew congressional districts based on the 2020 Census and passed such districts in House Bill 2909 (2022).” D4:P3 ¶ 16. The General Assembly enacted a new congressional districting map in House Bill 1 (“HB 1”)¹ on September 12, 2025, and Governor Kehoe signed it into law on September 28, 2025. D4:P2 ¶¶ 10, 12.

Appellants are qualified voters in the State of Missouri. *See* D4:P1-2 ¶¶ 1-8. They filed their Petition challenging HB 1 in the Circuit Court of Cole County on September 12, 2025. *See* D2:P1. The Petition named Secretary of State Denny Hoskins as the Defendant. *See* D2:P3 ¶¶ 14-17. Appellants’ sole claim posited that Section 45 prohibits mid-decade congressional redistricting and, thus, that the General Assembly’s enactment of HB 1 is unconstitutional. *See* D2:P5 ¶¶ 34-39. Appellants sought declaratory relief and an injunction enjoining Secretary Hoskins from using the new map to conduct any congressional election. *See* D2:P7 ¶ b.

The Missouri Republican State Committee moved to intervene in defense of HB 1 on October 31, 2025. *See* D7. The circuit court granted the motion to

¹ House Bill 1, 103rd General Assembly, Second Extraordinary Session (2025).

intervene on November 5, 2025, and tried the matter on stipulated facts and exhibits on November 12, 2025. *See* D15:P1; A1. The circuit court entered judgment in favor of Respondents and denying Appellants' claim and requested relief on December 9, 2025. *See* D15:P1-7; A1-7. Applying the principle that "the legislature has the plenary authority to enact laws except as expressly prohibited," the circuit court ruled that the General Assembly had the power to enact HB 1 because Article III, Section 45 "contains no restrictive language" on the General Assembly's authority to conduct mid-decade redistricting. D15:P4-6; A4-6.

Appellants filed their notice of appeal on December 15, 2025. *See* D16. This Court granted Appellants' motion to expedite appellate proceedings. Intervenor-Respondents now file this timely brief.

POINTS RELIED ON

I. APPELLANTS CANNOT CARRY THEIR HEAVY BURDEN OF PROVING THAT HB 1 CLEARLY AND UNDOUBTEDLY CONTRAVENES THE MISSOURI CONSTITUTION.

U.S. Const. art. I, §4, cl. 1

Mo. Const. art. III, § 45

Pearson v. Koster, 359 S.W.3d 35 (Mo. banc 2012)

Liberty Oil Co. v. Director of Revenue, 813 S.W.2d 296 (Mo. banc 1991)

II. THE COURT SHOULD NOT ORDER ANY CHANGES TO THE GENERAL ASSEMBLY'S DULY ENACTED MAP FOR THE ONGOING 2026 ELECTION.

Abbott v. League of United Latin American Citizens, 607 U.S. ----, 2025 WL 3484863 (2025)

Purcell v. Gonzalez, 549 U.S. 1 (2006)

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INTRODUCTION

Appellants cannot carry their heavy burden of proving that House Bill 1 (“HB 1”) “clearly and undoubtedly contravene[s] the constitution.” *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012) (quotations omitted). Nothing in Article III, Section 45 (“Section 45”) “expressly prohibit[s]” the General Assembly from performing mid-decade congressional redistricting. *State v. Clay*, 481 S.W.3d 531, 532 (Mo. banc 2016). In fact, the U.S. Constitution’s Elections Clause grants the General Assembly plenary power to conduct congressional redistricting, *see* U.S. Const. art. I, § 4, cl. 1 (“Elections Clause”), including to perform mid-decade redistricting, *see League of United Latin American Citizens v. Perry*, 548 U.S. 399, 415, 418-19 (2006) (plurality op.) (“LULAC”).

The Court should affirm the circuit court’s judgment dismissing the Petition and denying Appellants’ request for relief.

LEGAL STANDARD

“[T]he Constitution is not a grant but a restriction upon the powers of the legislature.” *Liberty Oil Co. v Director of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991). “Consequently, the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained by the Constitution.*” *Id.* (emphasis added); *see also Bohrer v. Toberman*, 227 S.W.2d 719, 723 (Mo. banc 1950) (General Assembly has “all the powers and

privileges which are necessary to enable it to exercise in all respects . . . its appropriate functions, except so far as it may be restrained by the express provisions of the Constitution”) (quotations omitted). Thus, “where the constitution is silent, the legislature may properly address the issue.” *State ex rel. Mathewson v. Bd. of Elec. Comm’rs of St. Louis Cnty.*, 841 S.W.2d 633, 636 (Mo. banc 1992).

Like any statute, a redistricting plan enacted by the General Assembly “is assumed to be constitutional and will not be held unconstitutional unless the plaintiff proves that it ‘clearly and undoubtedly contravene[s] the constitution.’” *Johnson*, 366 S.W.3d at 20 (quoting *Mo. Prosecuting Att’ys v. Barton Cnty.*, 311 S.W.3d 737, 740-41 (Mo. banc 2010)). Courts therefore must uphold a redistricting plan “unless it ‘plainly and palpably affronts fundamental law embodied in the constitution.’” *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741). Any “doubts will be resolved in favor of the constitutionality of the plan.” *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741); see also *Liberty Oil Co.*, 813 S.W.2d at 297 (“Deference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by any reasonable construction of that action or by any reasonable construction of the Constitution.”).

ARGUMENT

I. APPELLANTS CANNOT CARRY THEIR HEAVY BURDEN BECAUSE MID-DECADE CONGRESSIONAL REDISTRICTING IS CONSTITUTIONAL.

Section 45 does not prohibit the General Assembly from conducting mid-decade congressional redistricting. On the contrary, the Elections Clause of the U.S. Constitution vests power to conduct congressional redistricting, including mid-decade redistricting, in the General Assembly. Appellants’ challenge to HB 1 therefore fails.

A. Section 45 Does Not Expressly Prohibit Mid-Decade Congressional Redistricting.

Section 45 directs:

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

Mo. Const. art. III, § 45; A8.

Section 45 “sets out only three requirements for the redistricting of seats in Missouri for the United States House of Representatives”: Congressional districts “shall” be composed of “contiguous territory as compact and as nearly equal in population as may be.” *Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. banc 2012) (quoting Mo. Const. art. III, § 45) (cited at Opening Br. 22-23). “As long

as the districts comply with these constitutional requirements, [Missouri] court[s] shall respect the political determinations of the General Assembly.” *Id.* at 40 (emphasis added).

On its face, Section 45 places no “express[] restrain[t]” on the General Assembly’s authority to choose to redistrict mid-decade. *Liberty Oil*, 813 S.W.2d at 297. Section 45’s lone timing-related clause mandates only that the General Assembly “shall” adopt a new congressional plan after the 1950 census and every census thereafter. Mo. Const. art. III, § 45; A8. Missouri adopted Section 45 after decades of the General Assembly failing to redraw its congressional map. See Erik J. Engstrom, *Stacking the States, Stacking the House: The Partisan Consequences of Congressional Redistricting in the 19th Century*, 100 AM. POL. SCI. REV. 419, 421 (Aug. 2006); Lloyd M. Short, *Congressional Redistricting in Missouri*, 25 AM. POL. SCI. REV. 634, 639 (1931). The 1945 Constitution therefore imposed a minimum mandatory duty on the General Assembly to perform congressional redistricting after each decennial census, see Mo. Const. art. III, § 45; A8; *Am. Fed’n of State, Cnty. & Mun. Emps. v. State*, 653 S.W.3d 111, 120 (Mo. banc 2022) (“the word ‘shall’ imposes a mandatory duty”), years before the U.S. Supreme Court articulated the one-person, one-vote mandate conveying a similar duty, see, e.g., *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

Thus, Section 45's only "express[] restrain[t]" on the timing of congressional redistricting is to remove the General Assembly's prior power *not* to redistrict after each census, which it had exercised in the lead-up to the 1945 Constitution. *Liberty Oil*, 813 S.W.2d at 297. Otherwise, Section 45 reserves the timing of congressional redistricting to the General Assembly. *See id.*; *Bohrer*, 227 S.W.2d at 723; *State ex rel. Mathewson*, 841 S.W.2d at 636. In other words, that "[n]othing in Section 45" speaks to the timing of congressional redistricting other than "*when* the census is certified to the governor," Opening Br. at 15, disproves Appellants' claim and *proves* that the General Assembly has authority to engage in mid-decade congressional redistricting. Appellants cannot carry their heavy burden to prove that HB 1 "clearly and undoubtedly contravenes the constitution," *Johnson*, 366 S.W.3d at 20 (quotations omitted), when the Constitution is *silent* about the choice whether to engage in mid-decade congressional redistricting, *see Liberty Oil Co.*, 813 S.W.2d at 297; *Bohrer*, 227 S.W.2d at 723; *State ex rel. Mathewson*, 841 S.W.2d at 636; *see also* D15:P4; A4.

If more were somehow needed, the Framers of the 1945 Constitution knew how to impose "express[] prohibit[ions]" on the General Assembly's exercise of legislative power. *Clay*, 481 S.W.3d at 532. The Constitution is replete with such prohibitions framed in declarations that the General Assembly "shall have no power to" or "shall not" have certain powers. *See, e.g.*,

Mo. Const. art. III, §§ 2(c) (“shall make no law”) (campaign contributions limit); 37 (“shall have no power”) (contracting liability of the state); 38(a) (“shall have no power”) (loan or grant of funds); 39 (“shall not have power [to] . . .”) (list of limits including establishing lotteries); 40 (“shall not pass . . .”) (special laws); 41 (“shall not indirectly enact”) (special or local laws); 43 (“shall never interfere”) (sale of US government lands); art. X, §10(a) (“shall not impose”) (taxes for local purposes).

Indeed, the terms “shall have no power” and “shall not” are “words of prohibition.” *Brooks v. State*, 128 S.W.3d 844, 847 (Mo. banc 2004). That the Framers did not include those terms in Section 45—or anywhere else in Missouri law when it comes to congressional redistricting—only further underscores that the Constitution permits, rather than prohibits, mid-decade congressional redistricting by the General Assembly.

B. Appellants Identify No Express Prohibition On Mid-Decade Redistricting.

Appellants and their *amici* offer four main arguments in an attempt to read a prohibition on mid-decade congressional redistricting into Section 45. All fail.

First, Appellants’ main thrust posits that, by “requir[ing] the General Assembly to draw congressional districts *when* the census is certified to the governor,” Section 45 “implies that” the General Assembly may not do so at

any other time. Opening Br. 15; *see also id.* at 21-22. But Appellants' premise—that the Constitution can strip the General Assembly of legislative authority by “impli[cation],” *id.* at 15—is wrong as a matter of a long line of this Court's precedents. *See Liberty Oil Co.*, 813 S.W.2d at 297; *see also Alpert v. State*, 543 S.W.3d 589, 596 (Mo. banc 2018); *Clay*, 481 S.W.3d at 532-33; *State ex rel. Mathewson*, 841 S.W.2d at 636; *Bohrer*, 227 S.W.2d at 723; *accord* D15:P3-4; A3-4; *supra* part I.A.

None of the cases Appellants and *amici* cite overrides the *Liberty Oil* rule that constitutional limitations on the General Assembly's legislative power must be express. Five predate the 1945 Constitution and Section 45, have not been cited by this Court for decades to support the proposition that constitutional limitations on legislative power may be implied, and have been superseded by the weight of the Court's recent decisions to the contrary. *See, e.g., State v. Shelby*, 64 S.W.2d 269, 271 (Mo. banc 1933) (cited at Opening Br. 16); *State ex rel. City of St. Louis v. Seibert*, 27 S.W. 624 (Mo. banc 1894) (ACLU Br. 12-13); *Ex parte Arnold*, 30 S.W. 768 (Mo. banc 1895) (ACLU Br. 13); *State ex inf. Shartel v. Brunk*, 34 S.W.2d 94 (Mo. banc 1930) (ACLU Br. 13); *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932) (ACLU Br. 12).

Three other cases cited by Appellants and their *amici*, *Pestka v. State*, *Rebman v. Parson*, and *Fowler v. Missouri Sheriffs' Retirement System*, actually *confirm* the exacting standard Appellants must satisfy, explaining

that Missouri courts will not hold a legislative act unconstitutional unless it “clearly and undoubtedly violates the constitutional limitation” and where “no other reasonable construction [of the constitutional provision] is possible.” *Pestka*, 493 S.W.3d 405, 409 (Mo. banc 2016) (quotations omitted) (Opening Br. 16-17); *see also Rebman*, 576 S.W.3d 605, 610 (Mo. banc 2019) (similar) (Opening Br. 18); *Fowler*, 623 S.W.3d 578, 584 (Mo. banc 2021) (similar) (ACLU Br. 14-15); *see also Pestka*, 493 S.W.3d at 414 (Russell, J., dissenting) (citing *Liberty Oil* and explaining that restrictions on the legislature’s authority must be “express[]”). One of those cases, *Pestka*, *did* involve an express limitation on the General Assembly’s veto override authority. *See* 493 S.W.3d at 409-13. *Rebman* was a separation of powers case; the Court held that the separation of powers precludes the General Assembly from effectively requiring the executive branch to remove a particular administrative law judge. *See* 576 S.W.3d at 610-13.

Furthermore, *Fowler* (ACLU Br. 14-15) and *Harrison v. Monroe County*, 716 S.W.2d 263, 267 (Mo. banc 1986) (ACLU Br. 15), concerned the public’s express constitutional right to open courts in Article I, Section 14 which, as the Court held, obviously limits the General Assembly’s legislative authority. *See Fowler*, 623 S.W.3d at 584; *Harrison*, 716 S.W.2d at 267. And *Conservation Commission v. Bailey*, 669 S.W.3d 61 (Mo. banc 2023) (Opening Br. 17), concerned an express constitutional delegation of power to the Conservation

Commission that, this Court held, “unambiguously” did not “leave any room for the General Assembly to interfere with the Conservation Commission’s performance of its constitutional purposes,” *id.* at 68.

Second, Appellants suggest that Article III, Section 10, which provides that *state* house and senate “districts may be altered from time to time as public convenience may require,” somehow means that *congressional* redistricting “is authorized only in conjunction with the certification of the census.” Opening Br. 19-20. This argument fails. The inclusion of *permissive* language in Section 10 does not create an “express[]” *prohibition* on mid-decade congressional redistricting in Section 45. *Liberty Oil Co.*, 813 S.W.2d at 297. As the circuit court correctly observed, “there is no restrictive language in Section 45, and conceivably the framers could have had a number of reasons to not specifically address multiple redistricting’s in Section 45.” D15:P6; A6.

In fact, there is a straightforward explanation for the difference in language between Section 10 and Section 45. State legislative redistricting under Section 10 is conducted by “constitutionally created commission[s] of limited authority,” not the General Assembly. *State ex rel. Teichman v. Carnahan*, 357 S.W.3d 601, 607 (Mo. banc 2012). Unlike the General Assembly, commissions have no inherent legislative authority: they “only ha[ve] the authority expressly granted to [them] by the language of the constitution and implicitly necessary to carry out [their] express duties.” *Id.*

Thus, Section 10's "from time to time" language was necessary to *grant* the commissions authority to redistrict (while limiting when they may do so to the requirements of "public convenience"). Section 10's grant of authority to otherwise powerless commissions simply cannot be read to convey in Section 45 an express prohibition on the General Assembly's inherent legislative authority to conduct mid-decade congressional redistricting. *See, e.g., Liberty Oil Co.*, 813 S.W.2d at 297; D15:P6; A6.

Third, Appellants and *amici* point to three decisions of this Court that, in their view, limit redistricting to once per decade. *See* Opening Br. 7. They are mistaken. The first decision is *Gordon*, 49 S.W.2d 146 (ACLU Br. 12, 16-17), which in addition to predating the 1945 Constitution and Section 45, *supra* at 10, touched on state legislative redistricting, not congressional redistricting, *see* 49 S.W.2d at 147. In any event, this Court in *Gordon* declined to hold that the 1875 Constitution limited the General Assembly to redrawing state legislative districts "just once and upon the basis of the census" because "it was [not] necessary . . . to pass judgment" on that question. *Id.* at 148. And even if that Court had so held, its holding would be unilluminating here. The 1875 Constitution operative in *Gordon* directed that state legislative redistricting plans would remain in place "until the next decennial census" and would be changed "at the first session of the General Assembly after each such census,"

Mo. Const. art. IV, § 7 (1875)—language conspicuously absent from Section 45, compare Mo. Const. art. III, § 45; A8.

The second decision, *Preisler v. Doherty*, likewise concerned state legislative redistricting. By the time of *Preisler*, state legislative redistricting was conducted by a commission and local officials, not the General Assembly. See 284 S.W.2d 427 (Mo. banc 1955). As the Court explained, a commission is not “a coordinate branch of [the] government . . . [with] all of the legislative power of the State except that denied it by express limitations of the Constitution.” *Id.* at 431-32; see also *id.* (describing the Commissioners as “administrative officers who have been delegated very limited legislative power for a single purpose”). *Preisler* thus has no bearing on whether the Constitution contains an “express[]” restraint on mid-decade redistricting by the General Assembly. *Liberty Oil Co.*, 813 S.W.2d at 297. Even so, *Preisler* does not prohibit the commissions from conducting mid-decade redistricting; the plain text of Section 10 permits them to do so “from time to time as public convenience may require.” Mo. Const. art. III, § 10.

The third decision, *Pearson*, predicted that the 2012 congressional plan would “take effect for the 2012 election and remain in place for the next decade or until a Census shows that the districts should change.” 359 S.W.3d at 38-39. If anything, however, *Pearson* undermines Appellants’ claim and supports Respondents’ reading of the Constitution. *Pearson* did not address the

question of mid-decade congressional redistricting, much less read the Constitution to forbid it. *See* 359 S.W.3d at 38-39; D15:P5-6; A5-6. In fact, *Pearson* recognized that Section 45 “sets out only three requirements for” congressional redistricting—none of which precludes mid-decade redistricting—and that “[a]s long as the districts comply with these constitutional requirements, [Missouri] court[s] *shall* respect the political determinations of the General Assembly.” *Id.* at 38, 40 (emphasis added). Thus, *Pearson* confirms that the choice whether to conduct mid-decade congressional redistricting is precisely the type of “political question” the Constitution entrusts to the General Assembly. *Id.* at 39.

Fourth, Appellants cite decisions from other state courts that limit redistricting “to once every ten years.” Opening Br. 23. Those decisions have no precedential weight in Missouri and no persuasive value in this case.

Several of the out-of-state cases interpreted express constitutional language materially different from the text of Section 45. For example, Appellants cite *In re Certification of a Question of Law from U.S. Dist. Court, Dist. of South Dakota, Western Division*, 615 N.W.2d 590, 593 (S.D. 2000); A38, where the South Dakota Supreme Court was reviewing language in the South Dakota Constitution that restricted redistricting to “1983, and in 1991, and every ten years after 1991.” *Id.* (citing S.D. Const. Art. III, § 5). The New Hampshire and Illinois decisions cited by amicus ACLU, *see* ACLU Br. 27-28,

likewise evaluated constitutional provisions explicitly restricting redistricting to “every ten years,” see *In re Below*, 855 A.2d 459, 469 (N.H. 2004) (citing (N.H. Const. pt. II, art. 9); *People ex rel. Mooney v. Hutchinson*, 50 N.E. 599, 601 (Ill. 1898) (citing Ill. Const. art. IV, § 6). And the Alabama decision evaluated express prohibitory language that once an apportionment is made, it “shall not be subject to alteration until the next session of the Legislature after the next decennial census of the United States shall have been taken.” *Opinion of the Justices*, 47 So. 2d 714, 716 (Ala. 1950). Section 45, by contrast, does not restrict the General Assembly’s congressional redistricting to any time or years. See Mo. Const. art. III, § 45; A8.

More fundamentally, none of these out-of-state decisions is governed by the *Liberty Oil* rule, so none grappled with the heavy burden of proof required in Missouri to displace the General Authority’s plenary authority to enact laws. *Liberty Oil Co.*, 813 S.W.2d at 297. Indeed, *Mooney* explained that in Illinois “it is *not essential*, in order that the constitution may operate as a prohibition, that it shall contain a specific provision that apportionments shall not be made otherwise than according to its provisions.” 50 N.E. at 601 (emphasis added). Missouri law says the opposite. See, e.g., *Clay*, 481 S.W.3d at 532-33; *Liberty Oil Co.*, 813 S.W.2d at 297. The remainder of Appellants’ citations follow the same pattern, relying on inference rather than express prohibition. See, e.g., *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1238 (Colo. 2003); A21

(inferring “by implication” that “when the constitution specifies a timeframe for redistricting . . . it forbids performing that task at other times”); *Legislature v. Deukmejian*, 669 P.2d 17, 22-24 (Cal. 1983); A52 (relying on “historical understanding” and implied limitations as opposed to an express-statement rule); *Harris v. Shanahan*, 387 P.2d 771, 779-80 (Kan. 1963) (relying on “general rule” among other states as opposed to express statement in Kansas law); *Lamson v. Sec’y of Commonwealth*, 168 N.E.2d 480, 483-84 (Mass. 1960) (examining the “dominating idea” of the Massachusetts Constitution instead of requiring an express prohibition); *State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416, 424 (Wis. 1953) (citing *Slauson v. City of Racine*, 13 Wis. 398, 401 (1861), where the court acknowledged that “there is no express prohibition” in the Wisconsin Constitution “against an alteration of assembly districts”). Because none of these decisions required an express constitutional prohibition of the kind required in Missouri, they shed no light on the interpretation of Section 45.

Moreover, as amici acknowledge, several other state courts have deemed mid-decade redistricting constitutional. See ACLU Br. 29-30. In *Blum v. Schrader*, 637 S.E.2d 396, 399 (Ga. 2006), the Georgia Supreme Court explained that “[t]he frequency of reapportionment between censuses is solely a matter of unfettered legislative discretion, unrestricted by any state constitutional provision.” *Id.* at 399. And the Texas Supreme Court recently

held that the Texas Constitution’s specified time for legislative redistricting “provides a mechanism to ensure that the Legislature exercises this power in a timely fashion following each decennial census, but it neither expressly nor impliedly forecloses this power from being exercised at another time.” *Abbott v. Mexican Am. Legis. Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 702 (Tex. 2022). These decisions confirm that Respondents’ construction of Section 45 is more than “reasonable.” *Liberty Oil Co.*, 813 S.W.2d at 297.

In all events, even if the Court concludes that Appellants have raised “doubt” regarding the General Assembly’s authority to conduct mid-decade congressional redistricting, it must resolve that doubt in favor of the General Assembly and HB 1’s constitutionality. *Johnson*, 366 S.W.3d at 20; *see also Clay*, 481 S.W.3d at 537. The Court should affirm.

C. The Elections Clause Authorizes The General Assembly To Conduct Mid-Decade Congressional Redistricting.

Appellants’ claim fails for another reason as well: Construing Section 45 to preclude mid-decade redistricting would violate the U.S. Constitution’s Elections Clause. Appellants’ brief does not even *mention* the Clause, much less explain how Appellants’ claim survives it.

Because federal offices “aris[e] from the Constitution itself,” state authority “to regulate election to those offices . . . ‘had to be delegated to, rather than reserved by, the States.’” *Cook v. Gralike*, 531 U.S. 510, 522 (2001)

(quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804-05 (1995)); see also *State ex rel. Carroll v. Becker*, 45 S.W.2d 533, 536 (Mo. banc 1932) (“So far as the state has authority to divide the state into congressional districts, it derives that authority from the Federal Constitution and the acts of Congress.”) (cited at ACLU Br. 11). The Elections Clause effects that delegation by directing that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof,” subject to a grant of authority to Congress to “make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1. The Elections Clause thus vests the Missouri General Assembly with authority “to provide a complete code for congressional elections.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

That grant of authority includes the power to conduct mid-decade redistricting. “[T]he Constitution and Congress state no explicit prohibition” on “mid-decade redistricting to change districts drawn earlier in conformance with a decennial census.” *LULAC*, 548 U.S. at 415 (plurality op.). Moreover, “[t]he text and structure of the Constitution and [U.S. Supreme Court] case law indicate there is nothing inherently suspect about a legislature’s decision to re[district] mid-decade.” *Id.* at 418-19. The Missouri General Assembly has authority under the Elections Clause to enact mid-decade congressional

redistricting plans like HB 1. *See, e.g.*, U.S. Const. art. I, § 4, cl. 1; *LULAC*, 548 U.S. at 414-15 (plurality op.); *Smiley*, 285 U.S. at 366.

For their part, courts “must respect” the Framers’ “deliberate choice” to “expressly vest[] power” to set federal election rules “in ‘the Legislature’ of each State.” *Moore v. Harper*, 600 U.S. 1, 34 (2023). Indeed, the Elections Clause imposes significant limitations on state courts’ power to review, much less to set aside, under state law a state legislature’s statutes governing federal elections, including its congressional redistricting plans. *See id.*; *see also* THE FEDERALIST NO. 59 (Alexander Hamilton) (C. Rossiter ed., 1961) (explaining that the Elections Clause vests primary responsibility for election regulation in state legislatures). Accordingly, state courts do not have “free rein” to set aside such laws or redistricting plans. *Moore*, 600 U.S. at 34. Instead, they must abide by “the ordinary bounds of judicial review” when applying state constitutions in this context. *Id.* at 36. A state court thus violates the Elections Clause when it “transgress[es] the ordinary bounds of judicial review such that [it] arrogate[s] . . . the power vested in [the General Assembly] to regulate federal elections.” *Id.*

Construing the Missouri Constitution to preclude the General Assembly from engaging in mid-decade congressional redistricting would constitute such a violation. After all, Missouri law is clear that “the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly*

restrained by the Constitution,” *Liberty Oil Co.*, 813 S.W.2d at 297 (emphasis added)—and nothing in Section 45 or any other provision of the Missouri Constitution purports to prohibit or restrain the General Assembly’s authority to conduct mid-decade congressional redistricting, *see supra* Part I.A. Arriving at the conclusion that the Missouri Constitution somehow *does* effect such a prohibition would grossly depart from governing Missouri law and, thus, “transgress the ordinary bounds of judicial review” in violation of the Elections Clause. *Moore*, 600 U.S. at 36. Appellants’ claim fails for this reason as well.

The ACLU misses the mark when it says that the U.S. Supreme Court and this Court have “squarely rejected” Intervenor-Respondent’s Elections Clause arguments. ACLU Br. 32. To be sure, the Elections Clause “does not empower the General Assembly to ignore the state constitution” or foreclose “judicial review . . . [of] congressional redistricting” plans. ACLU Br. at 32; *see also Moore*, 600 U.S. at 31-32; *Cook*, 531 U.S. at 522-23; *Carroll*, 45 S.W.2d at 534, 537. But Intervenor-Respondents have never argued otherwise. The question is not whether the General Assembly must comply with the Missouri Constitution, but whether the Missouri Constitution actually prohibits mid-decade congressional redistricting. It does not. *See supra* Part I.A. Section 45 contains no such prohibition and no Missouri precedent has ever so held. Appellants and *amici* ask this Court to infer a prohibition from constitutional silence. But doing so would “transgress the ordinary bounds of judicial review”

in Missouri, *Moore*, 600 U.S. at 36, because constitutional limitations on the General Assembly's legislative power must be "express." *Liberty Oil Co.*, 813 S.W.2d at 297; *see also Alpert*, 543 S.W.3d at 596; *Clay*, 481 S.W.3d at 532-33; *State ex rel. Mathewson*, 841 S.W.2d at 636; *Bohrer*, 227 S.W.2d at 723. Far from foreclosing Intervenor-Respondent's Elections Clause argument, *Moore* supplies the very foundation for it.

II. THE COURT SHOULD NOT ORDER ANY CHANGES TO THE GENERAL ASSEMBLY'S DULY ENACTED MAP FOR THE ONGOING 2026 ELECTION.

Finally, in all events, the Court should not order any changes to the General Assembly's duly enacted map for the ongoing 2026 election. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). The February 24 opening of candidate filing is rapidly approaching as of the date of this brief. Any judicially ordered changes to the map at this late juncture would harm candidates preparing for the upcoming primary elections, "result in voter confusion and consequent incentive to remain away from the polls," and erode the "[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy." *Id.* at 4-5.

Indeed, the U.S. Supreme Court recently stayed a three-judge federal district court's order enjoining use of Texas's 2025 congressional redistricting plan and requiring the State to revert to its 2022 plan. *Abbott v. League of United Latin American Citizens*, 607 U.S. ----, 2025 WL 3484863, at *1 (2025).

The district court issued its injunction shortly after the opening of candidate filing, approximately four months before the primary elections, and eleven months before the November 2026 general election. *See League of United Latin Am. Citizens v. Abbott*, No. 3:21-cv-259, 2025 WL 3215715 (W.D. Tex. Nov. 18, 2025). The U.S. Supreme Court issued the stay because the district court had “improperly inserted itself into an active primary campaign, causing much confusion” with its late-breaking injunction. *Abbott*, 2025 WL 3484863, at *1; *see Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir. 2022) (per curiam), *stay issued sub nom.*, *Ardoin v. Robinson*, 142 S. Ct. 2892, 2892-93 (June 28, 2022) (staying injunction of congressional redistricting plan issued five months before primary elections); *Callais v. Landry*, 732 F. Supp. 3d 574, 613-14 (W.D. La. Apr. 30, 2024), *stay issued sub nom.*, *Robinson v. Callais*, 144 S. Ct. 1171 (May 15, 2024) (staying injunction of congressional redistricting plan issued more than six months before the next election).

It is a “basic tenet of election law” that “[w]hen an election is close at hand, the rules of the road should be clear and settled.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (mem.) (Kavanaugh, J., concurring). “[L]ate-breaking, court-ordered rule changes can ‘result in voter confusion and consequent incentive to remain away from the polls,’ and thus undermine the ‘[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy.’” *Bost v. Ill. State*

Bd. of Elections, 607 U.S. ----, 2026 WL 96707, at *4 (2026) (quoting *Purcell*, 549 U.S. at 4-5); see also *Abbott*, 607 U.S. ----, 2025 WL 3484863, at *1 (2025). After all, “running a statewide election is a complicated endeavor,” involving “a host of difficult decisions about how best to structure and conduct the election.” *Democratic Nat’l Committee*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). And those decisions must then be communicated to the “state and local officials” tasked with implementing them, who in turn “must communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting.” *Id.* When a “court alters election laws near an election,” *id.*, candidates, voters, and even voters are left scrambling to understand the court-imposed alteration, “inviting confusion and chaos and eroding public confidence in electoral outcomes,” *id.* at 30 (Gorsuch, J., concurring).

These considerations counsel judicial restraint and deference to the democratic process on the eve of an election. The legislative power of each state is responsible for redrawing its Congressional districts. See *supra* Part I.C; U.S. Const. art. I, § 4, cl. 1; see also *Ariz. State Legis. v. Ariz. Ind. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). This allocation makes practical sense. Legislatures “enjoy far greater resources for research and factfinding” than courts, and “make policy and bring to bear the collective wisdom of the whole people when they do, while courts dispense the judgment of only a single

person or a handful.” *Democratic Nat’l Comm.*, 141 S. Ct. at 29 (Gorsuch, J., concurring). “It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a . . . court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent.” *Id.* at 31 (Kavanaugh, J., concurring).

This case presents the scenario *Purcell* was designed to prevent. Candidates have already started preparing to file as soon as the filing period opens on February 24 (or shortly thereafter). Those candidates—as well as the voters, campaigns, political parties, and volunteers who support them—are thus actively preparing for and working toward the July 8 voter registration deadline and the August 4 primary election. See Missouri Secretary of State, 2026 Missouri Election Calendar.²

Invalidating HB 1 at this juncture or even later would cause severe disruption. Candidates would find themselves running in redrawn districts against different opponents, potentially including incumbents or challengers they never anticipated facing. Support cultivated among volunteers and voters, and endorsements painstakingly secured from local officials and community leaders, might carry little weight, become useless, or even become

² Available at <https://www.sos.mo.gov/elections/calendar/2026cal>.

liabilities among a new electorate. In short, candidates and their supporters would be forced to mount an entirely “new and different campaign in a short time frame.” *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006) (quotations omitted). And voters would find themselves in new districts, facing confusion about which district they reside in and confronting unfamiliar candidates. *See Bost*, 2026 WL 96707, at *4; *see also Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (explaining that “even heroic efforts likely would not be enough to avoid chaos and confusion”).

The Court should follow the settled approach of the United States Supreme Court and decline to order any changes to the General Assembly’s duly enacted map in the few months before the upcoming primary elections. *See Abbott*, 2025 WL 3484863, at *1; *Ardoin*, 142 S. Ct. at 2892-93; *Robinson*, 144 S. Ct. 1171. Such an injunction would “lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). To “protec[t] the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election,” *Democratic Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring), this Court should decline to order any changes to HB 1 map for the 2026 election.

CONCLUSION

The Court should affirm the circuit court's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a copy of Intervenor-Respondent's brief was filed by the Court's electronic filing system on February 9, 2026, for service electronically on all counsel of record. This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 5,810, excluding the cover, table of contents, table of authorities, signature block, appendix, and this certificate. The font is Century Schoolbook 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

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