

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**No. WD88795**

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**PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN,**

**APPELLANTS,**

**VS.**

**DENNY HOSKINS, SECRETARY OF STATE OF MISSOURI,**

**RESPONDENT.**

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**On Appeal from the Circuit Court of Cole County, Missouri**

**The Honorable Brian K. Stumpe, Judge**

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**APPELLANTS' BRIEF**

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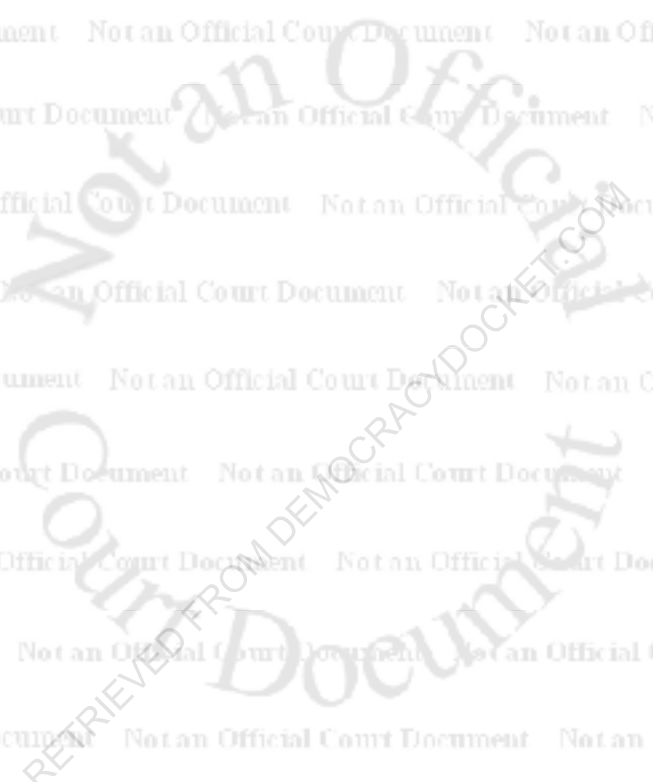
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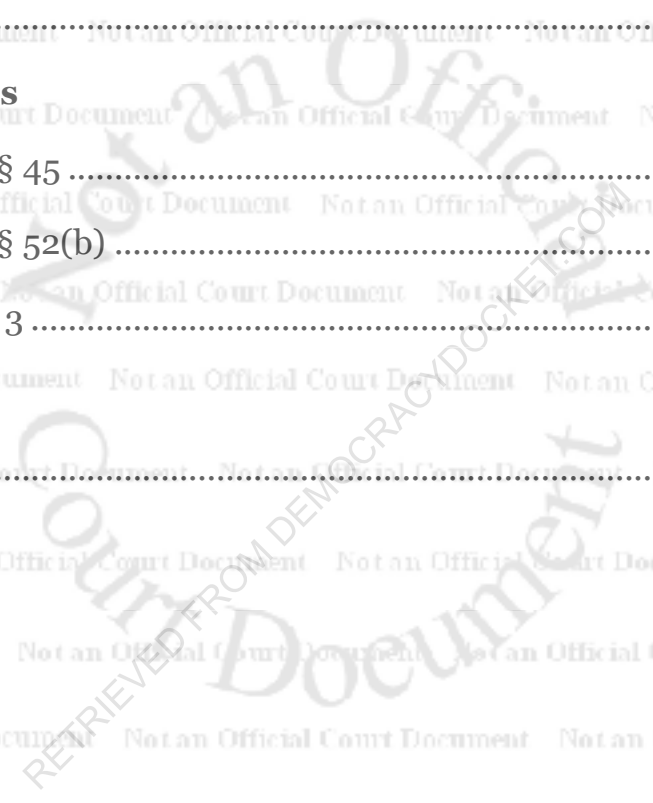
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## INTRODUCTION

This Court is quite familiar with ballot title challenges. See § 116.190, RSMo.<sup>1</sup> This one is a little different because it involves a dispute about whether any *facts* are needed to justify the Secretary’s summary. If there were, the Court will need to decide what facts were necessary and whether the trial court’s judgment properly considered those facts.

This case has to do with a referendum, but the basic principles are the same. A group of citizens seeks a referendum on House Bill 1, related to congressional redistricting. The Secretary was charged with creating a ballot title for that referendum. His title was:

Do the people of the state of Missouri approve the act of the General Assembly entitled “House Bill No. 1 (2025 Second Extraordinary Session),” which repeals Missouri’s existing gerrymandered congressional plan that protects incumbent politicians, and replaces it with new congressional boundaries that keep more cities and counties intact, are more compact, and better reflects statewide voting patterns?

The parties now agree that title was—on its face—argumentative and biased. After initially denying it, the Secretary eventually conceded the point.

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<sup>1</sup> The Revisor of Statutes’ official website lists two versions of § 116.190, RSMo. That is because the 2025 version was declared invalid by the Missouri Supreme Court, which returns the law to the pre-2025 version of that section. *Nicholson v. State*, 2026 WL 202013 (Mo. banc Jan. 23, 2026).

D153; D154. But the Secretary's confession did not extend to all the unfair aspects; he admitted only that the phrase "gerrymandered congressional plan that protects incumbent politicians" was unfair, while defending the value-laden description of the new plan.

This appeal raises a number of issues, though the Court may not need to reach all of them. Plaintiffs offer the following analytical roadmap:

Point I challenges the trial court's removal of a word ("existing") in the summary statement that Plaintiffs did not challenge and that accurately describes the probable effects of the measure. This is a purely legal issue that turns on the scope of the trial court's revision authority, the language of the summary, and the text of House Bill 1.

Point II addresses the standard by which summary statements should be reviewed. Specifically, must the summary statement be rooted in the text of the measure, or may the Secretary stray outside the measure? To avoid discovery, the Secretary repeatedly insisted the analysis should be limited to comparing the text of the summary against the contents of the referred bill. He then enticed the trial court to error by asking it to look at information *outside* House Bill 1. If the Secretary's originally stated position below was correct, this Court should reverse because the summary statement is simply not a summary of the contents of the bill. That would obviate the need for the Court to reach any other point.

Points III-IV are standard fare for this Court. They ask the Court to decide whether two statements the Secretary made in the summary statement

(concerning division of municipalities and compactness) are impermissibly argumentative because they amount to value-laden advocacy about which congressional boundaries are better, in an attempt to bias voters in favor of a “yes” vote. Those points turn entirely on the text of the summary statement and House Bill 1.

Points V-VII address evidentiary issues, which this Court need not reach if it agrees with Point II or Points III-IV. If the Court believes it is proper to consider evidence other than the text of the summary statement and House Bill 1 and *does* reach these points, Plaintiffs submit that the only competent and admissible evidence in the record was presented by Plaintiffs and does not support the remaining contested phrases in the summary statement.

Appellants request this Court reverse the decision below and enter the judgment that should have been entered. That means certifying a fair and sufficient summary statement to the Secretary of State to be included on the ballot the people will see in November. § 116.190.4 RSMo.

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### JURISDICTIONAL STATEMENT

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This is an appeal from a judgment of the Circuit Court of Cole County.

Neither the underlying lawsuit nor this appeal raise any issue falling within the

Supreme Court's exclusive jurisdiction; therefore, this Court has general

appellate jurisdiction. Mo. Const. art. V, § 3; § 477.070, RSMo.

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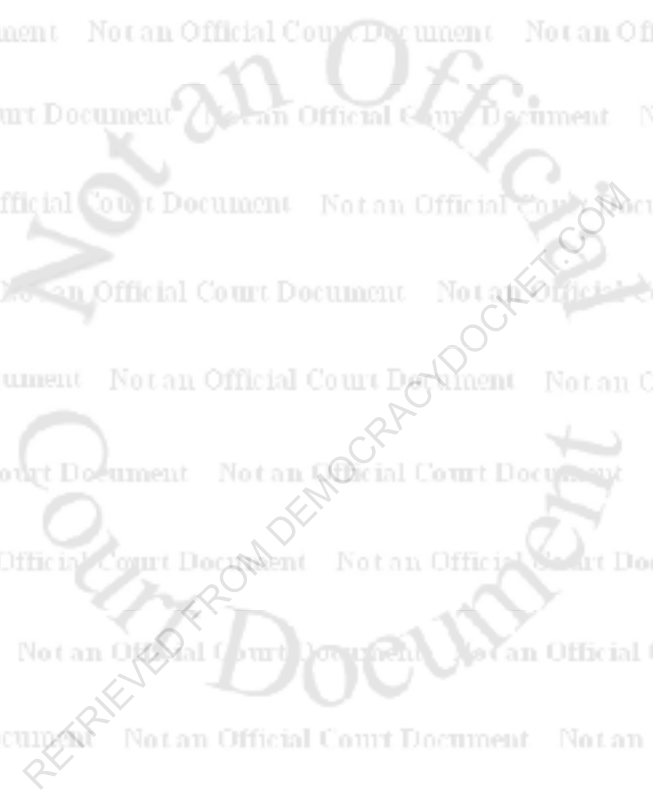
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## STATEMENT OF FACTS

Unlike most ballot title cases, this one was not tried on stipulated facts. Instead, after an initial answer denying all the Petition's allegations, the Secretary amended his answer to *concede* certain parts of the summary statement are unfair and insufficient. *See* D97; D153; D154. He continued, however, to defend the fairness and sufficiency of other parts. *See* D154; *see generally* Trial Tr. The parties agree on most (perhaps all) of the basic facts and relevant documents. At trial, Plaintiffs presented two witnesses and the parties introduced a handful of documents. After all that, the remaining disputes come down to three phrases in the summary statement.

### A. The General Assembly Draws New Congressional Districts

On September 3, 2025, the General Assembly convened for a special session to pass legislation designating new congressional districts. *See* D95; D122 (¶ 11).<sup>2</sup> On September 12, 2025, the General Assembly truly agreed and finally passed House Bill 1 (“HB 1”), titled: “To repeal sections 128.345 and 128.348, RSMo, and to enact in lieu thereof twelve new sections relating to the composition of congressional districts.” *Id.* (¶ 12).

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<sup>2</sup> The Secretary admitted many of the pertinent facts in his Amended Answer (D122). Because he did not repeat the text of Plaintiffs' allegations, Plaintiffs cite to both the Petition (D95) and the Amended Answer.

B. House Bill 1 is a Technical Description of Congressional Districts

In Sections 128.461 to 128.478, HB 1 describes “counties, voting districts (VTD), and tract-blocks (Block).” D96:2; A11. These units are reported “to the state by the United States Bureau of the Census for the 2020 census.” *Id.*

These counties, VTDs and Blocks are, in turn, used to describe the congressional districts that “shall be effective beginning with the election of the 120th Congress.” D96:P3; A12. HB 1 further explains the “state of Missouri shall consist of eight congressional districts.” *Id.* Then, each congressional district is described using counties, VTDs, and Blocks. Each congressional district is in its own statutory section. *Id.* For example:

	<b>128.472. The second congressional district shall be composed of the following:</b>
2	<b>County: Crawford MO</b>
3	<b>County: Franklin MO</b>
4	<b>County: Gasconade MO</b>
5	<b>County: Jefferson MO</b>
6	<b>VTD: Brennan</b>
7	<b>Block: 290997002111020</b>
8	<b>Block: 290997002111021</b>
9	<b>Block: 290997003032017</b>
10	<b>Block: 290997003051001</b>

D96:P24; A33.

HB 1 is clear about what congressional districts are composed of: counties, VTDs, and Blocks. D96:P2; A11. Depending on the description of the voting district, it may be possible to understand which city a particular voting district is in, but typically not. *See, e.g.*, D96:P27; A36. Regardless, HB 1 does not recognize

cities as a descriptive building block of a congressional district. D96:P2; A11. For example:

85	Block: 290997003022001
86	Block: 290997003022002
87	Block: 290997003022015
88	Block: 290997003023002
89	Block: 290997003063001
90	Block: 290997003063003
91	Block: 290997003063004
92	Block: 290997003063005
93	VTD North Jefferson Subtotal
94	VTD: Northwest
95	VTD: Parkdale
96	VTD: Peaceful Village
97	VTD: Raintree
98	VTD: Rockwood
99	VTD: Scotsdale
100	VTD: Valle

D96:P27; A36.

C. Plaintiffs Submit a Referendum Sample Sheet for HB 1 and the Secretary Prepared a Ballot Title

On September 29, 2025, Richard von Glahn submitted a referendum sample sheet referring HB 1 to voters. *Id.* (§ 14). People Not Politicians is the campaign committee organized to support the referendum campaign. *Id.* (§§ 1-2).

The Secretary denominated the measure as Referendum Petition 2026-RO04. As required, the Secretary prepared a summary statement:

Do the people of the state of Missouri approve the act of the General Assembly entitled “House Bill No. 1 (2025 Second Extraordinary Session),” which repeals Missouri’s existing gerrymandered congressional plan that protects incumbent politicians, and replaces it with new congressional boundaries that keep more cities and counties intact, are more compact, and better reflects statewide voting patterns?

D126. On November 13, 2025, the Secretary certified the ballot title for Referendum Petition 2026-R004, which contains the Secretary’s summary statement. *Id.*

D. Plaintiffs Challenge the Summary Statement as Unfair and Insufficient

Plaintiffs filed suit on November 20, 2025, challenging the fairness and sufficiency of the summary statement. *See generally* D95. Specifically, Plaintiffs challenged the factual descriptions of the 2022 congressional plan (the “existing” map) and the map drawn by HB 1. *Id.* The Secretary’s summary statement described the existing map as a “gerrymandered congressional plan that protects incumbent politicians.” D126. He also described the new congressional districts drawn by HB 1, claiming they “keep more cities and counties intact, are more compact, and better reflect[] statewide voting patterns.” *Id.*

While Plaintiffs challenged a large majority of the summary statement, they did *not* challenge its description of the 2022 congressional map as the “existing” map. *See generally* D95.

E. Plaintiffs Serve Discovery

Because the summary statement makes factual statements about the existing map—that it was gerrymandered and that it protected incumbents—and the new map (HB 1)—that it keeps more cities and counties intact, is more compact and better reflects voting patterns—Plaintiffs served requests for production and interrogatories to determine the underlying facts that support the

statements made in the ballot title the Secretary prepared. D102; D103. To Plaintiffs' interrogatories, the Secretary served objections and largely non-responsive answers, asserting across-the-board relevancy objections, burden shifting, and categorical invocations of attorney-client, work-product, executive/deliberative, and legislative privileges. D103.

The Secretary relied heavily on the proposition that the fairness and sufficiency of a summary statement should be assessed by "review of the plain language of a ballot title and a comparison of the ballot title to the provisions of the referendum." D102:P3 (quoting *State ex rel. Kander v. Green*, 462 S.W.3d 844, 949 (Mo. App. 2015)); D103:P2 (same). The Secretary continued to assert this throughout the litigation—that ballot title cases involve *only* a comparison of the summary statement and the underlying measure. D111:P6; D114:P9-10; Trial Tr. at 78:4-7.

Plaintiffs moved to compel. D98. Rather than take up that motion, the parties entered a Joint Stipulation on Discovery and Evidence Presented at Trial, which was filed with the trial court. D101. The Secretary agreed that "at trial, he will not introduce or rely on any evidence except for Exhibits C-G herein and any evidence introduced or referenced by Plaintiffs in their case in chief." *Id.* (¶ 3). He further agreed that "at trial, he will not call any witnesses, including any expert witnesses, to provide testimony." *Id.* (¶ 4). He reserved "the right to cross examine any witnesses called by Plaintiffs, including expert witnesses." *Id.* Finally, the Secretary agreed that "if Plaintiffs introduce evidence or call

witnesses, including any expert witnesses, the Secretary will not introduce or rely on any rebuttal evidence or testimony, except for Exhibits C-G attached herein.” *Id.* (¶ 5). But he would “have the chance to cross-examine witnesses, including expert witnesses, called by Plaintiffs. And the Secretary may utilize any evidence presented by Plaintiffs.” *Id.*

The referenced exhibits were as follows: Exhibit C is the certified copy of the ballot title for HB 1 (D104); Exhibit D is the Congressional District Map of the Truly Agreed and Finally Passed HCS HB 2909, which created the existing 2022 map (D105); Exhibit E is HB 1 (D106; A11); Exhibit F is the Map of New Congressional Districts in HB 1 (D107); and Exhibit G is the Official Ballot Titles for 2018-R002, 2020-R001, and 2022-R001 (D108-110). The Secretary provided these documents to Plaintiffs in response to their requests for production. *See* D102.

F. The Secretary Admits Parts of His Summary Statement are Unfair and Insufficient

After agreeing to that, the Secretary of State decided parts of his summary statement were unfair and insufficient. He sought leave to file an amended answer, which was granted. D94:P12; D153. He also filed a Motion for Judgment in Favor of Plaintiffs, claiming—because of his admissions— “Plaintiffs are

entitled to complete relief on Count I.” D142:P4.<sup>3</sup> The Secretary admitted the phrases “gerrymandered” and “protects incumbent politicians” are “argumentative and likely to create prejudice.” *See* D95 and D122 (¶¶ 26-27).

However, the Secretary did not admit *all* of the language Plaintiffs challenged was unfair and insufficient. *See generally* D95 and D122. Instead, he admitted only that the statements about the existing map were unfair. *See id.* (¶¶ 23-35). He continued to deny allegations concerning the fairness and sufficiency of the language used to describe the new HB 1 map, including that it “keep[s] more cities and counties intact,” is “more compact,” and “better reflects statewide voting patterns.” *Id.*

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<sup>3</sup> The Secretary filed this motion *after* the Supreme Court invalidated Senate Bill 22 (which imposed a three-try revision process on ballot title cases) in *Nicholson v. State*, 2026 WL 202013 (Mo. banc Jan. 23, 2026). While refusing to admit *all* the language Plaintiffs challenged was unfair and insufficient, the Secretary asserted the trial court should “remand” the summary statement to him for unspecified revisions, despite the lack of any statutory basis for such procedure. *See* D142:P4-12; *see also Seay v. Jones*, 439 S.W.3d 881, 894 (Mo. App. 2014) (“Notably, there is no provision for a remand of the summary statement under these circumstances . . . . The statute implicitly allows the court to certify a corrected summary statement, and then the secretary of state shall certify the language which the court certifies to her.” (cleaned up)).

G. Plaintiffs Serve Deposition Notices and the Secretary Moves to Quash

The Secretary publicly asserted that reporting about in-court admissions of his counsel that his summary statement was unfair and insufficient was “fake news.” *See* D119:P10. So, Plaintiffs sought depositions to determine the Secretary’s position on the accuracy of factual statements in the ballot summary. *See* D94:P12. Plaintiffs served deposition notices for the Director of Elections and a Corporate Representative of the Secretary of State’s office. *Id.*; *see also* D119.

The Secretary objected and moved to quash. D114. He insisted no deposition was needed because he was bound by the Joint Stipulation, which limited his ability to present evidence at trial. *See* D114; Feb. 4, 2026 Hearing Tr. at 42-45. Plaintiffs explained there is no categorical bar on discovery in ballot title cases and that the Secretary’s contradictory statements justified discovery concerning the accuracy of the statements still in dispute. D119. The trial court quashed the depositions. D121.

H. The Parties Proceed to Trial

The trial court took the Secretary’s Motion for Judgment for Plaintiffs with the case and trial proceeded on February 9, 2026. D121.

1. *Plaintiffs’ Evidence*

Plaintiffs called two witnesses: Richard von Glahn and Sean Soendker Nicholson. Mr. von Glahn testified about his role as Executive Director of People Not Politicians, his submission of the referendum petition, and the Plaintiff’s

position on the unfairness of the summary statement. Trial Tr. at 9-16. Mr. von Glahn testified that he “found sections of the summary statement dishonest and designed to influence how voters would feel about the measure.” Trial Tr. at 14:2-4. He explained the summary statement is accurate only insofar as “it is asking people in the state of Missouri to approve an act of the General Assembly entitled House Bill 1, which repeals Missouri’s existing congressional plan and replaces it with a new congressional plan.” *Id.* at 14:10-14. He further explained he was **not** challenging use of the word “existing” in the summary statement because it accurately described the legal effect of the referendum. *Id.* at 14:7-17; *see also* D127 (trial exhibit with Plaintiffs’ proposed rewrite of summary statement).

Mr. Nicholson testified about the factual underpinnings of the provisions of the summary statement still at issue. Mr. Nicholson has “worked on redistricting issues and matters for almost a decade.” Trial Tr. at 16:25-17:1. The Court accepted his testimony without objection. He testified that HB 1 includes “a list of old sections of State law that would be stricken or repealed, and then it’s a list of voting tabulations districts by county assigned to each of the State’s eight congressional districts.” *Id.* at 24:1-6.

Looking at HB 1, Mr. Nicholson testified “[y]ou could see how many [counties] are intact as whole units, but you would not see anything about the existing plan.” *Id.* at 34:10-11. When asked whether the Court could determine from HB 1 how many cities are kept intact, Mr. Nicholson testified unequivocally: “No.” *Id.* at 33:25-34:3. Similarly, when asked whether anything in HB 1 would

tell how many cities the previous plan kept intact, he again responded: “No.” *Id.* at 34:4-6. When asked whether he was able to confirm that the summary statement’s claim that HB 1 “keeps more cities intact” is accurate, Nicholson testified: “No, I—I was not. I reviewed the—I looked at what was provided today of the maps of the congressional district lines, and there was not enough detail to be able to make that assessment.” *Id.* at 39:3-6.

Mr. Nicholson also looked at the Secretary’s Exhibits A and B—maps of the 2022 congressional districts and the districts drawn by HB 1. On rebuttal, after hearing the Secretary’s counsel point to the maps and identify specific cities she claimed were split, Nicholson examined the maps and testified: “I don’t see any municipal lines.” *Id.* at 94:2. He was asked: “Is there any way that you can ascertain from Exhibit B to tell how many cities are divided? A. No.” *Id.* at 94:3-5. He noted the blown-up versions of the maps provided by the Secretary’s counsel did not include “enough detail to understand which cities are divided,” *id.* at 94:11-13, and that, contrary to counsel’s claims, “[y]ou cannot” determine how many municipalities are divided just by looking at the two maps, *id.* at 94:15-20.

Regarding county splits, Mr. Nicholson testified Jackson County “is split in brand new ways in House Bill 1,” *id.* at 40:5-6 and that, accounting for the anomaly of voting tabulation district KC-811 being assigned to two different congressional districts, *id.* at 69:18-70:5, Jackson County is divided “at least” four times under HB 1, *id.* at 70:12—compared to being split three times under the existing plan, *id.* at 56:21-57:2.

Mr. Nicholson also testified about whether HB 1 describes the compactness of the districts created. “Q: And is there . . . anywhere that’s going to describe to us in this bill how compact a congressional district is? A: No.” *Id.* at 27:24-28:2. He explained compactness is “not very well defined in the law” and that “a number of statistical measurements have been crafted to help come up with different ways to analyze whether or not a shape of a final district looks like a circle.” *Id.* at 21:24-22:5. He testified he “would not make a determination based on compactness from a visual review” because “there are a number of different statistical measurements that would try to assess compactness.” *Id.* at 41:6-9.

Mr. Nicholson testified about some commonly used statistical measures—Reock and Polsby-Popper. *Id.* at 22:10-25. Using these scores from the Office of Administration’s own analysis, Nicholson concluded “some districts, if HB 1 is adopted, become less compact, some become more compact, and some are exactly as compact as they were. As they are under the existing plan.” *Id.* at 44:4-11. He concluded the summary statement’s compactness language “is incorrect, because some congressional district boundaries are less compact and some are neither more or less compact.” *Id.* at 44:16-18. He provided a concrete example: “District 5 was relatively tight in the existing plan that exists right now. And then, if HB 1 is adopted, it stretches all the way out to the Lake of the Ozarks from the river and river mart (*sic*) in Kansas City. So District 5 is an example of a district that becomes less tight and longer and less compact.” *Id.* at 99:1-8. He also noted

Districts 7 and 8 “don’t change in—at all in the House Bill 1,” *id.* at 57:9-10, meaning their compactness scores are identical.<sup>4</sup>

## 2. The Secretary’s “Evidence”

Per the Stipulation, the Secretary called no witnesses. *See generally* Trial Tr.; *see also* D101 (¶4). The Secretary asked the trial court to admit two pieces of evidence—a map of the existing 2022 districts and a map of the new HB 1 districts. *See id.* at 81:19-25; D131; D132. The Secretary’s counsel then proceeded to narrate what she contended the trial court could ascertain from those maps. Trial Tr. at 81-93.

Plaintiffs’ counsel objected: “I know we’re kind of doing opening, but I’m hearing testimony here.” *Id.* at 80:17-18. The court sustained at least one objection to counsel’s attempted testimony about what the maps were “intended” to show. *Id.* at 85:12-15. Despite these objections, the Secretary’s counsel characterized the HB 1 districts as having “boxier appearances,” *id.* at 86:5, and asserted “large clusters of cities” could be “determined as being kept more intact under the new plan, as opposed to the old plan,” *id.* at 90:12-17—assertions made without any sworn testimony or documentary support.

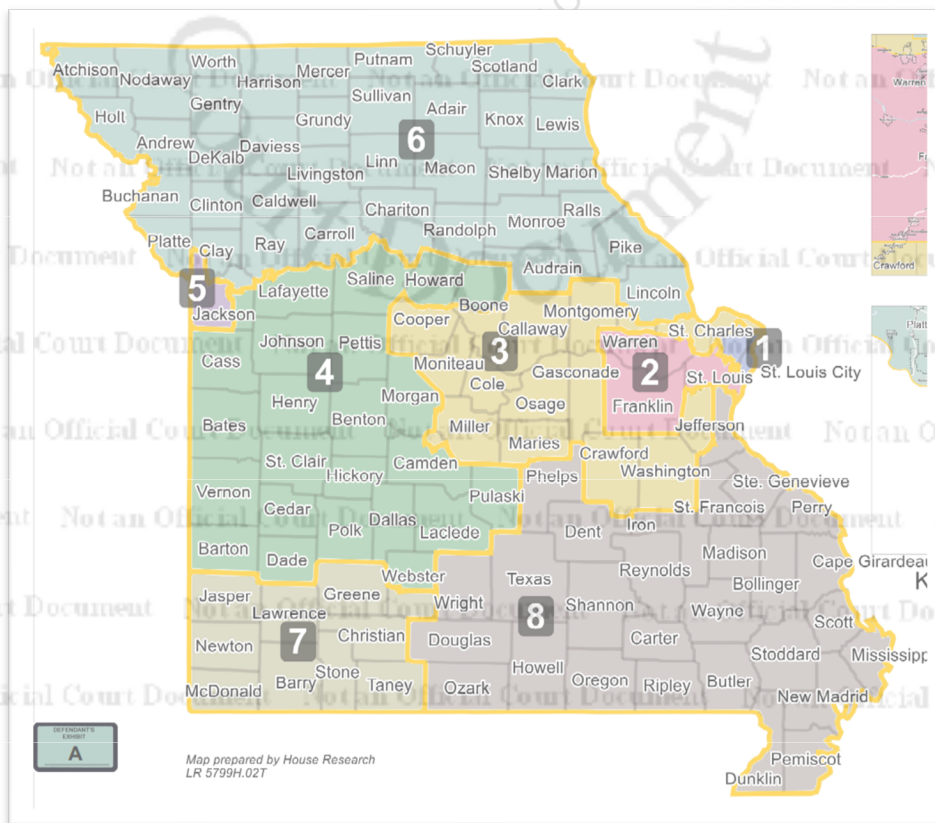
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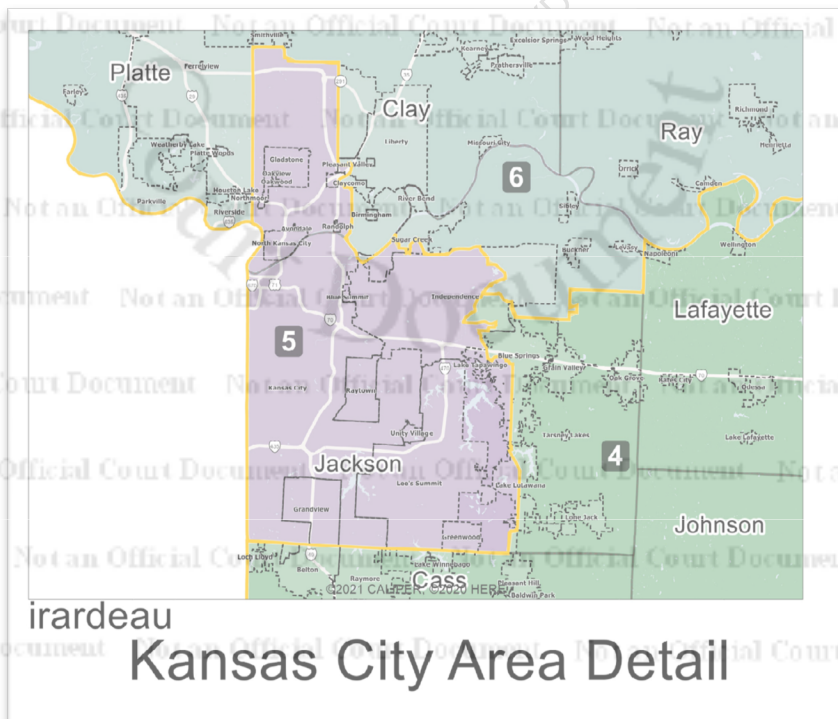
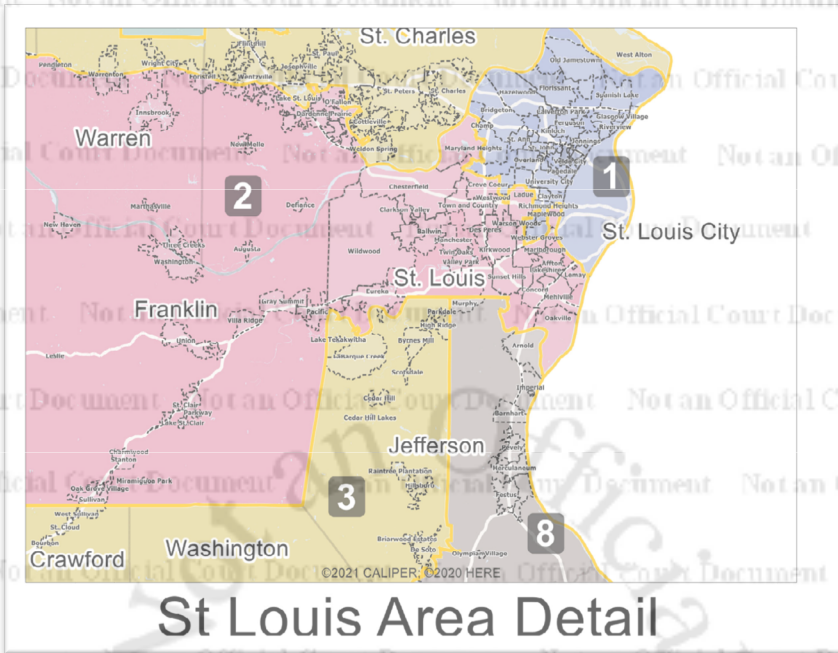
<sup>4</sup> Plaintiffs acknowledge the judgment described Mr. Nicholson’s testimony as “unhelpful.” D133:P8; A8. But, as explained in Point V, that is not a credibility finding to which this Court must defer.

Aside from Exhibits A and B (which were admitted), the Secretary did not ask the trial court to take judicial notice of any facts or documents. *See generally id.* Nor did the Secretary’s counsel address the propriety of keeping or removing the word “existing” in the summary statement. *See generally id.*

### 3. Exhibits A and B Include Minimal Detail

Exhibit A is the visualization of the existing map (the 2022 congressional districts). D131. It shows the boundaries of the eight congressional districts and which counties are in each. *Id.* The only areas where cities are arguably visible are inserts showing more detail of the St. Louis area and Kansas City area. *Id.* But even in those inserts, the details of the cities are hard to distinguish:



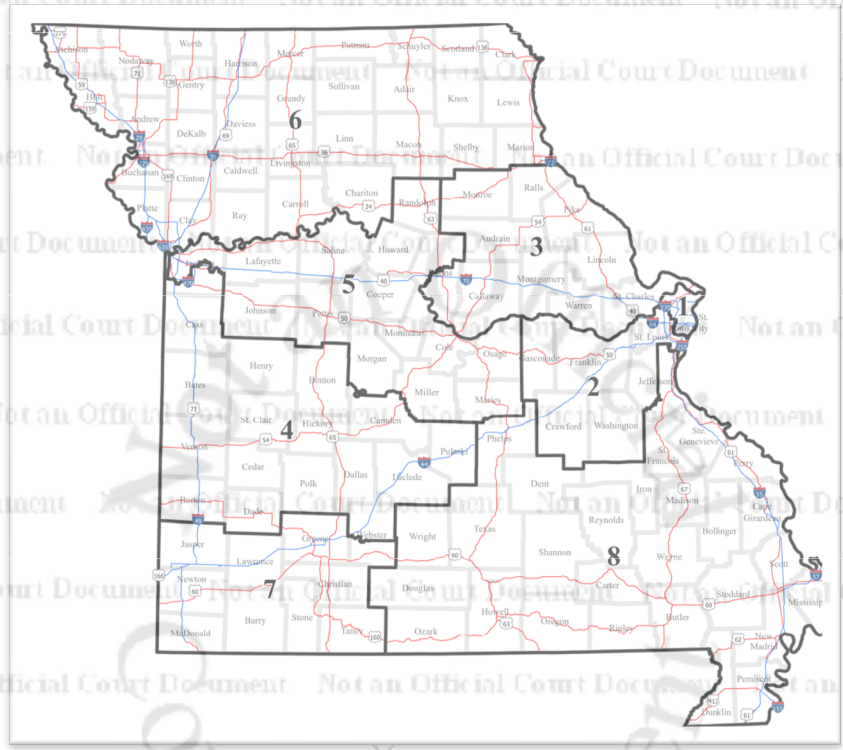


D131.

Exhibit B is the visualization of the map of the districts in House Bill 1.

D132. Like Exhibit A it shows the boundaries of the eight congressional districts

and which counties are in each. *Id.* But, there are no city names or boundaries show on Exhibit B. *Id.*



D132.

I. The Trial Court Enters Judgment

After trial, the parties submitted proposed judgments. *See* Parties’ March 26, 2026 Correspondence to Boeding. The Secretary’s proposed judgment included two footnotes that would have the trial court take judicial notice of unspecified “administrative records and maps hosted by the Office of Administration as well as the contents of the ArcGIS system,” along with— apparently—“the locations of” *all* “cities within the state.” Attachment 2 to Secretary’s March 26, 2026 Letter to Boeding at 8 nn.1-2. His proposed judgment

also gratuitously removed the word “existing” from the summary statement, without explanation or analysis. *See generally id.*

After considering those judgments, the trial court made minor alterations to the Secretary’s proposal and signed it. *See* D133; A1. The trial court’s judgment followed the Secretary’s suggestion and removed the word “existing” from the summary statement without explanation. *Id.* It also found the phrases “keep more cities and counties intact” and “more compact” to be fair and sufficient. *Id.* It retained the Secretary’s proposed footnotes taking judicial notice of various information. *Id.* The trial court did, however, deviate from the Secretary’s proposed judgment by concluding the phrase “better reflect statewide voting patterns” was unfair and insufficient and refusing to include that phrase in the summary statement it certified. *Id.*

This appeal followed.

**POINTS RELIED ON**

**I. The trial court erred and erroneously declared and applied the law by removing the word “existing” from the summary statement because courts must engage in limited rewrites of summary statements in that the trial court removed the word “existing” even though no party challenged its fairness and sufficiency.**

- *Fitz-James v. Hoskins*, 726 S.W.3d 133 (Mo. App. 2025)
- *Stickler v. Ashcroft*, 539 S.W.3d 702 (Mo. App. 2017)
- § 116.190, RSMo

**II. The trial court erred and erroneously declared and applied the law in concluding the challenged portions of the summary statement are fair and sufficient because the determination of fairness and sufficiency must be based on a comparison of the language of the summary statement against the contents of the referendum in that the assertions in the summary statement cannot be gleaned from the contents of HB 1.**

- *Sedey v. Ashcroft*, 594 S.W.3d 256 (Mo. App. 2020)
- *Fitz-James v. Hoskins*, 726 S.W.3d 133 (Mo. App. 2025)
- § 116.334, RSMo

**III. The trial court erred and erroneously declared and applied the law in concluding the phrase “keep more cities and counties intact” was fair and sufficient because a summary statement may not be biased or argumentative in that the phrase “keep more cities and counties intact” is language likely to create prejudice because it implies the existing (2022) congressional map is inferior to the map drawn by HB 1.**

- *Sedey v. Ashcroft*, 594 S.W.3d 256 (Mo. App. 2020)
- *Hill v. Ashcroft*, 526 S.W.3d 299 (Mo. App. 2017)
- *Fitz-James v. Hoskins*, 726 S.W.3d 133 (Mo. App. 2025)

**IV. The trial court erred and erroneously declared and applied the law in concluding the phrase “more compact” was fair and sufficient because a summary statement may not be biased or argumentative in that the phrase “more compact” is language likely to create prejudice for HB 1 because it implies the existing map is inferior.**

- *Sedey v. Ashcroft*, 594 S.W.3d 256 (Mo. App. 2020)
- *Fitz-James v. Hoskins*, 726 S.W.3d 133 (Mo. App. 2025)
- § 116.334, RSMo

**V. The trial court erred in concluding the phrase “more compact” is fair and sufficient because it was against the weight of the evidence in that the only competent evidence in the record demonstrates that some districts under HB 1 are less compact than under the existing plan, some are unchanged, and a blanket assertion that the new districts are “more compact” is inaccurate.**

- *Fitz-James v. Hoskins*, 726 S.W.3d 133 (Mo. App. 2025)
- *Wilson v. Wilson*, 667 S.W.3d 181 (Mo. App. 2023)
- *Cardwell v. Treasurer*, 249 S.W.3d 902 (Mo. App. 2008)

**VI. The trial court erred and abused its discretion by purportedly taking judicial notice of unidentified administrative records and maps, the contents of the ArcGIS system, and the location of every city in Missouri because the Secretary did not follow the proper procedure for requesting judicial notice in that the Secretary did not ask for relief from his pretrial stipulation, did not timely request that judicial notice be taken, and did not introduce the referenced material into the record.**

- *Gordon v. Gordon*, 739 S.W.2d 728 (Mo. App. 1987)
- *Howard v. Mo. State Bd. of Educ.*, 847 S.W.2d 187 (Mo. App. 1993)
- *Jackson v. Cherokee Drug Co.*, 434 S.W.2d 257 (Mo. App. 1968)
- *Randall v. St. Albans Farms, Inc.*, 345 S.W.2d 220 (Mo. 1961)

**VII. The trial court erred in concluding the phrase “keep more cities and counties intact” is fair and sufficient because that conclusion was against the weight of the evidence in that the only admissible evidence demonstrated it is impossible to tell how many cities either set of boundaries divides.**

- *Fitz-James v. Hoskins*, 726 S.W.3d 133 (Mo. App. 2025)
- *Wilson v. Wilson*, 667 S.W.3d 181 (Mo. App. 2023)
- *Weeks v. City of St. Louis*, 721 S.W.3d 873 (Mo. banc 2025)

## ARGUMENT

### I. **The trial court erred and erroneously declared and applied the law by removing the word “existing” from the summary statement because courts must engage in limited rewrites of summary statements in that the trial court removed the word “existing” even though no party challenged its fairness and sufficiency.**

**Standard of Review:** “*De novo* review of the trial court’s legal conclusions about the propriety of the [Secretary’s] summary statement . . . is the appropriate standard of review when there is no underlying factual dispute that would require deference to the trial court’s factual findings.” *Omohundro v. Hoskins*, 2026 WL 233297, at \*3 (Mo. App. Jan. 29, 2026) (cleaned up). Likewise, whether the trial court applied the correct legal standard is reviewed *de novo*. *Riley v. Headland*, 311 S.W.3d 891, 893 (Mo. App. 2010).

**Preservation:** Plaintiffs preserved this issue by requesting certification of a summary statement that included the word “existing” (D127) and testifying in support of the fairness of that word (Trial Tr. at 14-15).

The trial court largely adopted the Secretary’s proposed judgment<sup>5</sup> and removed the word “existing” from the summary statement, despite no party

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<sup>5</sup> Plaintiffs opposed the Secretary’s unprecedented motion to enter judgment in their favor—in which he asked the trial court to remand the summary statement

having challenged it. In fact, the trial court removed the phrase in the face of specific argument of Plaintiffs, without explanation. As a result there is no way to discern why the trial court thought it should rewrite the phrase “repeals Missouri’s existing . . . congressional plan” to say “repeals Missouri’s congressional plan.” But it was error for two reasons. First, the trial court’s authority under Section 116.190 is limited to correcting language challenged by the plaintiff. Second, the word “existing” accurately describes what would occur if voters approve the referendum.

A. No Party Challenged the Word Existing, So the Trial Court Was Not Authorized to Remove It

Plaintiffs never challenged use of the word “existing.” To the contrary, they explicitly argued the word “existing” was one of the only fair and sufficient words in the summary. Mr. von Glahn testified the summary statement is accurate insofar as “it is asking people in the state of Missouri to approve an act of the General Assembly entitled House Bill 1, which repeals Missouri’s existing congressional plan and replaces it with a new congressional plan.” Trial Tr. 14:9-15. Since Plaintiffs never challenged the word “existing,” it was error to remove it.

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to him for revisions—because they suspected (correctly) the Secretary intended to try to rewrite parts of the summary statement he no longer cared for. Since the trial court did not remand the summary statement, the Secretary took it upon himself to submit a proposed judgment removing a word Plaintiffs expressly *agreed* with.

Any citizen can “challenge the official ballot title.” § 116.190.1, RSMo. The petition must “state the reason or reasons why the summary statement portion of the official ballot title is insufficient or unfair and shall request a different summary statement portion of the official ballot title.” § 116.190.3, RSMo. The statute thus defines and limits the scope of the court’s inquiry: the trial court is to “consider the petition, hear arguments, and in its decision certify the summary statement portion of the official ballot title to the secretary of state.” § 116.190.4, RSMo.

That’s how the Secretary knows what to expect at trial and how the trial court understands which portions of the summary statement to consider. Section 116.190 does not give courts carte blanche authority to rewrite any portion of a summary statement, regardless of whether the plaintiff challenged it. If Plaintiffs had not challenged a portion of the summary statement in their Petition and then, at trial, asked the Court to find it unfair and insufficient, the Secretary would unquestionably object that Plaintiffs were too late. It has happened before.

Indeed, this Court has made clear that “a circuit court was not authorized to rewrite an entire summary statement because one word of the summary statement was found not to be fair and sufficient.” *Fitz-James v. Ashcroft*, 678 S.W.3d 194, 214 (Mo. App. 2023) (citing *Cures Without Cloning v. Pund*, 259 S.W.3d 76, 83 (Mo. App. 2008)). By the same logic, a circuit court cannot remove an unchallenged word from a summary statement when no party contends the word is unfair or insufficient.

Rather, when a summary statement is unfair and insufficient, courts must “revise the existing summary while modifying the existing language in the most limited fashion possible.” *Pippens v. Ashcroft*, 606 S.W.3d 689, 713 (Mo. App. 2020) (cleaned up). Plaintiffs did not challenge use of the word “existing,” and removing it was unnecessary to resolve any unfairness or insufficiency Plaintiffs identified. Nor did the trial court need to remove the word to stay under the summary statement word limit. There was no reason to remove “existing,” the trial court exceeded its authority by doing so, and this Court should reverse.

B. The Legal and Probable Effect of Voters Adopting the Referendum is that the “Existing” Congressional Plan Would be Repealed

Even if the trial court *could have* removed the word “existing”, it shouldn’t have, because the word “existing” describes the legal and probable effect of a vote for or against the referendum. It tells voters there is a current (*i.e.*, “existing”) map that may be replaced with a new map, depending on how voters decide on the referendum. And the 2022 map must be described as the “existing” map because when a referendum is submitted to the Secretary of State, it stays the implementation of the law on which the referendum is being requested. The trial court’s rewrite appears to change the meaning to say that something other than the “existing” plan is being repealed. That implication is wholly inaccurate.

1. *Submission of Referendum Signatures Stayed*

*Implementation of HB 1*

That’s because the voters are being asked whether they want to repeal the old maps and replace them with new maps. They are not being asked to repeal any plan other than the existing one. When referendum signatures are submitted, as they were here, the bill upon which the referendum is requested does not go into effect. Mo. Const. art. III, § 52(b); *Stickler v. Ashcroft*, 539 S.W.3d 702, 713 (Mo. App. 2017) (quoting *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 706 (Mo. banc 1952)) (cleaned up). The “purpose of referendum is to suspend or annul a law which has not gone into effect and to provide the people with a means of giving expression to a legislative proposition, and require their approval before it become operative as law.” *Id.* “[A]ny view other than that [a referendum] suspends the taking effect of the act against which it is invoked till a vote be had is *illogical and well-nigh unthinkable*.” *State ex rel. Kemper v. Carter*, 165 S.W. 773, 778 (Mo. banc 1914) (emphasis added).

This has been the law for over a century and it has not changed. Plaintiffs are aware the Circuit Court of Cole County recently issued a decision in *Maggard v. State*, Case No. 25AC-CC09120, that deviates from this long-held rule. But that decision is not binding and undoubtedly wrong on the merits. It flatly ignores the long line of cases holding submission of signatures stays the effectiveness of a referred law. And the rule makes sense. It would be illogical for a law subject to a

referendum to be briefly in effect, then not in effect until voters vote, only to potentially go *back* into effect.

2. *The “Existing” Congressional Plan is the One Adopted in 2022*

When Plaintiffs submitted signatures in support of the referendum petition, the effectiveness of HB 1 was stayed and the 2022 map remained in place. The 2022 map, therefore, is the “existing” congressional map and will be replaced *only* if voters approve the referendum. Mr. Nicholson explained the referendum process: “So how I think about these as a voter is, I’m taking the role of the Governor and signing or vetoing an act of the General Assembly. So it doesn’t yet take effect, because it’s been referred to the people. And then we, as voters, get to vote it up or down.” Trial Tr. at 36:4-9.

This Court considered and decided this issue in *Stickler v. Ashcroft*. There, plaintiffs challenged the affirmative wording of a referendum petition summary statement. The trial court agreed the “affirmative phrases failed to acknowledge that SB 19 has already been enacted into law by the General Assembly and the Governor.” 539 S.W.3d at 712. This Court reversed, citing the Constitution’s clear statement that referendum petitions stay the effectiveness of a law:

The relevant provisions of the Missouri Constitution do not prohibit the summary statement from being worded in the affirmative; indeed, the Constitution suggests that an affirmative wording is more appropriate. Article III, § 49 . . . provides that the people reserve power to approve or reject by referendum any act of the general assembly. . . . While Article III, § 49 may be ambivalent, the *Stickler* plaintiffs ignore Article III, § 52(b), which provides that any measure referred to the people shall

take effect when approved by a majority of the votes cast thereon, and not otherwise. Similarly, § 116.320.1 provides that each statewide ballot measure receiving a majority of affirmative votes is adopted. Article III, § 52(b) and § 116.320.1 plainly contemplate that referendum questions will be framed in the affirmative, asking voters whether they wish to approve a particular measure.

*Id.* (cleaned up).

This Court also cited Missouri Supreme Court precedent describing “the referendum process in a way which requires affirmative voter approval of the referred measure.” *Id.* at 713. That case, *State ex rel. Moore v. Toberman*, describes the effect of the referendum as suspending the implementation of the law. “The purpose of referendum is to suspend or annul a law *which has not gone into effect* and to provide the people a means of giving expression to a legislative position, and require their approval *before it comes operative as a law.*” 250 S.W.2d at 706 (emphasis added).

3. *The Word “Existing” is a Fair and Sufficient Description of the Legal and Probable Effect of HB 1 and the Referendum*

Summary statements “should accurately reflect the legal and probable effects of the proposal.” *Fitz-James v. Hoskins*, 726 S.W.3d 133, 147 (Mo. App. 2025). Here, the word “existing” accurately reflects the effect of the measure. HB 1 is titled “to repeal sections 128.345, 128.346, and 128.348, RSMo, and to enact in lieu thereof twelve new sections relating to the composition of congressional districts.” D123:P2. That means HB 1 would repeal the current (*i.e.*, “existing”) congressional district lines (those put in place in 2022) and replace them with

new ones. Considering the extensive precedent discussed above, there can be little debate that the word “existing” is fair and sufficient, as it accurately describes the legal and probable effect of the measure.

As the trial court’s judgment acknowledged: “House Bill 1 replaces House Bill 2909 and provides the plan for redistricting Missouri’s federal congressional seats.” D133:P2; A2. This is precisely what the word “existing” conveys—there is a current plan that would be replaced. The referendum allows voters to decide whether they want to enact HB 1. Voters will be asked to decide whether they want to repeal the current congressional district lines (the 2022 lines) and replace them with the new lines drawn in HB 1.

“Where a ballot measure’s adoption would directly nullify or substantially alter existing legal rules, reference to the measure’s effect on *existing* law may often be necessary to adequately inform voters of the legal and probable effects of the proposal.” *Pippens*, 606 S.W.3d at 708 (cleaned up; emphasis added). That’s the case here. The word “existing” properly explained to voters what it is their vote will do. It was error to remove that word without explanation.

**II. The trial court erred and erroneously declared and applied the law in concluding the challenged portions of the summary statement are fair and sufficient because the determination of fairness and sufficiency must be based on a comparison of the language of the summary statement against the contents of the referendum in that the assertions in the summary statement cannot be gleaned from the contents of HB 1.**

**Standard of Review:** As there are no factual disputes related to this Point, this Court reviews the fairness and sufficiency of the summary statement *de novo*. *Omohundro*, 2026 WL 233297, at \*3. This Court also reviews *de novo* whether the trial court applied the correct legal standard. *Riley*, 311 S.W.3d at 893.

**Preservation:** Plaintiffs preserved this issue by challenging the identified language in their Petition (D95 at ¶¶ 31-34); requesting entry of judgment in their favor (Attachment 2 to Plaintiffs' March 26, 2026 Letter to Boeding); and negotiating a stipulation that barred the Secretary from offering evidence after he insisted the case should be resolved based on a comparison of the summary statement to the referendum (D108).

A major question for this Court to decide is whether the trial court should have limited its review of the actually-contested phrases to simply comparing the ballot title to the text of the underlying measure upon which a vote is sought.

That is the traditional analysis. But in this case, the Secretary tried to have his

cake and eat it too. He embraced that analysis to avoid discovery, arguing the fairness and sufficiency of summary statements should be assessed solely by comparing the underlying measure and the text of the summary statement. *See* D102:P2-3. The Secretary reiterated this position at trial, where his counsel stated the case requires “an objective comparison of the summary statement . . . with House Bill 1.” Trial Tr. 78:4-7.

But, after taking that position, the Secretary asked the trial court to consider documents *other than* HB 1 to find the summary fair and sufficient (Exhibits A and B). *See* D131-132. Regardless of which of the Secretary’s two position this Court follows, the summary statement is unfair and insufficient. But if—as the Secretary repeatedly argued—a summary statement’s legality is assessed only by comparing the language of the measure to the language of the summary, HB 1’s summary statement is necessarily unfair and insufficient because it includes assertions that indisputably cannot be gleaned from the text of HB 1. The Secretary effectively admitted this by asking the trial court to look at various maps and take judicial notice of an array of poorly defined information.

This Court has said the “appropriate inquiry involves both a review of the ballot summary to ensure that it does not use language that is intentionally argumentative and a comparison of the summary to the provisions of the ballot measure to ensure that the summary fairly and adequately summarizes the proposed measure.” *Sedey v. Ashcroft*, 594 S.W.3d 256, 263 (Mo. App. 2020) (cleaned up); *see also* § 116.334, RSMo. Under this inquiry, the phrases the trial

Court included in its certified ballot title, “keep more cities and counties intact” and “more compact,” are necessarily unfair and insufficient because neither claim flows from the language of HB 1. *See Fitz-James*, 726 S.W.3d at 147 (“The summary statement should accurately reflect the legal and probable effects of the proposal, and should inform voters of the initiative’s central feature.” (cleaned up)).

A. HB 1 is Just a List of Voting Tabulation Districts

HB 1’s structure is straightforward. Its opening sections repeal the existing congressional district statutes and establish which election will be governed by the new districts. D123:P2. The remainder of the bill is just a list of voting tabulation districts organized by county and assigned to each of the eight congressional districts. *See generally* D123; Trial Tr. at 24:3-6. That’s it. The bill does not include a visual representation of the congressional districts. *Id.* The bill contains no maps, no descriptions of district characteristics, and no comparisons to prior plans. D123. It is, in essence, a technical assignment of geographic building blocks to numbered districts—nothing more.

B. HB 1 Contains Nothing Reflecting that It “Keeps More Cities and Counties Intact” as Compared to the 2022 Congressional Plan

Nothing in HB 1 supports the Secretary’s claim that it “keeps more cities and counties intact” than the existing plan. This part of the summary statement fails for two independent reasons: first, HB 1 contains virtually no information

about cities; and second, it contains no comparative information about the 2022 plan whatsoever.

As to cities, the bill does not list the cities within each congressional district, except for a very few. A review of HB 1 (D96; A11) reveals this to be the case. In addition, the only witness on the issue testified, without objection that HB 1 does not show how many cities are kept intact. Tr. 34:2. When asked whether HB 1 would tell how many cities the *previous* plan kept intact, he again answered: “No.” Tr. 34:5. The bill organizes voting tabulation districts by county, but Nicholson explained that only “a small minority of the VTDs . . . list a city,” and that practice “is more unusual than normal.” Tr. 27:4-7. All of this is also readily apparent from the face of the bill.

As to counties, HB 1 provides slightly more information—but still nothing comparative. Because the bill organizes voting tabulation districts by county, one can identify which counties are in more than one congressional district (commonly referred to as split) under the new plan. But there is no information about the 2022 congressional districts. “You could see how many [counties] are intact as whole units [in the new plan], but you would not see anything about the existing plan.” Trial Tr. 34:10-11. Without any information about the 2022 plan’s county splits, the word “more” in the Secretary’s summary statement has no foundation in the bill’s text.

In short, it is impossible to verify from the language of HB 1 whether it “keeps more cities and counties intact” than a plan contained in a different

document. The bill simply does not contain comparative information. To make the comparison the Secretary included in the summary statement, one must look outside the four corners of HB 1—which the Secretary himself argued is impermissible. If the Court agrees, the Judgment must be reversed and the ballot title rewritten to remove all the comparative language. That is what the Plaintiffs proposed judgment asked.

C. HB 1 Contains No Information About Compactness

HB 1 also contains no information about compactness—of either the districts it creates or those it would replace. When asked whether HB 1 describes the compactness of its districts, the only witness was unequivocal: “is there . . . anywhere that’s going to describe to us in this bill how compact a congressional district is? A. No.” Trial Tr. at 27:24-28:2. Compactness is measured through statistical analyses, not by reading statutory text listing voting tabulation districts. Trial Tr. 21:24-22:7, 22:17-23:1. Again, it is readily apparent from the face of HB 1 that it does not address compactness.

Because HB 1 contains neither compactness information for either plan nor visual representations of any districts, the Secretary’s claim that the new districts are “more compact” cannot be derived from the bill’s language. Thus, the trial court erred as a matter of law because the Secretary’s comparative claims are not a summary of the text of HB 1 at all—much less a fair and sufficient one. The Secretary cannot have it both ways: he cannot argue discovery is unnecessary because the inquiry is limited to the bill’s language, and then defend summary

statement language by relying on information found nowhere in the bill itself.

The phrases “keep more cities and counties intact” and “more compact” are unfair and insufficient on this basis alone.

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III. **The trial court erred and erroneously declared and applied the law in concluding the phrase “keep more cities and counties intact” was fair and sufficient because a summary statement may not be biased or argumentative in that the phrase “keep more cities and counties intact” is language likely to create prejudice because it implies the existing (2022) congressional map is inferior to the map drawn by HB 1.**

**Standard of Review:** There are no underlying factual disputes concerning this Point on whether the language of the summary statement is likely to create prejudice, so this Court reviews the issue *de novo*. *Omohundro*, 2026 WL 233297, at \*3.

**Preservation:** Plaintiffs preserved this issue by challenging the identified language in their Petition (D95 at ¶¶ 31-32) and requesting entry of judgment in their favor (Attachment 2 to Plaintiffs’ March 26, 2026 Letter to Boeding).

Rather than tethering the summary statement to the language of the measure (as the Secretary claims he must), he instead improperly placed his thumb on the scale when he wrote the summary statement by using phrases meant to prejudice voters in favor of implementing HB 1. Comparing the districts in HB 1 to the existing 2022 congressional districts, with qualitative phrases, is inherently argumentative and biased—such statements tell voters the districts created by HB 1 are *better* than the existing districts.

The original summary made pejorative statements about the existing districts and positive statements about the new districts. That the Secretary conceded the pejorative statements were improper and must be removed does not justify retaining the positive statements about the HB 1 districts. And a comparison of the summary statement to HB 1 confirms that the statement “keeps more cities and counties intact” is nowhere to be found in the actual language of the measure. The trial court erred in retaining these comparative phrases in the summary statement, and this Court should reverse.

A. A Summary Statement Should be Fair, Impartial, Unbiased, and Not Argumentative

A summary statement should use language that “fairly and impartially summarizes the purposes of the measure so that voters will not be deceived or misled.” *Sedey*, 594 S.W.3d at 262; *see also* § 116.334.1, RSMo (summary statements must be drafted “using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure”). “The Secretary of State must attempt to draft neutral language that is fair and impartial . . . which describes the [measure] using terms that would [not] immediately prejudice a voter for or against the initiative.” *Hill v. Ashcroft*, 526 S.W.3d 299, 308 (Mo. App. 2017). A summary statement is insufficient and unfair if it inadequately and with “bias, prejudice, deception, or favoritism” states the consequences of a measure. *Brown v. Carnahan*, 370 S.W.3d 637, 654 (Mo. banc 2012).

This Court regularly finds portions of summary statements to be argumentative and biased. In *Sedey*, for example, this Court found the Secretary's description that an initiative would allow election judges to transfer votes between ballots to be prejudicial. "[B]ecause some voters may be prejudiced against the proposed amendments due to a potentially errant belief that, without statutory or regulatory guidance, election judges will be transferring votes, the vote-transfer language of the summary statements is unfair and must be redrafted." 594 S.W.3d at 267. In *Fitz-James v. Hoskins*, this Court found the phrase "sex-change procedures" to be unfair and insufficient. Specifically, the Court found the "language employed by the Secretary of State is misleading, as it suggests that the prohibition in subsection 9 is narrower than that intended by the General Assembly." 726 S.W.3d 133, 156 (Mo. App. 2025). There are many other examples.

B. The Phrase "Keep More Cities and Counties Intact" is Biased and Argumentative Because it Creates Prejudice for HB 1

As in the above cases, the Secretary chose language intended to prejudice voters for HB 1. By stating HB 1 will "keep more cities and counties intact," the Secretary is conveying to voters that HB 1 is *comparatively better* than the existing congressional map and this is a reason to *prefer* HB 1. That's the same type of advocacy the Secretary conceded was improper when he admitted "gerrymandered" and "protects incumbent politicians" are "argumentative and likely to create prejudice." Trial Tr. at 80:3-9; D122:P4. The difference is only one

of direction: the struck phrases denigrated the existing plan, while “keep more cities and counties intact” promotes the new plan. Both are meant to influence voters.

The phrase is inherently comparative and argumentative—it necessarily conveys the existing plan is inferior. Again, the original summary statement (with its denigration of the existing map) makes clear this was the Secretary’s objective. The remaining statement is still intended to prejudice voters in favor of HB 1. The Secretary promotes HB 1 by making a direct comparison between the existing congressional map and the map drawn by HB 1.

Evaluating whether HB 1 keeps more cities and counties intact is not the Secretary’s job. The proper place for such advocacy is the campaign trail. There will be months for both sides to talk to voters about the advantages and disadvantages of each congressional map. The Secretary’s role is to draft neutral summary statements that allow voters to make their own, informed choices without the Secretary advocating for or against the measure. That wasn’t done here. The phrase “keep more cities and counties intact” cannot be discerned from HB 1. It must be removed because it is argumentative, likely to create prejudice for HB 1, and does not neutrally describe the measure.

IV. **The trial court erred and erroneously declared and applied the law in concluding the phrase “more compact” was fair and sufficient because a summary statement may not be biased or argumentative in that the phrase “more compact” is language likely to create prejudice for HB 1 because it implies the existing map is inferior.**

**Standard of Review:** There are no underlying factual disputes concerning this Point on whether the language of the summary statement is likely to create prejudice, so this Court reviews the issue *de novo*. *Omohundro*, 2026 WL 233297, at \*3.

**Preservation:** Plaintiffs preserved this issue by challenging the identified language in their Petition (D95 at ¶¶ 33-34) and requesting entry of judgment in their favor (Attachment 2 to Plaintiffs’ March 26, 2026 Letter to Boeding).

As discussed in the preceding section, the summary statement is unfair and insufficient because it compares the number of city and county splits in HB 1 to the 2022 congressional map. The phrase “more compact” is prejudicial for the same reason. *See Fitz-James*, 726 S.W.3d at 156. The text of the measure does not support the proposition that HB 1’s congressional districts are more compact as compared to the 2022 congressional map.

The word “more” necessarily implies the existing plan (2022 map) is inferior because its districts are “less compact”—a judgment that should not be embedded in a summary statement that is supposed to “fairly and impartially

summarize[] the purposes of the measure so that voters will not be deceived or misled.”<sup>6</sup> *Sedey*, 594 S.W.3d at 262; see also § 116.334.1, RSMo. Notably, the Secretary himself conceded his original descriptions of the existing plan as “gerrymandered” and “protect[ing] incumbent politicians” were “argumentative and likely to create prejudice.” Trial Tr. 80:1-9. The phrase “more compact” operates in the same way: it tells voters HB 1 is better than the current plan on a technical dimension, thereby advocating for the measure rather than neutrally describing it.

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<sup>6</sup> It is also an odd assertion, given that HB 1’s districts were drawn using the same census data and districts are supposed to be “as compact and as nearly equal in population as may be.” Mo. Const. art. III, § 45.

- V. **The trial court erred in concluding the phrase “more compact” is fair and sufficient because it was against the weight of the evidence in that the only competent evidence in the record demonstrates that some districts under HB 1 are less compact than under the existing plan, some are unchanged, and a blanket assertion that the new districts are “more compact” is inaccurate.**

**Standard of Review:** A weight-of-the-evidence challenge requires this Court to “weigh the probative value of the evidence supporting the judgment relative to the evidence not supporting the judgment.” *Weeks v. City of St. Louis*, 721 S.W.3d 873, 876 (Mo. banc 2025). The Court defers to the trial court’s credibility findings and resolution of factual disputes. *Id.* The Court will reverse “if the circuit court could not have reasonably found, from the record at trial, the existence of a fact that is necessary to sustain the judgment.” *Id.* at 877. The Court looks at all the evidence supporting and contradicting a disputed proposition and considers “why the favorable evidence . . . is so lacking in probative value, when considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.” *Interest of A.M.W.*, 652 S.W.3d 225, 234-35 (Mo. App. 2022).

Despite this deferential standard, a “court, either appellate or trial, [cannot] arbitrarily ignore the undisputed evidence.” *Scheufler v. Cont’l Life Ins. Co.*, 169 S.W.2d 359, 364 (Mo. 1943); see also *Hippos, LLC v. Mo. Dep’t of Health*

& *Senior Servs.*, 2026 WL 673011, at \*11 (Mo. App. Mar. 10, 2026) (“[An] agency may not arbitrarily disregard and ignore competent, substantial and undisputed evidence.”). Further, as discussed above, *de novo* review applies “when there is no underlying factual dispute that would require deference to the trial court’s factual findings.” *Omohundro*, 2026 WL 233297, at \*3.

This case is unusual in that ballot title cases are normally tried on stipulated facts. As discussed elsewhere, if this Court believes—as the Secretary repeatedly urged—the case should be decided simply by comparing the summary statement against the measure, the Court should reverse and need not reach the evidentiary challenges in this and the following points relied on. If, however, the Court concludes the fairness and sufficiency (namely, the accuracy) of the claims in the summary statement *cannot* be evaluated exclusively by comparing the language of the summary statement and HB 1, then the Court must consider the evidence.

As discussed below, there is *no* evidence supporting the accuracy of the contested portions of the summary statement. Plaintiffs would have made a “substantial evidence” challenge but for the fact that they had the burden of proof. *See Koeller v. Malibu Shores Condo. Ass’n, Inc.*, 602 S.W.3d 283, 287 (Mo. App. 2020); *but see Hippos, LLC*, 2026 WL 673011, at \*11 (concluding agency

decision was arbitrary and not supported by substantial evidence where agency improperly ignored undisputed evidence).<sup>7</sup>

**Preservation:** Plaintiffs preserved this issue by challenging the referenced language in their Petition (D95 at ¶¶ 33-34); offering evidence in support of this challenge (*see generally* Trial Tr.); objecting to the Secretary’s attempt to violate the stipulation (*id.* at 80:24-82:21, 85:1-15); and requesting entry of judgment in their favor (Attachment 2 to Plaintiffs’ March 26, 2026 Letter to Boeding).

As covered in the statement of facts, the Plaintiffs put on evidence about certain phrases in the Secretary’s summary statement. They did this because it seemed clear that the Secretary was relying on something other than the text of the bill to arrive at his summary. The Secretary essentially admitted that he had, when he offered evidence, in the form of maps, other than the bill itself.

In anticipation of that strategy, Plaintiffs’ *prima facie* case included testimony about the evidence on whether the challenged phrases were accurate. The trial court ignored the facts in front of it and kept the phrase “more compact” in the summary statement, despite the phrase being inaccurate and not reflecting the legal and probable effects of the measure. A summary statement must “accurately reflect the legal and probable effects of the proposal, and [] inform

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<sup>7</sup> As a practical matter, Plaintiffs believe there are no relevant factual disputes and this Court’s review is functionally *de novo*.

voters of the [measure’s] central features.” *Fitz-James*, 726 S.W.3d at 147. Stated differently, a summary statement cannot tell voters something that isn’t true.

It is not the legal or probable effect of the measure that HB 1 is “more compact” than the 2022 congressional plan. HB 2909 and HB 1 say what they say. But the legal and probable effect of the measure (*i.e.*, the referendum) is that—depending on how voters decide—either the 2022 congressional plan or the HB 1 congressional plan will govern the 2028 congressional election.<sup>8</sup>

Critically, compactness is not even mentioned in the text of HB 1. As Mr. Nicholson testified: nothing in HB 1 describes how compact a congressional district is. Trial Tr. at 27:24-28:2. The phrase “more compact” is thus a comparative characterization that goes beyond the four corners of the measure itself and requires the Secretary to make contested empirical judgments about the relative merits of two maps. Yet, the Secretary offered zero evidence to support the conclusion that the HB 1 districts are “more compact.”

A. It is Inaccurate to Describe HB 1 as Being “More Compact”

Compared to the 2022 Map

The trial court’s finding that HB 1 is more compact than the 2022 map rests entirely on the unsworn characterizations of the Secretary’s counsel, who—in lieu of calling any witnesses—attempted to “testify” about what the maps show. Trial Tr. 81-93. The trial court adopted the Secretary’s proposed finding based on

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<sup>8</sup> Assuming the General Assembly does not redraw districts again in the future.

“visual observation”—an observation made not by any witness under oath, but by counsel in argument. Counsel’s characterizations of maps are not evidence. *See, e.g., Wilson v. Wilson*, 667 S.W.3d 181, 187 (Mo. App. 2023).

And, even setting aside the evidentiary problem, the substance of the trial court’s finding is just wrong and contrary to the *only* admissible evidence on compactness. The only sworn witness on the issue explained that visual observation is an insufficient methodology for assessing compactness: “I would not make a determination based on compactness from a visual review. That is why there are a number of different statistical measurements that would try to assess compactness.” Trial Tr. 41:4-8. He explained that compactness is “not very well defined” in the law, but “a number of statistical measurements have been crafted to help come up with different ways to analyze whether or not a shape of a final district looks like a circle.” *Id.* at 22:1-7. Mr. Nicholson’s testimony about compactness went into the record without objection. *See generally* Trial Tr.

Mr. Nicholson’s testimony—unlike counsel’s unsworn observations—are consistent with the law. “[T]he word ‘compact’ does not refer solely to physical shape or size, [so] a visual observation, although relevant, **is not the decisive factor** in determining whether a district departs from the principle of compactness.” *Pearson v. Koster*, 367 S.W.3d 36, 48-49 (Mo. banc 2012) (emphasis added). As Mr. Nicholson testified, “scholars have recognized that ‘compactness’ is a vague standard and have developed various statistical

measures to be utilized in determining compactness.” *Id.* at 49; *see also Faatz v. Ashcroft*, 685 S.W.3d 388, 402 n.8 (Mo. banc 2024).

The commonly used statistical measurements—Reock and Polsby-Popper scores—tell a very different story from the trial court’s “boxier” finding. And these statistical measurements are commonly used measures of compactness and accepted by Courts that have reviewed congressional maps. *See Pearson*, 367 S.W.3d at 48-49; *Faatz*, 685 S.W.3d at 402 n.8. Mr. Nicholson testified that after reviewing these scores *from the Office of Administration’s own analysis*, he “was able to conclude that some districts, if HB 1 is adopted, become less compact, some become more compact, and some are exactly as compact as they were. As they are under the existing plan.” *Id.* at 44:4-11; *see also* D130. He specifically concluded the ballot summary’s compactness language “is incorrect, because some congressional district boundaries are less compact and some are neither more or less compact.” *Id.* at 44:15-18. There was no other admissible evidence on this topic. In other words, all evidence before the court was that the new map is *not* more compact than the old map. There was no contrary evidence.

The trial court’s judgment—written by the Secretary—acknowledged this testimony but purported to dismiss it as “unhelpful.” D133:P8; A8. This is remarkable, given the trial court’s professed reliance on *counsel’s* unsworn assertions that “[t]he districts formed by House Bill 1 better resemble the squares, rectangles, and hexagons that indicate compactness.” *Id.* As Mr. Nicholson testified, there are commonly used statistical tools to measure that

exact thing. The Secretary offered none of them into evidence and they are not mentioned in HB 1.

Missouri courts routinely criticize the “verbatim adoption of a proposed judgment or order.” *Neal v. Neal*, 281 S.W.3d 330, 337 (Mo. App. 2009). The reason is easy to understand: as explained below, the practice here caused the trial court to purportedly take judicial notice of a swath of unidentified information that was *never* offered into the record.

In any event, calling testimony “unhelpful” is not the same as finding it non-credible. Credibility determinations concern *veracity*. Helpfulness, on the other hand, concerns *relevance* (which is a legal conclusion). Thus, the trial court made no express credibility findings, and it had no basis to ignore the undisputed evidence, as reflected in the admitted documents and Mr. Nicholson’s testimony.<sup>9</sup> *See, e.g., Cardwell v. Treasurer*, 249 S.W.3d 902, 907-08 (Mo. App. 2008).

Ultimately, the *only* competent evidence in the record concerning compactness—Mr. Nicholson’s testimony—established that the blanket assertion “more compact” is factually inaccurate. The trial court should not have disregarded this

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<sup>9</sup> Further, if the Court chooses to disregard Mr. Nicholson’s testimony, then it is left to consider the documentary evidence, all of which was admitted without objection. In other words, “there is no underlying factual dispute that would require deference to the trial court’s factual findings” and review is *de novo*. *Omohundro*, 2026 WL 233297, at \*3.

uncontradicted testimony in favor of a “visual comparison” based on counsel’s inadmissible argument.

B. The Legal and Probable Effect of the Referendum is Not that HB 1’s Congressional Districts Are More (or Less) Compact than the 2022 Congressional Districts

The requirement that a summary statement “accurately reflect the legal and probable effects of the proposal” comes from the “commonly understood meaning of summary.” *Pippens*, 606 S.W.3d at 701. A summary is “a short restatement of the main points (as of an argument) for easier remembering, for better understanding, or for showing the relation of the points.” *Id.* Whether HB 1 is “more compact” as compared to the 2022 congressional districts, is not a summary of the main points of the proposal. It does not describe the legal and probable effects of voters adopting or rejecting the referendum.

Rather, as discussed above, the legal and probable effect of the proposal to refer HB 1 to voters is that voters will either approve HB 1 and those congressional districts will be in effect for the 2028 election *or* voters will reject it and the existing congressional districts will govern. Neither of these probable effects has anything to do with compactness of the districts, nor could they. The measure’s purpose is to give voters an opportunity to decide which congressional districts they want to use. It is not a value judgment on which map is better.

That’s for the campaigns, not for the courts (or the Secretary).

VI. **The trial court erred and abused its discretion by purportedly taking judicial notice of unidentified administrative records and maps, the contents of the ArcGIS system, and the location of every city in Missouri because the Secretary did not follow the proper procedure for requesting judicial notice in that the Secretary did not ask for relief from his pretrial stipulation, did not timely request that judicial notice be taken, and did not introduce the referenced material into the record.**

**Standard of Review.** This Court reviews the decision to take judicial notice of information for abuse of discretion. *Whitmoor Realty, LLC v. Beckerle as Tr. of Delora A. Beckerle Living Tr. Dated June 10, 1999*, 588 S.W.3d 573, 579 (Mo. App. 2019); *Willis v. Willis*, 50 S.W.3d 378, 389 (Mo. App. 2001).

**Preservation.** Plaintiffs preserved this issue by negotiating a stipulation that barred the Secretary from offering evidence after he insisted the case should be resolved based on a comparison of the summary statement to HB 1 (D108) and objecting to the Secretary offering improper “evidence” that exceeded the stipulation (Trial Tr. at 80:24-82:21, 85:1-15).

As discussed in the following Point, the trial court’s conclusion that the phrase “keep more cities and counties intact” is fair and sufficient is against the weight of the evidence because *no* admissible evidence showed how many cities either congressional plan divides. As a threshold matter, however, the Court must first address the propriety of the trial court purportedly taking judicial notice of

an array of information in its judgment. *See* D133:P8 nn.1-2; A8. The trial court abused its discretion in doing so for multiple reasons, detailed below.

A. The Secretary Enticed the Trial Court to Error

After first taking the position no evidence other than HB1 was necessary, entering a stipulation limiting the evidence, and despite not requesting judicial notice be taken of anything other than Exhibits A and B at trial, *see generally* Trial Tr., the Secretary submitted a proposed judgment which had the trial court take judicial notice of “these administrative records and maps hosted by the Office of Administration as well as the contents of the ArcGIS system,” along with the “locations of cities within the state,” *see* Attachment 1 to Respondent’s March 26, 2026 Letter to Boeding at 8 nn.1-2. And the trial court adopted it (with modifications not relevant to this Point). *See* D133; A1. These judicially noticed “facts” were ostensibly meant to support the court’s conclusion that HB 1 “splits” fewer counties and cities than the 2022 congressional plan. D133:P7-8; A7-8.

B. The Trial Court Abused Its Discretion by Taking Judicial Notice of Whatever Was Referenced in the Secretary’s Proposed Judgment

As noted, this Court reviews evidentiary rulings, including decisions about whether to take judicial notice, for abuse of discretion. Nonetheless, “[j]udicial notice must be exercised cautiously” and doubts should be resolved in favor of putting the parties to their proof. *Gordon v. Gordon*, 739 S.W.2d 728, 730 (Mo. App. 1987); *see also Schilling v. Bi-State Dev. Agency*, 414 S.W.2d 818, 826 (Mo. App. 1967).

1. *The Trial Court Improperly Relieved the Secretary of His Stipulation Not to Offer Evidence*

Before trial, Plaintiffs served discovery to try to learn the factual basis for the claims in the summary statement. D102-103. After Plaintiffs moved to compel, the parties entered a stipulation (filed with the Court) unequivocally stating the Secretary would not offer any evidence other than the summary statement, bills, and previously mentioned maps. D101. In moving to quash subsequent deposition notices, the Secretary's counsel acknowledged: "[W]e've entered into a stipulation that ties our hands specifically to our representations into the interrogatories" and that stipulation was "pretty clear of what [the Secretary] [in]tends to rely on at trial." Feb. 4, 2026 Hearing Tr. at 44.

Put simply, the Secretary agreed not to offer any evidence other than specified documents. "Judicial notice is but a branch of evidence." *Sherman v. Missouri Pros. Mut.-Physicians Pro. Indem. Ass'n (MPM-PPIA)*, 516 S.W.3d 867, 870 n.5 (Mo. App. 2017) (motion for judgment on pleadings converted into summary judgment motion when trial court took judicial notice of facts); *Ralph D'Oench Co. v. St. Louis Cnty. Cleaning & Dyeing Co.*, 218 S.W.2d 609, 612 (Mo. 1949) (same). Thus, the Secretary's proposed judgment, which had the trial court take judicial notice of various unidentified information, violated the stipulation.

"A stipulation is an agreement between counsel with respect to business before a court . . ." *Howard v. Mo. State Bd. of Educ.*, 847 S.W.2d 187, 190 (Mo. App. 1993). "Stipulations are controlling and conclusive, and courts are bound to

enforce them.” *Id.*; see also *State ex rel. Turri v. Keet*, 626 S.W.2d 422, 425 (Mo. App. 1981); *Hansen v. Ryan*, 186 S.W.2d 595, 600 (Mo. 1945). “Stipulations should be interpreted in view of the results the parties were attempting to accomplish.” *Ste. Genevieve Cnty. v. Fox*, 688 S.W.2d 392, 394 (Mo. App. 1985).

The stipulation resulted from the Secretary’s desire to avoid explaining or answering discovery about the factual basis for the assertions in the summary statement. Having persuaded the trial court to deny Plaintiffs all discovery on those issues, and having repeatedly insisted the case be decided by comparing the summary statement against HB 1, the Secretary cannot now rely on evidence outside the four corners of HB 1—particularly evidence introduced for the first time in a proposed judgment submitted after trial. The Secretary did not ask to be relieved from his stipulation, and the trial court erred by disregarding it.

## 2. *The Secretary Did Not Properly Request Judicial Notice*

Stipulation aside, the trial court abused its discretion because the Secretary never even asked the court to take judicial notice of anything mentioned in footnotes 1 and 2 of the judgment. The proper way for a party to request judicial notice is to “call matters of judicial notice to the attention of the trial court during trial in order that opposing counsel might have opportunity to offer rebuttal testimony” *Jackson v. Cherokee Drug Co.*, 434 S.W.2d 257, 264 (Mo. App. 1968). This is necessary because parties have a right to rebut facts introduced by way of judicial notice. *Willis*, 50 S.W.3d at 389 (trial court erred by depriving party of

opportunity to rebut judicially noticed facts); *Morrison v. Thomas*, 481 S.W.2d 605, 607 (Mo. App. 1972) (same).

The Secretary did not request the court to take judicial notice in his pretrial brief or any other filing. He did not ask the court to take judicial notice at trial. Instead, he sandbagged until he submitted his proposed judgment, when Plaintiffs could not respond. Further—as explained below—it is not even clear *what* the Secretary had the trial court judicially notice. Had he asked the trial court to take notice of unspecified “administrative records” and the “contents” of ArcGIS, Plaintiffs would unquestionably have objected, because they do not know what the Secretary is referring to.

3. *The Secretary Did Not Put the Allegedly Noticed Facts in the Record, Making it Impossible for this Court to Review Them*

Further, “[t]he facts of which a trial court does take judicial notice must be offered in evidence so as to become a part of the record in the case.” *Randall v. St. Albans Farms, Inc.*, 345 S.W.2d 220, 223 (Mo. 1961); *see also State v. Johnson*, 150 S.W.3d 132, 137 (Mo. App. 2004) (requiring records of prior convictions to be put before court). In addition to ensuring the opposing party can properly object and cross examine, this rule “ensure[s] an intelligible record for appellate review because [the court of appeals] cannot take a corresponding judicial notice of facts judicially noticed by the trial court.” *Johnson*, 150 S.W.3d at 137; *see also Welman v. Parker*, 391 S.W.3d 477, 486 n.8 (Mo. App. 2013).

This case illustrates why this requirement exists. The Secretary had the trial court judicially notice an unknown set of information in a proposed judgment, which the trial court adopted. None of that information is in the record. There is no way for this Court or Plaintiffs to review that information and determine whether it actually supports the judgment. Indeed, it is not even clear *what* the trial court purported to notice.

The judgment references “**these** administrative records and maps hosted by the Office of Administration.” D133:P8; A8 (emphasis added). What are those? And what are the “contents of the ArcGIS system” the trial court supposedly looked at? *See id.* ArcGIS is simply a “tool that the Office of Administration uses to show maps” and is akin to a “word processor[.]” Trial Tr. at 37. What that system will show “depends on what other data you also added to it and had at your disposal.” *Id.* at 37-38. It was an abuse of discretion to judicially notice and then rely on this undefined swath of information.

4. *The Referenced Facts Are Not the Proper Subject of Judicial Notice and Do Not Support the Trial Court’s Conclusions*

All else aside, the information referenced in footnotes 1 and 2 of the judgment is not the proper subject of judicial notice and does not support the judgment. Trial courts must take notice of certain information by statute. The information at issue does not fall into that category. And even if it arguably might, the information isn’t in the record, so there is no way to tell.

Otherwise, “[t]he basic operative condition of judicial notice is the notoriety of the fact to be noticed. It must be part of the common knowledge of every person of ordinary understanding and intelligence; only then does it become proper to assume the existence of that fact without proof.” *Endicott v. St. Regis Inv. Co.*, 443 S.W.2d 122, 126 (Mo. 1969). The fact to be noticed “must have independent reliability and trustworthiness.” *St. Louis Cnty. v. Skaer*, 321 S.W.3d 350, 352 (Mo. App. 2010). Courts may not take judicial notice “of facts merely because they may be ascertained by reference to dictionaries, encyclopedias, or other publications, nor of facts which the court cannot know without resort to expert testimony or other proof.” *Timson v. Manufacturers’ Coal & Coke Co.*, 119 S.W. 565, 569 (Mo. 1909).

Footnote 1 purports to judicially notice numerous documents and “systems,” not any facts in them. D133:P7; A7. As Mr. Nicholson’s testimony (and the improper attempt by the Secretary’s counsel to testify) makes clear, a witness was necessary to advise the trial court what those documents and systems show. This was not the proper subject of judicial notice. *Timson*, 119 S.W. at 569.

Footnote 2 purports to take judicial notice of the “locations of cities within the state.” D133:P8; A8. Presumably, the Secretary and trial court meant *all* cities in Missouri (of which there are nearly 1,000). Even assuming that would otherwise be proper, such information is simply not relevant. The dispute here is the accuracy of the summary statement’s assertion that HB 1 keeps *intact* more cities and counties than HB 2909—not where those political subdivisions are

located. Without an exhaustive comparison between maps reflecting how many cities are intact in the old maps and the new maps (which the Secretary's exhibits did not do)(see D131;D132), purportedly taking judicial notice of the general location of every city in Missouri is meaningless.

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VII. **The trial court erred in concluding the phrase “keep more cities and counties intact” is fair and sufficient because that conclusion was against the weight of the evidence in that the only admissible evidence demonstrated it is impossible to tell how many cities either set of boundaries divides.**

**Standard of Review:** A weight-of-the-evidence challenge requires this Court to “weigh the probative value of the evidence supporting the judgment relative to the evidence not supporting the judgment.” *Weeks*, 721 S.W.3d at 876 (Mo. banc 2025). The Court defers to the trial court’s credibility findings and resolution of factual disputes. *Id.* The Court will reverse “if the circuit court could not have reasonably found, from the record at trial, the existence of a fact that is necessary to sustain the judgment.” *Id.* at 877. The Court looks at all the evidence supporting and contradicting a disputed proposition and considers “why the favorable evidence . . . is so lacking in probative value, when considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.” *Interest of A.M.W.*, 652 S.W.3d at 234-35.

Despite this deferential standard, a “court, either appellate or trial, [cannot] arbitrarily ignore the undisputed evidence.” *Scheufler*, 169 S.W.2d at 364; see also *Hippos, LLC*, 2026 WL 673011, at \*11 (Mo. App. Mar. 10, 2026). Further, as discussed above, *de novo* review applies “when there is no underlying factual dispute that would require deference to the trial court’s factual findings.” *Omohundro*, 2026 WL 233297, at \*3.

**Preservation**: Plaintiffs preserved this issue by challenging the referenced language in their Petition (D95 at ¶¶ 31-32); offering evidence in support of this challenge (*see generally* Trial Tr.); objecting to the Secretary’s attempt to violate the stipulation (*id.* at 80:24-82:21, 85:1-15); and requesting entry of judgment in their favor (Attachment 2 to Plaintiffs’ March 26, 2026 Letter to Boeding).

As explained, a summary statement must “accurately reflect the legal and probable effects of the proposal, and [] inform voters of the [measure’s] central features.” *Fitz-James*, 726 S.W.3d at 147. Once this Court sets aside and disregards whatever information the trial court purported to judicially notice, there is simply no admissible evidence to support its conclusion that the assertion that HB 1 “keep[s] more cities and counties intact” is an accurate statement of the probable effects of the referendum.

A. The Evidence Shows it is Impossible to Determine Whether HB 1 Keeps More Cities and Counties Intact

The phrase “keep more cities and counties intact” logically refers to the total number of cities plus counties wholly contained within any congressional district. Any other reading would misinterpret the word “and” as disjunctive rather than conjunctive. *State v. Yount*, 642 S.W.3d 298, 301 (Mo. banc 2022) (“Ordinary[ily] the words ‘and’ and ‘or’ are in no sense interchangeable terms, but on the contrary, are used in the structure of language for purposes entirely

variant, the former being strictly of a conjunctive, the latter, of a disjunctive, nature.” (cleaned up)).

So, to understand this phrase, and assuming the Court decides it should look outside of the text of the underlying measure, the only evidence properly before the trial court was: (i) the text of HB 1 and HB 2909, (ii) the Secretary’s Exhibits A and B, and (iii) Mr. Nicholson’s unobjected-to testimony. Mr. Nicholson testified that while HB 1 divides fewer counties than HB 2909 did, HB 1 nonetheless creates *more* county splits (because it splits those fewer counties more often). Trial Tr. at 61:12-70:12. He also testified it is impossible to tell from *either* the text of HB 1 and HB 2909 *or* the maps the Secretary offered into evidence how many cities are split by either map because cities generally are not referenced in the bills and the maps do not show city boundaries. *Id.* at 33:25-34:6, 39:1-6, 94:2-13.

The Secretary offered nothing on the other side of the ledger. The only evidence he offered was Exhibits A and B (the aforementioned maps). *See id.* at 4. His lawyer then improperly attempted—at length—to testify about what those maps show. *Id.* at 81-93. Statements of counsel are not evidence, so her assertions cannot support a judgment that the language in the summary is fair, sufficient, or accurate. *Wilson*, 667 S.W.3d at 187.

B. The Weight of the Evidence Does Not Support the Accuracy of the Phrase “Keep More Cities and Counties Intact”

The summary statement asserts HB 1 “keep[s] more cities and counties intact.” D126. For the same reasons discussed in Point V, keeping more cities and counties intact is not the probable effect of voters adopting the referendum. In any event, while the Secretary would prefer to treat cities and counties separately—see Attachment 2 to Secretary’s March 26, 2026 Letter to Boeding at 7-8—this is a *singular* phrase. It is the same as saying HB 1 keeps more “municipalities” or “political subdivisions” intact. Consequently, the question for this Court is whether the weight of the evidence supports the accuracy of the assertion that HB 1 keeps more political subdivisions intact.

It does not. While HB 1 might split *fewer* county boundaries than the 2022 map, it is undisputed that HB 1 creates *more* county splits and splits Jackson County *more* than the 2022 map did. Moreover, the assertion in the summary statement is only accurate if one can tabulate *all* the city *and* county splits in *both* HB 1 and HB 2909 and determine that HB 1 results in fewer splits *overall*. The only admissible evidence offered at trial is that it is impossible to make that determination. The bills do not contain this information. The maps the Secretary’s counsel introduced and then improperly tried to testify about do not contain it. Plaintiffs were denied all discovery into whatever information the Secretary might have that supports the accuracy of this statement and then the Secretary offered no evidence to support it at trial.

Thus, there is *no* evidence in the record to sustain a conclusion that this assertion in the summary statement is accurate. So, if the Court decides it is appropriate to look beyond the four corners of the referendum to evaluate the accuracy (and, therefore, the fairness and sufficiency) of the summary statement, the trial court’s conclusion is against the weight of the evidence. The judgment should be reversed.

**CONCLUSION**

For the reasons set forth above, Plaintiffs request that the Court reverse the judgment of the trial court and enter the judgment the trial court should have entered. Rule 84.14. Plaintiffs request that the Court certify the following summary statement to the Secretary:

Do the people of the state of Missouri approve the act of the General Assembly entitled “House Bill No. 1 (2025 Second Extraordinary Session),” which repeals Missouri’s existing congressional plan and replaces it with new congressional boundaries?

Respectfully submitted

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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 April 6, 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 13,557 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.

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