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IN THE SUPREME COURT OF MISSOURI

No. SC101412

MERRIE SUZANNE LUTHER, *et al.*,
Appellants,

v.

SECRETARY OF STATE DENNY HOSKINS, *et al.*,
Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Christopher K. Limbaugh

APPELLANTS' REPLY BRIEF

STINSON LLP

Charles W. Hatfield, No. 40363
Alexander C. Barrett, No. 68695
Alixandra S. Cossette, No. 68114
Greta M. Bax, No. 73354
230 W. McCarty Street
Jefferson City, Missouri 65101
573.636.6263 (phone)
573.636.6231 (fax)
chuck.hatfield@stinson.com
alexander.barrett@stinson.com
alixandra.cossette@stinson.com
greta.bax@stinson.com

MISSOURI VOTER PROTECTION COALITION

Denise D. Lieberman, No. 47013
6047 Waterman Blvd.
St. Louis, MO 63112
(314) 780-1833
denise@movpc.org

Attorneys for Appellants

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ARGUMENT

The Court has now received a good deal of briefing covering several issues the Court may want to consider when deciding this case. The central issue, though, is straightforward. Plaintiffs, and their aligned amici, contend that Article III, Section 45's pronouncement of "when" the legislature shall redistrict is a limitation on the legislature's authority. The Secretary and Intervenor urge the Court not to find limits on legislative authority absent express language of limitation.

The Secretary's contention appears to be that the entirety of Missouri government (including this Court) has simply overlooked authority to conduct mid-decade redistricting for eighty or more years. That's not the case. There is a reason redistricting has only happened once every ten years (absent a court order). That's because, as this Court said just ten years after the 1945 Constitution was adopted, "only one valid apportionment is intended for each decennial period" because "the decennial census is made the basis of reappointment." *Preisler v. Doherty*, 284 S.W.2d 427, 436-37 (Mo. banc 1955). Respondents are just wrong that the Constitution must contain magic language expressly prohibiting mid-decade redistricting.

Plaintiffs address that issue in the first part of their Reply. Plaintiffs otherwise direct the Court to their Opening Brief and the briefs of amici in support of Plaintiffs for further analysis of the various issues raised by Respondents. The balance of Plaintiffs' Reply addresses Respondents'

contentions regarding the Elections Clause and the *Purcell* Principle because those were not addressed in the opening brief.

I. There is No "Plenary Power Doctrine" and it is Not an Interpretive Canon

The Secretary claims the General Assembly has the authority to redistrict whenever and as often as it wants because of the "plenary power doctrine." SOS Br. at 23. There is no such doctrine – not a single reported case in Missouri refers to a "plenary power doctrine."[1] The phrase "plenary power" simply refers to the General Assembly's power to legislate. It describes the distinction between the powers of the Missouri legislature as compared to its federal counterpart. "Unlike the Congress of the United States, which has only that power delegated by the United States Constitution, the legislative power of Missouri's General Assembly, under Article III, Section 1 of the Missouri Constitution is plenary, unless, of course, it is limited by some other provision of the constitution." *Bd. of Educ. of City of St. Louis v. City of St. Louis*, 879 S.W.2d 530, 532-33 (Mo. banc 1994).

[1] Similarly, Intervenor refers to the "*Liberty Oil* rule." Intervenor Br. at 10. *Liberty Oil* has been cited a total of three times since it was decided in 1991. One of those citations appears in the *dissent* in *Pestka v. State*, 493 S.W.3d 405 (Mo. banc 2016), which criticized the majority opinion for concluding the legislature lacked authority to override a veto in the absence of an "explicit limitation" in Article III, Section 32. *Id.* at 414 (Russell, J., dissenting).

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Whether there is such a limitation in Article III, Section 45 is the question. Helpfully, until the lottery provisions were adopted in the 1980s, Section 45 was housed in the portion of Article III designated "Limitation of Legislative Power."[2] The phrase "plenary power" does not, contrary to Respondents' arguments, imbue the General Assembly with authority to conduct mid-decade redistricting. Instead, the Court should conduct its traditional analysis of the meaning of constitutional phrases.

A. The Phrase "Plenary Power" Just Describes the Contours of State Legislative Authority

There can be no argument that "[t]he legislative power shall be vested in a senate and house of representatives to be styled 'The General Assembly of the State of Missouri.'" *State Auditor v. Joint Comm. on Legislative Research,* 956 S.W.2d 228, 230–31 (Mo. banc 1997), *as modified on denial of reh'g* (Nov. 25, 1997) (citing Mo. Const. art. III, § 1). It is the responsibility of the legislature to pass laws. "A careful reading of article [III] shows that the constitution assigns the General Assembly the single power and sole responsibility to make, amend and repeal laws for Missouri and to have the necessary power to accomplish its law-making responsibility." *Id.*

[2] Arguably, Sections 36-48 of Article III are all limitations on legislative power. The addition of the "State Lottery" provisions (Sections 39(b)-(f)) broke up the heading, but a review of the substance reveals these sections to also be limitations on legislative authority.

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But *how* the legislature exercises this power is described in the Constitution. "All the power to make laws in the name and with the authority of its constituent elements—its citizens en masse—is lodged in the temporary Legislature, subject only to the restraining clauses of the Constitutions of the state and nation." *Id.* (cleaned up). No other branch of government (or other entity) is empowered with the authority to make laws in Missouri. Thus, "[t]he power of the legislature to make laws is plenary within its sphere of responsibility." *Id.* "Within its sphere of responsibility" is a very important qualifier. The Constitution describes the contours of this sphere. And ample precedent explains how to read the Constitution and ascertain the scope of legislative power. The Court should not depart from those principles here.

B. Regardless of "Plenary Power," The Constitution Is Always Interpreted by Looking at its Plain Language

The Missouri Constitution is interpreted by looking at its plain language. The goal of constitutional interpretation is to "ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted." *C.S. v. Mo. State Highway Patrol Criminal Justice Info. Serv.*, 716 S.W.3d 264, 267 (Mo. banc 2025) (cleaned up). "Every word contained in a constitutional provision has effect, meaning, and is not mere surplusage." *Id.* (cleaned up). A constitutional provision "should be considered as a whole, with the primary objectives of the provision in issue in mind." *Id.* (cleaned up).

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1. *The Constitution contains Implied Restrictions on the General Assembly's Authority*

But Respondents take a different road. Rather than looking at the language of Article III, Section 45, Respondents ask this Court to create, for the first time in Missouri, a rule that there must be an explicit statement to limit the legislature's power. *See* SOS Br. at 29; Intervenor Br. at 7-8. That's not the law. *See State ex rel. Gordon v. Becker*, 49 S.W.2d 146, 147 (Mo. banc 1932)("[T]he general grant of the legislative authority of the state...is likewise subject to all the limitations, express or implied, contained in the Constitution."). Restrictions on the General Assembly's lawmaking power may either "be expressed in the Constitution or *clearly implied* by its provisions." *State v. Shelby,* 64 S.W.2d 269, 271 (Mo. banc 1933) (emphasis added).

This Court has recognized implied restrictions on the General Assembly's power on several occasions. In *Bohrer v. Toberman*, 227 S.W.2d 719 (Mo banc. 1950), for example, the Court explained: "It is apparent from a reading of § 52, supra, that a limitation upon the power of the Legislature to order a measure referred to the people (as distinguished from an order for a special election at which to determine such referendum) arises from the use of the words 'as other bills are enacted.'" *Id.* at 722. "This language means that legislative power to order such a referendum in any other way than by bill is denied. It may be said that . . . such power would undoubtedly reside in the legislative branch . . . in the absence of this or some other restraint placed thereon by the Constitution." *Id.*

Bohrer was discussing Article III, Section 52(a). Notably, that provision does *not* "explicitly" bar the legislature from ordering a referendum by means other than a bill. Indeed, it states that a referendum "*may* be ordered . . . as other bills are enacted." Mo. Const. art. III, § 52(a). "May" is usually construed as a permissive word. *See State ex rel. Nixon v. Boone,* 927 S.W.2d 892, 897 (Mo. App. 1996). So, under Respondents' "plenary power doctrine," the legislature would be free to order a referendum by means other than a bill because there is no explicit prohibition on doing so. But that can't be.

More recently, in *Pestka v. State*, 493 S.W.3d 405 (Mo. banc 2016), this Court recognized the legislature's "plenary power," *id.* at 408, but nonetheless concluded that Article III, Section 32 "clearly and undoubtedly" prohibited the legislature's attempt to override a veto based on the text and history of the provision, *id.* at 409-13. This Court found an implied, rather than explicit, restriction on the legislature's authority. Indeed, the *Pestka* dissent makes this very point. *Id.* at 414 (Russell, J., dissenting).

There are other examples. *See, e.g.*, *Conservation Commission v. Bailey,* 669 S.W.3d 61, 66 (Mo. banc 2023); *Rebman v. Parson,* 576 S.W.3d 605 (Mo. banc 2019). And this Court has long recognized that "[e]very positive direction contains an implication against anything contrary to it, or which would frustrate or disappoint the purpose of that provision," *State v. Hamey*, 65 S.W. 946, 948 (Mo. 1901) (quotations omitted). *Bohrer* and *Pestka* are simply applications of that principle. Adopting Respondents' view on constitutional interpretation

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would upend the application of numerous constitutional provisions and undermine this Court's precedent.

The Secretary does not stop at arguing there can never be implied limitations on the legislature's authority. He goes further, suggesting that for the legislature's power to be limited, there must be "words of prohibition," such as "shall not" or "shall have no power." SOS Br. at 29-31. That also is not how we read the Constitution. The Constitution contains what anyone would recognize as clear limitations on the legislature's authority without using "words of prohibition."

For example, the Constitution does not use "words of prohibition" to prohibit the General Assembly from appropriating gaming revenues to anything other than education. Mo. Const. art. III, § 39(d) ("All state revenues derived from the conduct of all gaming activities as are now or hereafter authorized by this constitution or by law, unless otherwise provided by law on the effective date of this section, shall be appropriated beginning July 1, 1993, solely for the public institutions of elementary, secondary and higher education[.]"). The language of Article III, Section 39(d), however, is interpreted and understood not just to dedicate gaming revenue to education, but to *prohibit* the General Assembly from appropriating the funds otherwise. It is interpreted that way because that's what its plain language means, "word of prohibition" or not.

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2. *Article III, Section 45 Clearly Restricts the General Assembly to Redistricting Only After Certification of the Census*

Article III, Section 45 contains an implied restriction on the legislature's redistricting power. Section 45 includes a directive to the General Assembly about "when" to conduct redistricting and otherwise limits redistricting to the parameters, including timing, outlined in the Constitution. Respondents complain that there is no explicit temporal restriction on redistricting. SOS Br. at 30; Intervenor Br. at 8. But that ignores the word "when" in Section 45. Respondents offer no explanation of how to interpret that word in the context of the entirety of Section 45. For the reasons addressed in Plaintiffs' opening brief and the briefs of amici, the logical interpretation is that "when" sets the only time at which redistricting can occur. *See* App. Br. at 15.

Respondents nonetheless claim Article III, Section 45 imposes only three limitations on redistricting (compactness, contiguity, and population equality). SOS Br. at 31; Intervenor Br. at 15. But that's a misreading of Section 45 and this Court's decision in *Pearson v. Koster*. As Respondents appear to acknowledge, the three limitations discussed in *Pearson* relate to the *districts themselves,* and the General Assembly's political determinations as to what those districts should look like. This case, by contrast, is about *when* the legislature can draw districts in the first place. That issue was mentioned in *Pearson* (districts "remain in place for the next decade or until a census shows that the district should change,"

Pearson v. Koster, 359 S.W.3d 35, 37-38 (Mo. banc 2012)), but has not been specifically revisited since *Preisler v. Doherty*, 284 S.W.2d 427 (Mo. banc 1955).

No doubt political figures through the decades have considered redrawing congressional districts to favor the political winds of the time. Whether the General Assembly can redistrict more than once per census period is not a political consideration contemplated by Section 45 or this Court's precedents. If the General Assembly would like to reconfigure districts to favor one political party or another, that is a political consideration it is entitled to make when it draws congressional districts *at the time of the census* (assuming such districts otherwise comply with the compactness, contiguity, and population equality requirements). *See* Mo. Const. art. III, § 45. But it is not within the power of the General Assembly to simply ignore the timing limitation imposed by Section 45.

II. Reading Article III, Section 45 to Prohibit Mid-Decade Redistricting Avoids Absurdity and Chaos

The Secretary pushes for a deviation from this Court's traditional analysis of constitutional language. He tries to distinguish *Pestka* by claiming the result was necessary to "avoid absurdity and rendering constitutional text surplusage." SOS Br. at 40. It is the same here.

It would also lead to absurdity to interpret Article III, Section 45 to allow redistricting at any time, subject only to the whims of the General Assembly. Rather than the stability inherent in redistricting when the census is available,

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redistricting whenever the political winds blow would sow chaos and uncertainty for Missouri elections.

As this Court is well aware, in addition to the political angst, redistricting usually brings with it legal challenges. *See, e.g.*, *Faatz v. Ashcroft*, 685 S.W.3d 388 (Mo. banc 2024); *Pearson*, 359 S.W.3d 35; *Johnson v. State*, 366 S.W.3d 11 (Mo. banc 2012); *State ex rel. Teichman v. Carnahan,* 357 S.W.3d 601 (Mo. banc 2012); *Preisler v. Hearnes*, 362 S.W.2d 552 (Mo. banc 1962). There are several challenges to the substance of the maps drawn by HB1 pending *right now*. *See Healey v. Missouri,* No. 2516-CV31273 (Jackson County); *Wise v. State of Missouri,* No. 2516-CV29597 (Jackson County). If the General Assembly were authorized to draw new districts any time it wanted, there would be a never-ending cycle of map drawing and litigation.

One does not need to imagine the difficulty in administering elections when there are constant challenges to a never-ending set of new maps. That's what happened in the 1960s (albeit for different reasons). As the Secretary points out, there was a whole series of maps and legal challenges to those maps. The General Assembly failed to get it right and courts had to step in to avoid the implementation of legally suspect maps.[3]

[3] Contrary to the Secretary's claim, those challenges did not stem from mid-decade redistricting. When those maps were invalidated by the courts, it was as if the maps never existed in the first place. *City of Normandy v. Kehoe*, 709 S.W.3d 327, 334 (Mo. banc 2025). The General Assembly got a do-over (in fact more than one) to try to enact a constitutional map.

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And it wouldn't just be chaos for election administration. Respondents have no response to the inherent instability this would cause for residents of Missouri. *See* App. Br. at 27. It is absurd to think that the framers of the Constitution (and the voters who adopted it) would create a system that would allow the legislature to consistently sever the relationship between residents and their representatives. Instead, the framers intended that—like the emergence of cicadas—congressional redistricting would occur only periodically, on a set schedule. *See* Wise Amicus Br. at 20-26. Only Plaintiffs' interpretation maintains stability for Missourians and ensures their representation in Congress is meaningful.

III. The Elections Clause Is Irrelevant

Respondents contend the Elections Clause of the United States Constitution gives the legislature authority to engage in mid-decade redistricting, and Intervenor criticizes Plaintiffs for not discussing the Elections Clause in their opening brief. *See* SOS Br. at 17; Intervenor Br. at 18-22. Plaintiffs did not address the Elections Clause because it is not relevant. Respondents' arguments concerning the Elections Clause are underdeveloped and difficult to follow, likely because those arguments are conclusively refuted by the very case law they cite. The Elections Clause neither authorizes nor prohibits mid-decade redistricting. It is agnostic on the subject and leaves the matter to the states.

Both Respondents cite *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006), for the proposition that the Elections Clause does not

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affirmatively prohibit state legislatures from engaging in mid-decade redistricting. No one is suggesting otherwise. But that observation is irrelevant to the issue here, which is whether Article III, Section 45 of the *Missouri Constitution* authorizes the *Missouri General Assembly* to undertake mid-decade redistricting.

Respondents' citations to *Moore v. Harper*, 600 U.S. 1 (2023), are also misplaced. The Elections Clause does not place legislative redistricting "beyond the reach of the judiciary." *Id.* at 24 (quotations omitted).[4] Indeed, "[a] state legislature's 'exercise of . . . authority' under the Elections Clause . . . 'must be in accordance with the method which the State has prescribed for legislative enactments.'" *Id.* (quoting *Smiley v. Holm*, 285 U.S. 355, 367 (1932)). "Nowhere in the Federal Constitution [is there] provision of an attempt to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution of the State has provided that laws shall be enacted." *Id.* (quotations omitted). Whatever body is responsible for redistricting, it "remain[s] subject to constraints set forth in the State Constitution." *Id.* at 25 (quotations omitted).

[4] The Elections Clause also does not put redistricting beyond the reach of the people. In fact, it does not "preclude subjecting" a legislature's redistricting efforts "to a 'a popular vote.'" *Moore*, 600 U.S. at 23. That contention (which Respondents are making in other cases) is "'plainly without substance.'" *Id.* (quoting *State ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916)).

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Nonetheless, Respondents point to language in *Moore* that state courts do not have "free rein" to "so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution." *Moore*, 600 U.S. at 34-37. Intervenor asserts—without meaningful explanation as to why—that were this Court to interpret Article III, Section 45 to prohibit mid-decade redistricting, it would somehow run afoul of this language in *Moore*. Intervenor Br. at 20-21. The Secretary, by contrast, does not develop this issue at all and simply includes a footnote purporting to "preserve" the issue. SOS Br. at 23 n.5. It's unclear how this preserves anything. If the Secretary believes this Court would violate the United States Constitution by ruling for Plaintiffs, it would be useful for him to explain *how*.[5]

The upshot of more than 100 years of Supreme Court case law is simple: "A state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to enactment of laws." *Id.* (quotations omitted). *Moore* is the Supreme Court's latest

[5] Respondents' inability to offer more explanation is understandable. This aspect of *Moore* is almost certainly dicta. *See* 600 U.S. at 36 (declining to address whether state supreme court "strayed beyond the limits derived from the Elections Clause" because the defendants "did not meaningfully present the issue in their petition for certiorari or in their briefing"). *Moore* does not articulate any coherent test that could be applied to determine what constitutes "valid" state-court judicial review and what does not. Indeed, the Supreme Court specifically declined to adopt a standard. *Id.* at 36 (discussing but not endorsing various tests discussed in *Bush v. Gore*, 531 U.S. 98(2000)).

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consideration of the Elections Clause. *Moore* conclusively refutes Respondents' vague assertions that the Elections Clause allows the Missouri legislature to enact new congressional districts whenever it pleases. Intervenor acknowledges that the Elections Clause does not permit the legislature to ignore the Missouri Constitution and the ultimate question here is "whether the Missouri Constitution actually prohibits mid-decade congressional redistricting." Intervenor Br. at 21. Exactly. The Elections Clause is a red herring.

And Intervenor is simply wrong that interpreting Article III, Section 45 as Plaintiffs request would "grossly depart from governing Missouri law." Intervenor Br. at 21. As explained in Plaintiffs' opening brief and above, that interpretation is supported by decades of Missouri Supreme Court case law, the text and structure of the Constitution, and common sense. The Court should not reach a contrary conclusion based on Respondents' vague assertions that reading the Missouri Constitution this way would run afoul of some unarticulated standard in *Moore*.

IV. The "*Purcell* Principle" Has No Application Here, Is Bad Policy, and the Court Should Not Adopt It

Respondents argue that if the Court determines the legislature lacked authority to enact HB1, the Court should nonetheless withhold relief until after the conclusion of the 2026 election under the "*Purcell* Principle." In essence, Respondents argue that despite HB1 violating the Constitution, this Court should allow the 2026 congressional election to be held under a good-for-one-election-only illegal map. The Court should reject this invitation.

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The *Purcell* Principle is a largely incoherent "doctrine" that applies only in federal courts (as the Secretary acknowledges). *See* SOS Br. at 54. It is fundamentally incompatible with Missouri law, would invite even more legislative mischief, and the Court should not adopt it. And, as explained below, there is no factual or legal basis to apply the doctrine here.

A. *Purcell* Does Not Apply to State Courts

The so-called "*Purcell* Principle" is a poorly defined "doctrine" the United States Supreme Court has invoked to govern the dispensation or withholding of injunctive relief by *federal* courts reviewing state election procedures "close" to an election. *See generally Purcell v. Gonzalez*, 549 U.S. 1 (2006). The gist of the principle is that "*federal* courts ordinarily should not enjoin a state's election laws in the period close to an election, and [the Supreme Court] in turn has often stayed lower *federal* court injunctions that contravened that principle." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Mem.) (Kavanaugh, J., concurring) (emphasis added).[6] As Chief Justice Roberts has explained, the *Purcell* Principle has no bearing on "the authority of state courts to apply their own constitutions to election regulations," but is instead limited to policing "federal intrusion on state lawmaking processes." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Mem.) (Roberts, C.J., concurring) (explaining different

[6] Many of the decisions addressing the *Purcell* Principle are short in length and on reasoning, as they are a product of the Supreme Court's shadow docket. *See e.g. Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Mem.).

treatment of cases arising out of Wisconsin and Pennsylvania). For this reason, Respondents' heavy reliance on *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418 (2025), is misplaced.

State high courts have been cautious about engrafting the principle into state law. As the Court of Appeals of New York explained:

> The State respondents' reliance on the federal *Purcell* principle is misplaced. The *Purcell* doctrine cautions *federal* courts against interfering with state election laws when an election is imminent and does not limit state judicial authority where, as here, a *state* court must intervene to remedy violations of the State Constitution.

Matter of Harkenrider v. Hochul, 197 N.E.3d 437, 454 n.16 (N.Y. 2022). Other courts agree. *Martin v. Simon*, 6 N.W.3d 443, 451-52 (Minn. 2024) (holding *Purcell* had no application to state-law election challenge governed by state statute that expressly permitted challenge to be filed in state court); *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020) (Appel, J., concurring) (noting *Purcell* "is infused with federalism concerns," which are inapplicable in state court proceedings and cautioning that "*Purcell* should not overshadow the fact that pre-election litigation is better than postelection litigation."). "Based on a review of every reported state court decision to have cited *Purcell* through the November 2024 general election . . . state courts are not mirroring the U.S. Supreme Court's strong aversion to pre-election relief." Robert Yablon & Derek Clinger, Purcell *Principles for State Courts*, 2024 Wis. L. Rev. 1637, 1637 (2024).

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Ultimately, state courts—unlike their federal counterparts—"must be attentive to vindicating the rights of voters." *Pate*, 950 N.W.2d at 15 (Appel, J., concurring). "Prompt judicial intervention is both necessary and appropriate to guarantee the People's right to a free and fair election." *Harkenrider*, 197 N.E.3d at 454. This Court should "reject [Respondents'] invitation to subject the People of this state to an election conducted pursuant to an unconstitutional reapportionment." *Id.*

B. The Court Should Not Adopt *Purcell* or a Doctrine Like It Here

1. Purcell *Is an Amorphous, Unworkable Doctrine that Has No Application Here*

As noted above, the gist of *Purcell* is that federal courts should not alter state election rules too close to an election. How close? Respondents do not say. They cannot say, because the Supreme Court has never explained. Despite various decisions citing the *Purcell* Principle, it "remains remarkably opaque" and "its contours have never been clarified." Nicholas Stephanopoulos, *Freeing* Purcell *from the Shadows*, *Take Care* (Sept. 27, 2020).[7]

[7] The principle has been described as "vacuous, self-contradictory, amorphous, and more prone to aggrandizing election-related concerns—including those that the Supreme Court suggested it should mitigate." Wilfred U. Codrington III, Purcell *in Pandemic*, 96 N.Y.U. L. Rev. 941, 945 (2021). Indiscriminate application of the principle "increases the chances that laws motivated by partisanship—not election efficiency or integrity—will evade judicial scrutiny," and "incentivizes legislatures to adopt partisan election rules late in a legislative term." Anthony J. Gaughan, *Redistricting in the Political Thicket: The Ghosts of* Colgrove v. Green, 111 Ky. L.J. 589, 634 (2023). And the decisions applying

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And it is absurd to suggest that *Purcell* has any useful application to the facts here (which is, perhaps, why Respondents never raised the issue below). The legislature adopted HB1 at an extraordinary session on September 12, 2025. D4:P2 (¶ 10). Plaintiffs filed suit challenging the bill the same day. D2. Trial was held 8 weeks later. D15:P1. Plaintiffs requested expedited resolution from this Court. Mot. to Expedite. And now, *nine months* before the election, Respondents contend there is an "ongoing" election and it is simply too late to make changes. This is preposterous. Respondents point to events that will happen in July and August to justify this Court staying its hand. SOS Br. at 57-58; Intervenor Br. at 22.

Conveniently, Respondents ignore that in 2022 the legislature did not enact a congressional map until *May* – well after candidate filing – because it could not reach agreement on what the map should look like.[8] D4:P3, ¶ 17; D6. Yet, the 2022 elections took place without issue. Respondents have offered no evidence to suggest that the timing of the legislature's adoption of the map in 2022 caused any issues. In fact, they did not even raise *Purcell* in the trial court and submitted zero evidence to support their bald speculation that election "chaos" will ensue if this Court invalidates HB1. If this Court rules for Plaintiffs,

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Purcell are rife with inconsistencies and sketchy reasoning. Yablon & Clinger, *supra*, at 1650-51.

[8] By Respondents' logic, that map should not have been used and Missouri should instead have conducted the 2022 congressional election under the map drawn in 2011.

elections will simply occur under the 2022 map, which has already been used. Respondents' knee-jerk attempt to invoke *Purcell* in this case is exactly why the doctrine has been criticized.

2. Purcell*, as Respondents Would Have the Court Apply It, Is Incompatible with Missouri's Open Courts Provision*

Respondents ask the Court to permit use of an unconstitutional map. This request comes despite plenty of time before the 2026 election (and certainly more time to spare than before the election was held in 2022 using the map adopted in HB2909). Adopting and applying the *Purcell* Principle under these circumstances would raise grave concerns under Article I, Section 14 of the Missouri Constitution.

"[T]he courts of justice shall be open to every person, and *certain remedy afforded* for *every injury* to person, property or character, and that right and justice shall be *administered* without sale, denial, or *delay*." Mo. Const. art. I, § 14 (emphasis added). "[A]ll political power is vested in and derived from the people" and "all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole." Mo. Const. art. I, § 1. Here, the legislature did something it lacks constitutional authority to do. The people of Missouri have a right to ensure that the legislature complies with the Constitution. That is particularly true where, as here, the legislature attempts to alter the rules governing something as fundamental as the people's representation in Congress.

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While the open courts provision "does not itself grant substantive rights," it is "a procedural safeguard that ensures a person has access to the courts when that person has a legitimate claim recognized by law." *Missouri All. for Retired Americans v. Dep't of Lab. & Indus. Rels.*, 277 S.W.3d 670, 675 (Mo. banc 2009). The open courts provision specifically speaks to affording litigants a certain remedy, without delay. It ensures the right of the people "to have a remedy for a legal wrong." *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 255 (Mo. banc 2009).

Applying *Purcell* to withhold relief here is fundamentally incompatible with Missouri's open courts provision. As Respondents would have the Court apply *Purcell*, the courthouse doors are open but lead nowhere. Respondents also effectively ask the Court to abandon its constitutional role and duty. "'It is emphatically the province and duty of the judicial department to say what the law is.'" *Rebman*, 576 S.W.3d at 609 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). Put simply, "[t]he courts' duty is to find, declare, apply and enforce the law." *State v. Freeman*, 269 S.W.3d 422, 430 (Mo. banc 2008) (Wolff, J., concurring). The courts "are guardians of the sovereign rights of [the] people," *Stookey v. Midland Flour Milling Co.*, 171 S.W.2d 750, 754 (Mo. App. 1943), and should dispense those remedies necessary to ensure the Constitution is followed.

Notably, in another pending case concerning the impact of the submission of a referendum concerning HB1, the Secretary filed a trial brief claiming that *if* he concludes the referendum has enough signatures, he "will work [] to 're-

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implement'" the 2022 map. Feb. 9, 2026 Trial Br. at 14, *Maggard v. State*, No. 25AC-CC09120 (Cole County). Referring to his arguments to this Court concerning *Purcell*, the Secretary emphasizes that "the *Purcell* principle governs whether *courts* may alter election laws" and "does not override the Secretary's . . . statutory obligation[] . . . to certify the referendum if it is legally sufficient." *Id.* at 14 n.6. So, the Secretary's position concerning this Court's obligation to declare and enforce the law seems to be "*Purcell* for thee but not for me." The Court should reject this untenable position.

There is ample time for the 2026 elections to be conducted under the lawful 2022 map and this Court should not abdicate its constitutional duty based on vague assertions of election "chaos" that are unsupported by even a shred of evidence. *See Harkenrider*, 197 N.E.3d 454-55 (refusing to apply *Purcell* and explaining courts and executive officials were more than capable of implementing constitutionally compliant maps before election). While federal courts and judges may not be well situated to resolving election challenges at a quick pace (and nothing here requires a particularly quick pace), Missouri courts undoubtedly are. This Court, the Court of Appeals, and the Cole County Circuit Court have always moved time-sensitive election cases along in order to protect citizens' rights. *See, e.g.*, Order, *Coleman v. Ashcroft*, No. SC100742 (Mo. banc Sept. 10, 2024) (resolving election challenge two business days after trial court ruling and on eve of deadline to modify ballots); Order, *Toder v. Uccello*, No. WD88582

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(Mo. App. Jan. 1, 2026) (setting briefing and oral argument to be completed less than one month after appeal filed in ballot title challenge).

3. *Insofar as* Purcell *is a Branch of Laches, Plaintiffs Could Not Have Filed and Prosecuted This Case Any Quicker, and Respondents Failed to Plead or Prove Any Election "Chaos" Will Follow*

The Secretary suggests that a number of state courts have adopted *Purcell*. SOS Br. at 56-57. That is misleading. To be sure, several state courts have *cited and discussed Purcell*. But a closer look at their decisions reveals that state courts "have taken a more nuanced and context-specific approach." Yablon & Clinger, *supra*, at 1640. Some state courts have discussed *Purcell* as a branch of laches. *Id.* at 1656. This includes several of the cases cited by Respondents. *See Liddy v. Lamone*, 919 A.2d 1276 (Md. 2007) (discussing *Purcell* and applying laches because citizens waited too long to sue); *Fay v. Merrill*, 256 A.3d 622, 637-38 & n.21 (Conn. 2021) (discussing *Purcell* and laches together).

Laches is an affirmative defense. *Kixmiller v. Bd. of Curators of Lincoln Univ.*, 341 S.W.3d 711, 714 (Mo. App. 2011); *Lane v. Non-Teacher Sch. Emp. Ret. Sys. of Mo.*, 174 S.W.3d 626, 633 (Mo. App. 2005). The party invoking laches (here, Respondents) has the burden to establish the defense. *Back Ventures, L.L.C. Series D v. Safeway, Inc.*, 410 S.W.3d 245, 255 (Mo. App. 2013). Failure to plead laches waives it. *Bates v. City of St. Louis*, 728 S.W.2d 232, 235 n. 2 (Mo. App. 1987).

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Neither Respondent asserted laches as an affirmative defense. *See* D3:P6-7; D8:P10-11. Nor did they assert *Purcell* as an affirmative defense. *Id.* In fact, Respondents did not address *Purcell* or laches in their trial court briefing at all. *See generally* D10; D11. This case was tried on stipulated facts, but Respondents offered *no* evidence that granting Plaintiffs relief would create election difficulties. *See* D4; D12-14. This, alone, is sufficient to reject Respondents' late-blooming attempt to invoke *Purcell*.

In *Fay*, for example, the Supreme Court of Connecticut refused to apply laches on appeal because application of laches is a fact question that had never been passed on by the trial court, despite the submission of evidence on the issue. 256 A.3d at 637-38 & n.21. Here, Respondents never even raised the issue or offered any evidence.

In short, while Respondents offer much rhetoric about how catastrophic invalidating HB1 would supposedly be, they cannot point to *any* evidence (*e.g.*, testimony from the Secretary of State, election officials, or a candidate) to support these assertions. Furthermore, one of the requirements for laches is that the plaintiff unjustifiably delayed bringing or prosecuting a case.[9] *Ste. Genevieve Levee Dist. #2 v. Luhr Bros., Inc.*, 288 S.W.3d 779, 785 (Mo. App. 2009). There

[9] At least one Supreme Court Justice likewise seems to believe the plaintiff's diligence is relevant. *See Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (explaining that while "the Court has not yet had occasion to fully spell out all of [*Purcell*'s] contours," a relevant consideration is whether "the plaintiff has [] unduly delayed bringing the complaint").

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can be no assertion of *any* delay here. Plaintiffs sued the day the legislature truly agreed and finally passed HB1. D2. Trial was held eight weeks later. D15. They sought expedited briefing in this Court. Mot. to Expedite. This case could not have reached this Court any sooner and Plaintiffs did nothing to delay it.

4. *The Concerns Behind* Purcell *Are Not Present Here Because Plaintiffs Are Not Asking the Court to Change any Rules Close to an Election*

As Respondents assert, the theory behind *Purcell* is that federal courts should not change the rules too close to an election. SOS Br. at 57; Intervenor Br. at 23; *see Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) ("By changing the election rules so close to the election date . . . the District Court contravened this Court's precedents and erred by ordering such relief."); *Democratic Nat'l Comm. v. Bostelmann*, 977 F.3d 639, 641 (7th Cir. 2020) ("For many years the Supreme Court has insisted that federal courts not change electoral rules close to an election date."). Plaintiffs are not asking this Court to "change" any rules.

Instead, they are asking this Court to decide which of two maps enacted by the legislature will govern the 2026 election: the map the legislature lawfully enacted in 2022 or the map it unlawfully enacted in 2026. "An unconstitutional statute is no law and confers no rights. This is true from the date of its enactment, and not merely from the date of the decision so branding it." *City of Normandy*, 709 S.W.3d at 334. For the reasons Plaintiffs have explained, HB1 is not—and

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never was—valid. The map it purported to draw has never governed, to the exclusion of the 2022 map, and this Court is not tasked with "changing" any election rules.

There is a further consideration. Respondents' contention that this Court would be "changing" which map will govern the election hinges on their assumption that HB1 took effect 90 days after the adjournment of the special session where it was adopted (*i.e.*, December 11, 2025). *See* Mo. Const. art. III, § 29. But that is wrong. Missouri citizens have the same 90-day time period to submit a referendum petition on any act of the general assembly. Mo. Const. art. III, § 52(a). If they do so, the law "shall take effect when approved by a majority of the votes cast thereon, *and not otherwise*." Mo. Const. art. III, § 52(b) (emphasis added).

It is a matter of public record that Missouri citizens submitted a referendum petition containing more than 300,000 signatures concerning HB1 on December 9, 2025.[10] *See* https://apnews.com/article/missouri-redistricting-referendum-trump-gerrymandering-utah-14312a112b6e32d15e5ef36b83cdc6a7. There is active litigation concerning whether the submission of those signatures suspended HB1. *Maggard et al. v . State of Missouri,* No. 25AC-CC09120. That

[10] Respondents may complain that Plaintiffs did not address the impact of the referendum below. That is true, because this case was tried before the referendum petition was submitted. Furthermore, it is *Respondents* who ask this Court to withhold a remedy based on an issue they neither pleaded nor tried. Plaintiffs are simply responding to that improper argument by pointing out that one of the main rationales for invoking *Purcell* does not, and cannot, exist here.

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case will very likely make its way to this Court. But, the Secretary and Attorney General's public comments notwithstanding, Missouri law is exceedingly clear that the submission of the signatures to the Secretary prevented HB1 from taking effect. *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 706 (Mo. banc 1952) (explaining "all laws, except those declared non-referable, should be subject to referendum if petitions to refer them were duly filed before their effective date," and the "[p]urpose of referendum is to suspend or annul a law which has not gone into effect"); *State ex rel. Kemper v. Carter*, 165 S.W. 773, 778 (Mo. banc 1914) ("When we consider the primary object of the adoption of the referendum and have regard to the evils which its friends had in mind to correct by it, any view other than that it suspends the taking effect of the act against which it is invoked till a vote be had is illogical and well-nigh unthinkable.").

Put simply, even if Respondents are right on the merits, HB1 is not in effect, and cannot legally go into effect until the people have voted on it. Accordingly, declaring that HB1 was unlawfully enacted and ordering State officials to conduct the election under the 2022 map (which, they will have to do anyway), would not "change" the rules of the election. As a matter of well-established Missouri law, the 2022 map must be used for the 2026 election, regardless of whether the legislature had the power to engage in mid-decade redistricting under Article III, Section 45.[11]

[11] Of course, if the Court concludes that HB1 is a nullity, the people will not need to vote on whether to approve or reject it.

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C. Concluding HB 1 Is Unconstitutional and then Permitting the Map It Created to Govern the 2026 Election Would Do Far More to Erode Confidence in the Integrity of the Electoral Process than Enforcing the Mandates of the Constitution

Intervenor suggests that applying *Purcell* here is necessary to prevent erosion of "[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy." Intervenor Br. at 22 (quoting *Purcell*, 549 U.S. at 4-5). This is an astonishing assertion. If the Court agrees that HB1 was unconstitutionally enacted, the choice becomes whether to (i) order State officials to conduct the election under the 2022 map or (ii) tell the public that despite HB1 being unconstitutional and there being many months until the election, they will just have to vote in unlawful districts anyway. This Court does not need briefing or argument to decide which of those two outcomes would do more to erode public confidence in the electoral process.

HB1 is unlawful. There is plenty of runway between the time this case is likely to be decided and the 2026 election to fashion and implement a remedy (which is simply using the 2022 maps used in the last congressional election). This Court should reject Respondents' wholly unsupported assertions that enforcing clear-cut Missouri law would cause "chaos" in November.

Respectfully submitted,

/s/ Charles W. Hatfield

Charles W. Hatfield, No. 40363
Alexander C. Barrett, No. 68695
Alixandra S. Cossette, No. 68114
Greta M. Bax, No. 73354
STINSON LLP
230 W. McCarty Street
Jefferson City, Missouri 65101
573.636.6263 (phone)
573.636.6231 (fax)
chuck.hatfield@stinson.com
alexander.barrett@stinson.com
alixandra.cossette@stinson.com
greta.bax@stinson.com

Denise D. Lieberman, No. 47013
Missouri Voter Protection Coalition
6047 Waterman Blvd.
St. Louis, MO 63112
(314) 780-1833
denise@movpc.org

Attorneys for Appellants

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CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document and the appendix were served on counsel of record through the Court's electronic notice system on February 16, 2026.

This brief complies with the limitations contained in Supreme Court Rule 84.06 and Local Rule 41. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 6,896 excluding the cover, table of contents, table of authorities, signature block, appendix, and this certificate. The font is Georgia 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.

/s/ Charles W. Hatfield
Attorney for Appellants

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