WD88795

In the
Missouri Court of Appeals for the Western District

MISSOURI SECRETARY OF STATE, DENNY HOSKINS
Respondent,

vs.

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN
Appellants.

Appeal from the Circuit Court of Cole County
The Honorable Brian K. Stumpe

BRIEF OF RESPONDENT MISSOURI SECRETARY OF STATE

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INTRODUCTION

Under Missouri law, the Secretary of State has the responsibility to determine ballot title language for referenda. That includes the Referendum on House Bill 1 (hereafter the "Referendum"), which the Secretary duly promulgated. At Plaintiffs' insistence, the Circuit Court of Cole County reviewed this summary statement for fairness and sufficiency, making minor adjustments, while preserving proper deference to the Secretary's drafting prerogative. After all, "[t]here is no uniquely correct language for a summary statement to which the drafter must adhere" and "'there are many appropriate and adequate ways of writing the summary ballot language.'" *Seay v. Jones*, 439 S.W.3d 881, 889 (Mo. App. W.D. 2014) (quoting *Asher v. Carnahan*, 268 S.W.3d 427, 432 (Mo. App. W.D. 2008)). Here, the circuit court recognized this principle of Missouri law.

Apparently Plaintiffs disagree. The content of their voluminous briefing in this appeal reveals one consistent theme. Instead of the Secretary or the courts, Plaintiffs simply want to write the summary statement themselves. All of Plaintiffs' contentions flow from this inherently political preference, rather than substantive legal objection. To advance their preference, they spill a great deal of ink to allege bias, Appellants' Br. at 46–51, reintroduce a non-credible witness, *id.* at 52–59, 68–72, collaterally attack the judgment in a *different* case which they also dislike, *id.* 32–40, and nitpick the circuit court's assessment of evidence and use of judicial notice, *id.* at 68–72, all while insisting that the Secretary, and now this Court, ignore HB 1's central features because they do not align with Plaintiffs' political aims. The Secretary, however, cannot ignore its duty to adequately inform voters of the subject of the Referendum; and neither can this Court.

Again and again, Plaintiffs bungle the law. They consistently flip the burden of proof—a burden which *they* carry. *Hill v. Ashcroft*, 526 S.W.3d 299, 308 (Mo. App. W.D. 2017); *see* § 116.334.1, RSMo.[1] And, they attack the Circuit Court's findings of fact without grounds. The circuit court weighed the contested evidence, and found Plaintiffs' evidence and witness unpersuasive. That determination is not subject to *de novo* review, despite Plaintiffs' implicit insinuations to the contrary. The "credibility of the witnesses is for the trial court to determine and the court is not required to believe even uncontroverted testimony." *Dorner v. Wishon*, 809 S.W.2d 866, 868 (Mo. App. E.D. 1991); *State ex rel. Mo. Highway. & Transp. Comm'n v. Mann*, 708 S.W.2d 683, 686 (Mo. App. W.D. 1986) ("The trier of fact is not bound to believe or disbelieve the testimony of any given party."). After all, "[i]n appeals from a court-tried civil case, the trial court's judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *White v. Dir. of Revenue*, 321 S.W.3d 298, 307–08 (Mo. banc 2010).

And in any case, the revised summary statement accurately describes HB 1. The 2025 map, enacted by HB 1, does "keep more cities and counties intact" compared to the repealed 2022 map, and it is more compact. HB 1 has also taken legal effect. It is therefore no longer correct to describe the 2022 map as the "existing" congressional plan. Plaintiffs' attempts to inject contorted readings of this plain language and clear fact are hardly grounds for reversal. As part of this scheme, Plaintiffs quibble with the circuit court's taking of

[1] All statutory citations are to the most current version of the Revised Statutes of Missouri unless otherwise noted.

judicial notice. Putting aside that the Circuit Court took judicial notice of exactly the type of common knowledge permitted, Plaintiffs waived their objections.

Throughout their arguments, Plaintiffs ignore the latitude granted to the Secretary to devise summary statement language. And, again, they apparently seek to arrogate that authority to themselves. This is improper.

STATEMENT OF FACTS

Plaintiffs' statement of facts contains characterizations and partial explanations that obscure the factual background of this appeal.[2] Accordingly, the Secretary provides this statement to fill in gaps and correct any misstatements.

I. The General Assembly enacts House Bill 1, which repeals and replaces Missouri's prior congressional map.

In September 2025, the General Assembly adopted House Bill 1 ("HB 1") at a special session convened by Governor Mike Kehoe. D95 p.2–3, ¶¶ 10, 12. HB 1 contains the following information in its title: "To repeal sections 128.345, 128.346, and 126.348, RSMo, and to enact in lieu thereof twelve new sections relating to the composition of congressional districts." D96 p.2. Like all redistricting bills, HB 1 contains a list of counties, VTDs, and tract-blocks to be used as "building block units" to form the districts.

[2] *E.g.* Appellants' Br. at 19 (mischaracterizing the Secretary's position on the summary statement); *id.* (failing to address the Secretary's primary objections to Plaintiffs' depositions requests); *id.* at 23 (giving only a partial explanation of the Secretary's presentation at trial riddled with argumentative characterizations); *id.* at 24–26 (providing argument related to the Secretary's exhibits); *id.* at 26 (suggesting the Secretary had not raised the court's ability to take judicial notice of different facts at trial); *id.* at 27 (suggesting the trial court merely "signed" on to the Secretary's proposal without its own analysis).

Trial Tr. 26:3–11. *See generally* D96. But concurrent with the adoption of HB 1, the Missouri House of Representatives published a map of the congressional district lines. D133 p.3, ¶ 13; *see* D96 p.129 (mandating the publication of the "graphical map representation of the official congressional district boundaries"). It did the same in 2022 when it enacted the prior congressional plan by means of House Bill 2909 ("HB 2909"). D133 p.3, ¶ 14. This visual depiction of the official congressional district boundaries is the way that the public generally understands redistricting bills. D133 p.2, ¶ 11.

HB 1 repeals and replaces Missouri's prior congressional map (the "2022 map") and replaces it with a new one (the "2025 map"). D133 p.2, ¶ 10; *see* D96 p.1. There are three key differences between the 2025 map created by HB 1 and the 2022 map it repeals. *First*, HB 1 splits only five counties: Boone, Jackson, Jefferson, St. Louis, and Webster, D133 p.3, ¶ 15; D132; D96—four fewer than the 2022 map it repeals, D133 p.3, ¶ 16; *compare* D131, *with* D132. *Second*, HB 1 splits fewer cities than the 2022 map, particularly in the Kansas City and St. Louis metro areas. D133 p.3, ¶ 19. *Compare* D131, *with* D132. *Third*, HB 1 improves the compactness of its predecessor. D133 p.3, ¶ 20. *Compare* D131, *with* D132.

II. The Secretary certifies the official ballot title for the referendum referring House Bill 1 to voters; Plaintiffs initiate this lawsuit in response.

On September 29, 2025, Plaintiff von Glahn submitted a referendum sample sheet to the Secretary requesting to refer HB 1 to voters. D133 p.2, ¶ 4. Plaintiff von Glahn is a citizen of Missouri and the executive director of Plaintiff People Not Politicians. D133 p.1, ¶ 1; Trial Tr. 9:11–13, 24–25. The Secretary denominated the measure referring HB 1

as Referendum Petition 2026-R004 and prepared a summary statement in accordance with his statutory duty under § 116.334.1. D133 p.2, ¶¶ 4, 5. The summary statement describes HB 1 as follows:

> 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?

D104 p.3. The Secretary certified the official ballot title for the Referendum on November 13, 2025. D104; D133 p.2, ¶ 6. Plaintiffs filed their petition challenging the fairness and sufficiency of the Secretary's summary statement on November 20. *See generally* D95.

III. Plaintiffs serve written discovery, the vast majority of which pries into the Secretary's personal beliefs and subjective understanding of the measure.

In a departure from the typical procedure in ballot title litigation, Plaintiffs served the Secretary 22 requests for production and 18 interrogatories. *See* D102; D103. The vast majority of Plaintiffs' discovery requests indicated a misunderstanding of the relevant inquiry in ballot title litigation. *See, e.g.*, D102 p.4 (requesting "documents and communications concerning the drafting, review, approval, or certification of the Ballot Title including internal memoranda, notes, meeting agendas, minutes, and calendars."); D103 p.4 (requesting a description of the "process used to draft, review, and approve the Ballot Title").

Among other things, Plaintiffs' requests probed into the Secretary's subjective understanding of HB 1 and his personal beliefs, requested information not in the Secretary's care, custody, or control, and requested privileged legal analyses. *See*

generally D102; D103. Accordingly, the Secretary timely responded with proper objections to each request. *See generally* D102; D103. The Secretary, however, did not leave Plaintiffs empty handed. He consistently asserted that HB 1, the 2025 map, and the 2022 Congressional plan—documents widely available to the public—supported the summary statement. *E.g.*, D103 p.6 (Response to Interrogatory 3), p.8 (Response to Interrogatory 5), p.9 (Response to Interrogatory 6); D113 p.4. The Secretary has maintained this position throughout litigation. *E.g.*, D101; Hr'g Tr. 41:16–19 (Feb. 4); *id.* at 46:1–2 (Plaintiffs' counsel indicating understanding that the Secretary's position "is we need the 2022 map, the 2025 map, and House Bill 1.").

Unsatisfied with the Secretary's insistence that the only documents relevant to this litigation were the text and map of HB 1 and the 2022 Congressional plan, Plaintiffs doubled down on their irrelevant discovery requests and filed a motion to compel. D98. To avoid a drawn out discovery fight, the Secretary agreed to stipulate to the specific exhibits he would present at trial and agreed not call any witnesses. *See* D101 pp.2–3, ¶¶ 3–5. The Secretary honored this joint stipulation, introducing only two of the agreed upon exhibits at trial and not calling any witnesses. *See* Trial Tr. 81:19–25 (Feb. 9).

Violating the spirit of the joint stipulations and attempting to obtain discovery targeting the mental impressions, personal beliefs, and subjective intent of the Secretary, Plaintiffs sought depositions of the Secretary's Director of Elections and a corporate representative. *See* D114; Hr'g Tr. 25:14–24 (Feb. 4) (describing some of the contents of the deposition request). The Secretary moved to quash the depositions on necessity and relevance grounds. *See generally* D114; D120. On February 4, the trial court heard arguments and

reviewed the parties' briefing on the motion to compel. D121. The court granted the Secretary full relief on his motion, quashing both depositions. D121. Plaintiffs do not appeal this order. *See generally* Appellants' Br.

IV. The Secretary admits partial error and offers to rewrite the summary statement in accordance with Senate Bill 22, which was then in effect.

After a thorough review of the summary statement, the Secretary, through counsel, at a hearing before the trial court on January 9, conceded that part of the summary statement was too close to the line of being argumentative and likely to create prejudice. *See* D114 p.7; *see also* Hr'g Tr. 3:18–4:3 (Feb. 4). The Secretary offered to improve the statement through a rewrite in accordance with Senate B ill 22 ("SB 22"), which was then in effect. D114 p.15. At the hearing, the parties represented to the trial court that they were in discussions related to a joint proposed order. Hr'g Tr. 4:3–15 (Feb. 4). Plaintiffs ultimately refused relief. D160.

After the Missouri Supreme Court struck down SB 22 on procedural grounds, the Secretary maintained his position that a portion of the summary statement was unfair and insufficient. *See* Hr'g Tr. 4:16–24 (Feb. 4). To ensure this concession was legally valid, the Secretary sought leave to amend his Answer, which the Court granted. D121. The Secretary filed his amended answer on February 8 admitting that the phrase "gerrymandered congressional plan that protects incumbent politicians" was argumentative and likely to create prejudice. D122 p.4, ¶¶ 26–27. In an attempt to reach an expeditious conclusion to this litigation, the Secretary moved for judgment in favor of Plaintiffs. *See generally* D142. Plaintiffs once again refused relief. *See generally* D151. The trial court

heard arguments on this motion at the February 4 hearing and decided to take up the motion with the case. D121.

V. The parties each present their arguments at trial.

The trial court held a bench trial in this case on February 9. D133 p.1. At trial, Plaintiffs presented six exhibits and two witnesses. Trial Tr. 8:22–23, 16:9; D123; D124; D125; D126; D127; D128; D129; D130. In accordance with the joint stipulations, the Secretary did not call witnesses and presented only two exhibits. Trial Tr. 81:19–25. Neither party requested findings of fact and conclusions of law. *See generally id.*

A. Plaintiffs' Presentation

The first witness Plaintiffs called was Plaintiff von Glahn. He testified to his citizenship and offered suggested revisions to the trial court. Trial Tr. 9:9–15:25 (Feb. 9). He also offered his personal opinion on the legal sufficiency of the Secretary's statement and shared his opinion on how voters would "feel about the measure." *E.g.* Trial Tr. 14:2–4 (Feb. 9). Counsel for the Secretary did not cross-examine Plaintiff von Glahn. Trial Tr. 16:6.

Plaintiffs' second witness, Mr. Nicholson, testified that he serves as a political consultant for People Not Politicians, hired specifically to defeat HB 1. Trial Tr. 48:24–49:14. He further testified about his involvement in opposing HB 1 while the General Assembly debated its passage. Trial Tr. 49:15–18. Although Mr. Nicholson claimed to be testifying as "someone who has expertise in redistricting things," Trial Tr. 51:13–14, Plaintiffs' counsel did not offer him as an expert and he was not accepted as an expert by the trial court. D133 p.3, ¶ 21. Nonetheless, Mr. Nicholson attempted to explain the contents of HB 1 to the circuit court. *E.g.* 23:25–26:19. Mr. Nicholson also offered his

personal observations about what the circuit could extrapolate from HB 1. *See e.g.*, Trial Tr. 33:25–39:6.

Mr. Nicholson demonstrated a lack of familiarity with the contents of HB 1 and its map throughout the trial. For example, when asked whether he identified the counties split by the 2022 plan in advance of trial, Mr. Nicholson testified "Yes," Trial Tr. 52:18–21, however he claimed not to remember which were split, Trial Tr. 52:22–53:1. After the Secretary's counsel walked Mr. Nicholson through each of the counties split under the 2022 plan and under HB 1, Mr. Nicholson agreed that HB 1 kept four counties intact that the 2022 plan had split. *Id.* at 61:12–17. Mr. Nicholson also acknowledged that the number of split counties can be extrapolated directly from the text of HB 1. *Id.* at 75:15–20.

Mr. Nicholson also testified that he used the Office of Administration's interactive ArcGIS system to prepare for trial. *Id.* at 53:21–54:10. However, he could not demonstrate familiarity with the system, claiming that he did not remember using the features of the system that overlay county and district lines onto the 2025 map. *Id.* at 54:8–20. Mr. Nicholson attempted to wade further into expert territory by discussing compactness scores, but admitted he did not conduct any compactness analyses himself. *Id.* at 42:13–15, 61:24–62:2. He also did not offer testimony on a number of other well-accepted tests for compactness. *Id.* at 63:17–64. Ultimately, the trial court found Mr. Nicholson's testimony unhelpful. D133 p.8.

B. The Secretary's Presentation

The Secretary, in accordance with the joint stipulations and standard practice in ballot title cases, did not call witnesses. Instead, the Secretary presented his legal arguments to

the trial court, supported by two exhibits. The first exhibit is the map published alongside HB 2909 reflecting the 2022 congressional district plan. D131; Trial Tr. 81:19–21. The second exhibit is a map prepared by the Office of Administration of HB 1. D132; Trial Tr. 59:3–22. Counsel for the Secretary connected what the court could observe from comparing the 2025 map and the map it repeals—the 2022 map—to the legal implications of those observations. *See e.g.*, Trial Tr. 84:2–24, 85:24–86:15. Counsel for the Secretary also recapped information extracted from Mr. Nicholson during cross-examination. Trial Tr. 86:16–87:6. Ultimately, the Secretary demonstrated that the text of HB 1 and the map it produces support the challenged portions of the summary statement. *E.g.*, *id.* at 87:7–18.

VI. The trial court certifies a final summary statement, backed by substantive factual findings.

On March 20, after reviewing the pleadings, evidence, and hearing argument, the trial court entered its final judgment against the Secretary. D133. The court found that Secretary's summary statement was partially unfair and insufficient and certified the following language 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 congressional plan, and replaces it with new congressional boundaries that keep more cities and counties intact, and are more compact?

D133 p.10.

Although neither party requested factual findings, the trial court provided findings of fact and conclusions of law in its final judgment. D133. The trial court confirmed that the

new congressional map is more compact. D133 p.8. And supported this finding by explaining the visual analysis conducted, *id.*, and finding that "[t]he districts created by House Bill 1 have a boxier appearance than the map created by House Bill 2909," *id.* p.3, ¶ 20. The trial court also found that HB 1 split fewer counties than the 2022 map. *Id.* p.3, ¶ 17. And confirmed that the text of HB 1 identifies the counties split by the map it implements. *Id.* p.3, ¶ 18. The trial court also confirmed that HB 1 splits fewer cities than the 2022 map, identifying the Kansas City and St. Louis metropolitan areas as examples. *Id.* p.3, ¶ 19.

In its judgment, the trial court highlighted deficiencies in Plaintiffs' presentation. The court stated that Plaintiffs "did not present evidence or arguments of bias or prejudice created by the disputed po[r]tion of the Secretary's statement." D133, p.9. The trial court also recounted Plaintiffs' failure to provide the circuit court "with evidence or arguments that the Secretary failed to address features of the map that otherwise needed to be addressed in the summary," *id.*, as well as Plaintiffs' failure to "present evidence to refute the Secretary's claim that House Bill 1 splits 'fewer cities,'" *id.* p.7.

Plaintiffs' did not file any post-trial motions and filed a notice of appeal on March 23. D134.

SUMMARY OF ARGUMENT

This Court should uphold the summary statement certified by the circuit court in its March 20, 2026 order, as the statement gives adequate notice to voters and otherwise complies with the requirements set forth in §§ 116.334 and 116.190. The statement describes in neutral, everyday language the primary objective of the Referendum: namely,

the Referendum seeks voter approval of an act passed by the General Assembly (HB 1) during the Second Extraordinary Session, which repealed Missouri's earlier congressional plan (HB 2909) with new congressional boundaries. *See* D133 p.10. The statement then identifies the central features that distinguish the new congressional plan with the one HB 1 repealed, all of which can be ascertained by comparing the two redistricting maps with each other and basic facts relating to the locations of Missouri counties and cities.

Nor does the summary statement mislead voters. The circuit court tested the accuracy of each description offered by the Secretary. It confirmed in its findings of fact that the new congressional map is more compact and keeps more cities and counties intact than its predecessor. D133 p.3, ¶¶ 17, 19–20.

None of arguments raised in Plaintiffs' brief justify overturning the circuit court's reasoned opinion. *First*, Plaintiffs contend that the phrases "more compact" and "keep more cities and counties intact" are argumentative and likely to create prejudice among voters. Appellants' Br. at 46–51. This, however, misunderstands §§ 116.334.1 and 116.190 as well as the law governing Missouri redistricting. A summary statement must address a law's "central features" and effects. *Pippens v. Ashcroft*, 606 S.W.3d 689, 701–02 (Mo. W.D. App. 2020). Here, HB 1's central features include its comparative compactness, as well as the comparative manner in which it treats counties and cities, as each attribute implicates the map's compliance with the Missouri Constitution. *See* Mo. Const. art. III, § 45; *see also Johnson v. State*, 366 S.W.3d 11, 28 (Mo. banc 2012) (listing recognized factors of compactness). A description does not suddenly become argumentative and prejudicial because it can be classified as a positive attribute. Plaintiffs

needed to have shown that the summary statement used biased language or omitted some other central feature. They have done neither. D133 p.3, ¶ 22; *id.* at p.9.

Second, Plaintiffs contend that the circuit court's factual determinations about the new congressional map were against the weight of evidence. Appellants' Br. at 52–59, 68–72. That argument, however, ignores well-established precedent in Missouri, which not only endorses visual observations for evaluating redistricting maps, *Pearson v. Koster*, 367 S.W.3d 36, 48–49 (Mo. banc 2012), but also acknowledges multiple metrics for measuring compactness, including the consideration of recognized factors, *Johnson*, 366 S.W.3d at 28, which the circuit court cited in its opinion, *see* D133 p.3, ¶¶ 15–20. Plaintiffs instead point to their witness's testimony, but the circuit court had no obligation to accept that testimony as credible. As the trial record shows, Plaintiffs' primary witness, Sean Soendker Nicholson, was a paid political consultant hired specifically to defeat HB 1. Trial Tr. 48:24–49:14 (Feb. 9). He had no specialized knowledge, was not offered as expert, and was previously found not helpful by another Missouri court in a redistricting case because "he did not have extensive experience in evaluating [a senate district] map." J. at ¶ 35, *Faatz v. Ashcroft*, No. 22AC-CC03185 (Cole Cnty. Cir. Ct., Sept. 12, 2023). The circuit court therefore acted within its discretion when it relied on its own assessment of the 2025 and 2022 redistricting maps over that of an inexperienced hired gun.

Third, Plaintiffs assert that the district court lacked authority to strike the word "existing" from the summary statement, but that change was justified by Plaintiffs' decision to make the word an issue throughout this litigation, as well as the requirement that the summary statement not mislead or confuse voters. *See* Appellants' Br. at 32–39.

In their petition, Plaintiffs challenged the fairness and sufficiency of the Secretary's summary statement in its entirety. *See* D95 pp.4, 6, ¶¶ 24, 37 (describing the entire statement as "unfair and insufficient"). Although Plaintiffs later backpedaled from this position and in fact raised the accuracy (or lack thereof) of the word sua sponte during litigation proceedings. *See*, *e.g.*, D119 p.4–5; Trial Tr. 28:22–29:5. Plaintiffs never amended their Petition to narrow their claims. What's more, the effective date for HB 1 has since passed. Although Plaintiffs believe that the law should be stayed, *see* Appellants' Br. at 36, the Circuit Court of Cole County disagreed in *Maggard v. State*, No. 25AC-CC09120 (Cole Cnty. Cir. Ct., Mar. 27, 2026). And Plaintiffs can point to no other court opinion that has paused operation of the 2025 congressional map. It therefore would be misleading to voters to state that the 2022 map is the existing map given that the upcoming election continues to be run under the new districts.

Fourth, unable to win on the merits, Plaintiffs characterize as invalid the evidence the circuit court relied on when drawing its finding of fact and conclusions of law, but that argument falls flat. *See* Appellants' Br. at 68–72. The underlying measure in this case is a redistricting bill that replaced one congressional plan with another. "Redistricting plans, such as House Bill 1 and House Bill 2909, are visualized and understood by the public as maps." D133 p.2, ¶ 11. Accordingly, any description of HB 1, designed to inform voters of its central features, necessitates a comparison of the two congressional maps, in addition to reviewing HB 1's bill text—exactly what the circuit court relied on its opinion. The Secretary has maintained this position throughout this litigation and even identified in its discovery responses "HB 1, the congressional map formed by HB 1, [and] the 2022

Congressional Map" as documents that supported the challenged language." D103 p.9 (Objections and Response to Interrogatory No. 6).

Relatedly, Plaintiffs contest the circuit court's use of judicial notice, but they overstate the circuit court's reliance on it and misunderstand the doctrine in any event. The circuit court first and foremost relied on HB 1's bill text and the 2022 and 2025 congressional maps to form its opinion. To the extent the circuit court utilized judicial notice, it confirmed what the other evidence already established. However, even if the information formed the *sine non qua* of the circuit court's opinion, judicial notice was proper. The Secretary moved for judicial notice of these facts at the motion to quash hearing on February 4 and again at the February 9 trial. Hr'g Tr. 22:10–13 (Feb. 4); Trial Tr. 82:22–83:11; 95:5–12. Plaintiffs had notice and even asked their witness, Mr. Nicholson, questions about the GIS program because the Secretary had asked the court to take judicial notice of it at the earlier hearing. Trial Tr. 36:23–37:3.

The stipulation likewise does not stand as an obstacle. Judicial notice is for facts "safely assumed to be within the knowledge of the court." *Scheufler v. Cont'l Life Ins. Co*., 169 S.W.2d 359, 365 (Mo. 1943) (citing 1 Jones, Evidence in Civil Cases, §105; 9 Wigmore, Evidence, § 2565). It "dispenses with the necessity of establishing that fact by evidence." *Id.* Missouri courts often take judicial notice of geographical locations of cities, *see*, *e.g.*, *Goforth v. Dir. of Revenue*, 593 S.W.3d 124, 130 n.4 (Mo. App. W.D. 2020), as well as public records, such as administrative and legislative documents, *see*, *e.g.*, *Schweich v. Nixon*, 408 S.W.3d 769, 778 (Mo. banc 2013). The circuit court therefore acted within its discretion.

STANDARD OF REVIEW

Following a bench trial, this Court "will sustain the circuit court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Mo. Mun. League v. Carnahan*, 303 S.W.3d 573, 579 (Mo. App. W.D. 2010), as modified (Feb. 2, 2010). To that end, this Court reviews the circuit court's legal conclusions about the propriety of the Secretary's summary statement *de novo*, *Brown v. Carnahan*, 370 S.W.3d 637, 653 (Mo. banc 2012), but defers to the circuit court's factual determinations since the parties here, in contrast to a typical ballot title challenge, contest numerous facts related to the issues presented, *State ex rel. Kander v. Green*, 462 S.W.3d 844, 847 (Mo. App. W.D. 2015); *see Ivie v. Smith*, 439 S.W.3d.189, 200 (Mo. Banc 2014) ("When reviewing whether the circuit court's judgment is supported by substantial evidence, appellate courts view the evidence in the light most favorable to the circuit court's judgment and defer to the circuit court's credibility determinations.").

As the Missouri Supreme Court explains, it is not the appellate court's role to "re-evaluate testimony through its own perspective" or "second guess" the circuit court's evaluation of contested facts. *White v. Dir. of Revenue*, 321 S.W.3d 298, 309, 312 (Mo. banc 2010). A trial court is "free to believe or disbelieve any or all of the contested evidence at trial." *Id.* at 312. Missouri law recognizes that the circuit court "is in a better position not only to judge the credibility of the witnesses and the persons directly, but also their sincerity and character and other trial intangibles which may not be completely

revealed by the record." *Pearson*, 367 S.W.3d at 44 (quoting *White*,321 S.W.3d at 308–09).

Should a claim of error present a mixed question of law and fact, "the reviewing court applies the same principles articulated above except that it is necessary to segregate the parts of the issue that are dependent on factual determinations from those that are dependent on legal determinations." *Pearson*, 367 S.W.3d at 44. In such scenarios, the "court will defer to the factual findings . . . so long as they are supported by competent, substantial evidence" and "will review de novo the application of the law to those facts." *Id.* (cleaned up) (quotation omitted). An appellate court will reverse "only 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." *Weeks v. City of St. Louis*, 721 S.W.3d 873, 877 (Mo. banc 2025). That said, in Missouri, the party without the burden of proof on an issue "need not offer any evidence concerning it." *Maly Com. Realty, Inc. v. Maher*, 582 S.W.3d 905, 911 (Mo. App. W.D. 2019) (quoting *Adoption of K.M.W.*, 516 S.W.3d 375, 382 (Mo. App. S.D. 2017)). "[S]ubstantial evidence . . . is not required or necessary" to support a judgment against the party with the burden. *Id.*

When reviewing the official ballot title, courts afford deference to the language prepared by the Secretary, recognizing that "ten different writers would produce ten different versions" and "there are many appropriate and adequate ways of writing the summary ballot language." *Asher v. Carnahan*, 268 S.W.3d 427, 431–32 (Mo. App. W.D. 2008). Thus, "[t]he applicable question is not whether the summary drafted is the *best* summary, 'but whether [it] gives the voter a *sufficient idea* of what the proposed

amendment would accomplish, without language that is intentionally unfair or misleading.'" *Pippens*, 606 S.W.3d at 702 (emphasis added) (second alteration in original) (quoting *Sedey v. Ashcroft*, 594 S.W.3d 256, 263 (Mo. App. W.D. 2020)).

The purpose of the ballot title "is to give interested persons notice of the subject of a proposed [law] to prevent deception through use of misleading titles." *Missourians Against Human Cloning v. Carnahan*, 190 S.W.3d 451, 456 (Mo. App. W.D. 2006) (alteration in original) (quoting *Union Elec. Co. v. Kirkpatrick*, 606 S.W.2d 658, 660 (Mo. banc 1980)). "If the title gives adequate notice, the requirement is satisfied." *Id.* "The party challenging the language of the summary statement bears the burden to show that the language is insufficient or unfair." *Hill v. Ashcroft*, 526 S.W.3d 299, 308 (Mo. App. W.D. 2017); *see* § 116.334.1.

ARGUMENT

I. The final summary statement certified by the trial court is both fair and sufficient. (Addresses Points Relied Upon I, III, IV, V, and VII).

The summary statement certified by the circuit court in its March 20 order complies with the statutory requirement stipulated in §§ 116.334 and 116.190 because it fairly and sufficiently summarizes the central features of the Referendum, without bias, prejudice, deception, and/or favoritism. Plaintiffs argue otherwise, but they failed to meet their burden at trial. *Hill*, 526 S.W.3d at 308 (stating that the party challenging the statement bears the burden). The circuit court considered Plaintiffs' evidence; it nonetheless found that the Secretary accurately described the underlying measure in that HB 1 repeals the previous congressional plan and replaces it with one that is more compact and keeps more

cities and counties intact. The circuit court is entitled to deference on this point. Not only were these factual determinations contested by the parties, but the circuit court relied on competent evidence when making its ruling, including the maps enacted and repealed by HB 1, the bill text, and judicially known facts about the location of Missouri cities and counties. Moreover, because Plaintiffs bore the burden, substantial evidence was neither necessary nor required for the court's judgment. *See Maher*, 582 S.W.3d at 911. It was up to Plaintiffs to prove their case.

All in all, the certified summary statement gives voters notice of the subject of the Referendum and its probable and legal effect so that voters might make an informed choice on whether to investigate further. The statement should be upheld on appeal.

A. The phrase "more compact" fairly and accurately describes House Bill 1. (Addresses Points Relied Upon IV and V).

The certified statement fairly and accurately notes that the congressional plan created by the House Bill 1 is more compact than the plan it replaces. On the first point—fairness—Plaintiffs have all but waived their claim that the challenged language was biased or argumentative. Although Plaintiffs reference this claim in their Petition, "Plaintiffs did not present evidence or arguments of bias or prejudice created by the disputed portion of the Secretary's statement" at trial, as the circuit court explained in its opinion. D133 p.9. Nor did Plaintiffs submit a pre-trial brief that would have given the circuit court a prelude of Plaintiffs' position. Instead, Plaintiffs presented argument for the first time on appeal and demand that this Court reverse based on reasons that were not before the circuit court.

This issue is "not preserved for [this Court's] review." *Killian v. State Farm Fire & Cas. Co.*, 903 S.W.2d 215, 218 (Mo. App. W.D. 1995).

Even if Plaintiffs had raised the matter at trial, their arguments would still fail on the merits. The language used by the Secretary, and certified by the circuit court, is neutral and not inflammatory. It states in plain, everyday terms an accurate description of the new congressional map as compared to the one repealed. *See Stickler v. Ashcroft*, 539 S.W.3d 702, 715 (Mo. App. W.D. 2017) (holding that employing "everyday, colloquial language" is neither unfair nor insufficient). To be considered unfair, a summary statement must be "marked by injustice, partiality, or deception." *Brown*, 370 S.W.3d at 653–54 (quoting *State ex rel. Humane Soc'y v. Beetem*, 317 S.W.3d 669, 673 (Mo. App. W.D. 2010)). In this case, it not unfair to describe the maps affected by HB 1, as the new congressional map is the legal effect of the measure, while the compactness of the map is a central feature. HB 1's bill text in fact specifically contemplates that a "graphical map representation" of the congressional districts be published simultaneously as part of the statute's appendix. D125 p.15.

Plaintiffs, in their appellate brief, do not contest the circuit court's holding that compactness is a central feature of HB 1, although they argue that it is not a legal or probable effect. That alone dooms their argument. A summary statement must address a law's "central features" as well as its effects. *Pippens*, 606 S.W.3d at 701–02. A statement that does so accurately, without favoritism satisfies § 116.334.1 and § 116.190. The law governing Missouri redistricting supports the circuit court's holding as well. The Missouri Constitution demands that all congressional districts to be "as compact . . . as may be."

Mo. Const. art. III, § 45. Compactness is one of three substantive requirements each plan must meet. How the 2025 map compares therefore has legal significance, as it indicates compliance with the Missouri Constitution.

Nor does the assertion about the map's compactness suddenly become argumentative and prejudicial merely because it can be classified as a positive attribute. The proper inquiry is whether the summary statement fairly describes House Bill 1, including its central features and its probable and legal effects. Here, the language drafted by the Secretary makes no value judgment; it merely notifies voters about an important characteristic that helps voters make an informed choice on whether to investigate the subject further. Plaintiffs would need to have shown that the Secretary failed to include central features of HB 1 in the summary. But, as the circuit court noted in its opinion, "Plaintiffs did not provide this Court with evidence or arguments that the Secretary failed to address features of the map that otherwise needed to be addressed in the summary." D133 p.9. Nor have Plaintiffs offered an example on appeal. *See generally* Appellants' Br. Their argument fails.

On the second point—accuracy—Plaintiffs did not meet their burden in establishing that the Secretary's description of the 2025 map as "more compact" was misleading or false. To the contrary, as the circuit court held in its findings of fact, the congressional plan formed by HB 1 performs better on multiple compactness metrics than the 2022 plan—the most obvious being a visual comparison. D133 p.8. Plaintiffs' confusion stems from their miscomprehension of Missouri redistricting law. In the context of redistricting, the term compactness often refers to a district's size and shape. Compact districts, "[i]n

general . . . are those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries." *Faatz v. Ashcroft*, 685 S.W.3d 388, 394 (Mo. banc 2024).

The Missouri Supreme Court has also referred to compact districts as a "closely united territory" and has endorsed multiple metrics by which map drawers and courts may measure compactness, such as visual observations, mathematical tests, and an assessment of whether the districts comply with certain recognized factors. *Pearson*, 367 S.W.3d at 48–49. The recognized factors are of particular importance when it appears on the surface that a district may deviate from the goal of creating a closely united territory. If a deviation occurs as a result of these factors, then Missouri courts may still deem the district as compact as may be. *Pearson*, 367 S.W.3d at 51; *see also* Mo. Const. art. III, § 45 (requiring that congressional "districts shall be composed of contiguous territory as compact and as nearly equal in population as may be").

To quote the circuit court, "The districts created by House Bill 1 have a boxier appearance than the map created by House Bill 2909." D133 p.3, ¶ 20. They "better resemble the squares, rectangles, and hexagons that indicate compactness" under Missouri law. D133 p.8; *see also Faatz*, 685 S.W.3d at 394. The trial record supports this finding. As part of his defense, the Secretary admitted as exhibits two maps that depicted respectively the district boundaries of the congressional plan repealed by HB 1 (Exhibit A) and the district boundaries of the congressional plan enacted by HB 1 (Exhibit B). D131, D132. The exhibits show that 2025 plan minimizes and, in many cases, eliminates the physical features of the prior plan that reduced its overall compactness. Gone are the limbs

and appendages that wrap around or protrude into other districts. Instead, the districts more closely resemble conventional geometric shapes, and deviations more often correspond to county and city lines.

To offer an example, District 3 in the 2022 plan has an extreme claw-like configuration that all but swallows Districts 2 and 1. D131. These narrow appendages not only depart from traditional geometric shapes, but the northern tentacle ignores traditional redistricting criteria, such as abiding by political subdivisions. *Id.* The irregular shape significantly reduces the district's compactness and cannot be explained by natural boundaries. District 4 has a similar claw-like configuration in the 2022 plan that pinches the northern and southern boundaries of District 3. *Id.* District 2 is partially compact in the 2022 plan, but it too contains a thin appendage that juts across the southern half of St. Louis County that undermines its closely united appearance. *Id.* The appendage runs straight through a cluster of cities that adjoin the St. Louis metropolitan area and pays little heed to county and municipal lines. As with the other districts, its shape cannot be explained by the recognized factor that Missouri Supreme Court identified in *Pearson*, 367 S.W.3d at 53, and *Johnson*, 366 S.W.3d at 28.

Now, compare these districts with their 2025 counterparts. The hook configuration in Districts 3 and 4 are gone, as is the protrusion the jutted out from District 2. D132. The boundary lines separating Districts 1, 2, and 3 comport with counties in the area. *Id.* The only exception is St. Louis County, which was also split in the 2022 plan because its population exceeds the permissible limit to maintain equal population. Even there, the plan created by House Bill 1 smooths over the finger-like pattern that separated Districts 1 and

2 in the 2022 plan, which improves the 2025's plan's compactness by comparison. *Id.* The remaining districts tell a similar story. District 6 in the 2025 plan shrinks in size and loses a county split. *Id.* District 4, likewise, covers a smaller area and loses two county splits. Indeed, the only district to grow in size the western half of the state is District 5. *Id.* However, even there, the boundaries track county lines except in high density areas like Jackson County, where the boundaries track municipal lines instead. The combination means that the 2025 plan overall has a smoother, more pleasing appearance than the prior plan and performs better on the compactness metrics that voters can recognize and comprehend without specialized knowledge.

Plaintiffs at trial introduced evidence that contested the statement's accuracy. The circuit court, however, was not persuaded. And it exercised its prerogative as the trier of fact "to believe or disbelieve any or all of the contested evidence at trial." *White*, 321 S.W.3d 298 at 312. Plaintiffs contend that this decision was against the weight of evidence, Appellants' Br. at 52–59, but at bottom, their argument boils down to a disagreement about the credibility of Plaintiffs' witnesses and evidence—something the circuit court "is in a better position . . . to judge." *Pearson*, 367 S.W.3d at 44. The reality is that the circuit court had good reason to discredit Plaintiffs' evidence or find it unhelpful. Plaintiffs' primary witness on this point, Mr. Nicholson, was a paid political consultant hired by People Not Politicians to defeat HB 1, Trial Tr. 48:24–49:14, that had previously been found unhelpful by a Missouri court in the redistricting space, *see*, *e.g.*, *Faatz*, 685 S.W.3d at 402. He had no specialized knowledge about the map but instead read an Office of Administration document that contained Polsby Popper and Reock scores of the districts

created by HB 1 and communicated to the court the conclusions he drew from it. Trial Tr. 42:8–44:18.[3]

The district court explained in its findings of fact and conclusions of law why it discounted Mr. Nicholson's testimony as "unhelpful." D133 p.8. All of the reasons align with the trial record and case law. *First*, despite tendering opinions about the map and the Office of Administration's calculations, Mr. Nicholson "was not offered as an expert at trial" by Plaintiffs." D133 p.3, ¶ 21. *Second*, "Mr. Nicholson did not provide comparative scores nor did he rebut the visual compactness of House Bill 1," both of which the district court found relevant to its analysis. D133 p.8. *Third,* Mr. Nicholson lacked basic information about the map. "[H]e was not aware," for example, "that fewer counties were split on the new map than the previous map until he was walked through the previously split counties by the Secretary's counsel." D133 p.8. In other words, Mr. Nicholson did not provide the circuit court with credible evidence about facts the court found relevant to its inquiry, nor did he offer information that the court could not obtain on its own from reading the government documents admitted by Plaintiffs or scrutinizing the 2022 and 2025 maps. Just as courts can read a dictionary, courts are equally capable of reviewing a map to determine whether congressional districts better resemble geometric shapes, such squares and rectangles. *See Beetem*, 317 S.W.3d at 672 (holding that the trial judge "is educated and skilled in the English language").

[3] For context, Polsby Popper and Reock refer to two common mathematical formulas used to measure one element of compactness. Trial Tr. 96:14–97:3, 99:17–100:1.

Plaintiffs next criticize the circuit court for emphasizing visual observation, Appellants' Br. at 56, but the circuit court's approach conforms to the law and is appropriate for a ballot title challenge since the method turns on the maps published alongside the relevant legislation—i.e., the underlying measure— and is accessible to the average voter, who has neither the resources nor knowhow to conduct the calculations. It bears repeating that the Missouri Supreme Court has endorsed visual comparisons as one method of assessing compactness, and while "the word 'compact' does not refer solely to physical shape or size," courts usually resort to other factors when districts appear to depart from a closely united territory.[4] *Pearson*, 367 S.W.3d at 48–49. Assessing the size and shape is the first step.

In any event, the argument does not advance Plaintiffs' cause. The redistricting plan enacted by HB 1 performs better with respect to the recognized factors than the one it replaced, such as respecting political subdivisions and natural boundary lines, *see Johnson*, 366 S.W.3d at 29–30, and this information can be gleaned from the 2022 and 2025 maps along with basic geographic knowledge of the state. Moreover, the recognized factors do not refer to Polsby Popper or Reock, which concern a district's shape. Mr. Nicholson testified that these "statistical measurements have been crafted . . . to analyze whether or not the shape of a final district looks like a circle" or "other kinds of normal polygons"—just like the circuit court's visual inspection. Trial Tr. 21:21–22: 16. He also conceded

[4] Article III, Section 45 of the Missouri Constitution qualifies the compactness requirement with phrase, "as may be." The Supreme Court has interpreted this language to incorporate the recognized factors, which allows the legislature to pursue other redistricting principals in tandem with compactness. *Pearson*, 367 S.W.3d at 51.

that he did not look at other statistical metrics of compactness, such as Convex Hull, Schwartzberg, I-Know-It-When-I-See-It, Population Circle, and Perimeter in Miles, all of which measure different aspects of a district's shape. *Id.* at 63:20–64:11; *see*, *e.g.*, *Faatz*, 685 S.W.3d at 402 (explaining utility of Convex Hull). His testimony, at best, offered additional context, but the information is incomplete, and the circuit court had no obligation to accept it as persuasive.

The final argument Plaintiffs make is pointing to Mr. Nicholson's assertion that "some districts become less compact, some become more compact, and some are exactly as they were." Appellants' Br. at 57 (citing Trial Tr. 44:4–11). The problem with this approach is two-fold. *First*, his testimony makes no attempt at providing the maps' average compactness score, which bears on the statement's accuracy.[5] *Second*, the argument treats ballot titles as an exercise in absolute precision, whereas the actual standard gives the Secretary both flexibility and deference. Courts recognize that "ten different writers would produce ten different versions" and "there are many appropriate and adequate ways of writing the summary ballot language." *Asher*, 268 S.W.3d at 431–32. Thus, "[t]he applicable question is not whether the summary drafted is the *best* summary, 'but whether [it] gives the voter a *sufficient idea* of what the proposed amendment would accomplish

[5] Based on his testimony, Mr. Nicholson does not believe that an average compactness score make sense. However, in *Wise v. State*, which dealt with a compactness challenged to the 2025 map, multiple experts provided that analysis to the Kansas City Circuit Court, and the circuit court there relied on it when forming its findings of fact and conclusions of law. *See* Order and J., 7 ¶¶ 16–17, 24, *Wise v. State*, Case No. 2516-CV29597 (Jackson Cnty. Cir. Ct. Mar. 12, 2026) ("The 2025 Plan across all those measures is on average more compact than the 2012 Plan and 2022 Plan."). Plaintiffs did not provide comparable evidence in this case.

without language that is intentionally unfair or misleading." *Pippens*, 606 S.W.3d at 702 (emphasis in original) (second alteration in original) (quoting *Sedey*, 594 S.W.3d at 263). The 2025 map improves compactness overall. The summary statement accurately captures that given the 100 word limit. Plaintiffs have not demonstrated differently.

B. The phrase "keeps more cities and counties intact" fairly and accurately describes House Bill 1. (Addresses Points Relied Upon III and VII).

The certified statement also fairly and accurately notes that the congressional plan created by the HB 1 "keep[s] more cities and counties intact" than its predecessor. As is the case above, Plaintiffs have all but waived their claim that the Secretary's description was biased or argumentative. *Id.* They "did not present evidence or arguments" at trial, *id.*, nor did they submit a pretrial brief outlining their claims for the circuit court to consider when forming its ruling. However, setting preservation question aside, Plaintiffs' claim still fails on the merits. This is because the language drafted by the Secretary describes the statute's treatment of counties and cities with common place, neutral terms. *See Stickler*, 539 S.W.3d at 715 (holding that "everyday, colloquial language" is neither unfair nor insufficient). The statement makes no value judgment; it simply informs voters in a straightforward manner about a central feature of the underlying measure.

Plaintiffs disagree. They contend that informing voters about the comparative treatment of counties and cities in HB 1 and HB 2909 "placed [a] thumb on the scale." Appellants' Br. at 46. Not so. The language at issue is quantitative, not "qualitative." *Id.* It accurately states that more counties and cities are kept together by HB 1. The statement then leaves it up to voters to decide if this is a positive attribute or whether to investigate

further. In making their argument, Plaintiffs seem to imply that any inclusion of an arguably favorable characteristic constitutes bias, but that is not the standard. *See id.* at 47–48. Plaintiffs need to show more, such as cherry-picking or inflammatory terminology. Again, the purpose of a ballot title "is to give interested persons notice of the subject of a proposed [law]." *Missourians Against Human Cloning*, 190 S.W.3d at 456 (alteration in original). The inquiry is thus whether the summary statement fairly describes the underlying measure, including its central features and probable and legal effects. If the statement does so, then it does not matter that one or more central features could be viewed in a positive light.

To the extent that Plaintiffs object to calling split counties a central feature, the case law works against them. Missouri Courts have recognized that "counties are important governmental units, in which the people are accustomed to working together." *Preisler v. Hearnes*, 362 S.W.2d 552, 556 (Mo. banc 1962). Accordingly, "it has always been the policy of this state . . . to have [districts] composed of entire counties." *Id.* (citing Mo. Const. art. III, § 5). Furthermore, keeping counties and cities united within a single district is a recognized factor that is incorporated into the constitutional requirement of compactness. *See Johnson*, 366 S.W.3d at 28. The factor plays a significant role in determining whether a redistricting plan complies with the law. Accordingly, the question of county and city splits is of public concern and an appropriate attribute for the Secretary to include in the summary statement.

Plaintiffs' other argument is that the phrase "keeps more cities and counties intact" is not found in HB 1's written text, but this position is a dead end as it runs into both legal

and practical snags. Appellants' Br. at 42–44. On the legal side, Plaintiffs point to no authority that requires a summary statement to mimic exactly the language of the underlying measure. To the contrary, the Secretary is tasked only with drafting one that is fair and sufficient such that it gives adequate notice to voters. *See Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo. App. W.D. 1999) ("The important test is whether the language fairly and impartially summarizes the purposes of the measure, so that voters will not be deceived or misled.") That standard permits flexibility. *See id.* ("[E]ven if the language proposed by [the challenger] is more specific, and even if that level of specificity might be preferable, whether the summary statement prepared by the Secretary of State is the best language for describing the referendum is not the test."). On the practical side, Plaintiffs ignore how voters visualize and understand a redistricting plan. Voters do not conceptualize redistricting plans, such as HB 1 and HB 2909, as a list of voting tabulations districts ("VTDs") organized by county and assigned to respective congressional districts. They understand it as a map that depicts boundary lines for Missouri's eight congressional seats. The Secretary's summary statement reflects that understanding. It meets voters where they are so that voters appreciate how the congressional districts changed following HB 1's passage. In short, the statement does its job in informing voters about the measure.

Turning to the statement's accuracy, Plaintiffs failed to establish as misleading or false the Secretary's description of how counties and cities were treated under HB 1 and HB 2909. The reason for this is quite simple. The Secretary correctly described the underlying measure. The redistricting plan enacted by HB 1 does in fact keep more counties and cities together than the plan it repealed—full stop. Hence, Plaintiffs were

unable to muster up evidentiary support refuting the description. Because of this, Plaintiffs have attempted to flip the burden of proof throughout the case, arguing that the weight of evidence does not support the statement's accuracy. Appellant's Br. at 71–72. As an initial matter, that allegation is false. The circuit court relied on competent evidence when it upheld the disputed language, including the bill's text, government maps of the two redistricting plans, testimony from Plaintiffs' own witness, and basic geographic facts that Missouri courts are presumed to know. *See* D133 p.7–8. However, even if the Secretary had not proved his case, the Secretary does not bear the burden: It was up to Plaintiffs to show that the language was insufficient or unfair. *See Hill*, 526 S.W.3d at 308. Their failure to do so justified the circuit court's ruling and warrants denial of their appeal.

1. The evidence shows that HB 1 splits fewer counties than its predecessor. Whereas HB 2909 split nine counties, HB 1 splits five. *Compare* D131, *with* D132; D133 p.3 ¶ 15–17. Camden County, Clay County, St. Charles County, and Warren County all were divided among multiple congressional districts under the prior plan, yet all are kept intact under HB 1. *Compare* D131, *with* D132; D133 p.3 ¶ 16. At the same time, not a single county that was kept intact by HB 2909 was split by its successor. *Compare* D131, *with* D132. The evidence of this fact is clear-cut. HB 1's text identifies the counties that fall within each congressional district; it then lists which VTDs in the county should be assigned to which congressional district. *See generally* D123–25; D133 p.3 ¶18. For counties that fall entirely with a congressional district, the county is listed but no VTD or block assignments appear under it. *See*, *e.g.*, D123 p.13. The circuit court needed to go

no further than HB 1 itself to determine the number of counties kept together under the new legislation.

If that evidence were not enough, counsel for the Secretary elicited testimony from Plaintiffs' witness, Mr. Nicholson, during cross examination that supported the summary statement. This includes walking Mr. Nicholson through the bill and identifying the counties that were split under HB 2909 but were marked in HB 1 as being kept whole. Trial Tr. 60:4–61:17. It also includes directing Mr. Nicholson's attention to blown-up poster boards of the two congressional redistricting maps (Defense Exhibit A and B) that were on display during trial and identifying the splits. Trial Tr. 55:21–60:3. Based on Plaintiffs' brief, this evidence should qualify as competent. Not only does it rely on the bill text, the relevance of which no party disputes, but the circuit cited it, D133 p.3 ¶18, and the abovementioned exchange with Mr. Nicholson, *id.* p.8, as reasons for its ruling. Mr. Nicholson was under oath. The testimony bears the same indicia of reliability as his testimony on direct. Plaintiffs should have no objection to its admissibility.

Perhaps recognizing that the evidence is against them, Plaintiffs argue for the first time on appeal that the phrase "keep more cities and counties intact" must refer to "the total number of cities plus counties wholly contained within any congressional district." Appellants' Br. at 69–70. The argument, however, is a nonstarter. Even assuming that "and" cannot mean "or," *but see City of Olivette v. St. Louis Cnty.*, 507 S.W.3d 637, 643 (Mo. App. E.D. 2017), Plaintiffs offer no reason why their interpretation should control over the more natural reading that more individual cities and counties are kept intact under the new plan. The summary statement, after all, refers to a quantitative amount of cities

and counties being kept intact, not the number of times cities and counties are split overall. In addition, Plaintiffs did not offer persuasive evidence that HB 1 performed worse on this metric. Although Plaintiffs cite to Mr. Nicholson's testimony, the testimony contradicts the bill's text, which identifies only five split counties. *Compare* Trial Tr. 67:5–68:8, *with* D96. The confusion likely stems from the fact that Mr. Nicholson is reading an excerpt from Plaintiffs' Exhibit 12, but the excerpt refers to attachments that originally accompanied the document but were not offered into evidence or examined by Mr. Nicholson at trial.[6] The circuit court had solid reasons for discounting the testimony.

2. In regards to the assertion about cities, "Plaintiffs did not present evidence to refute the Secretary's claim that House Bill 1 splits 'fewer cities.'" D133 p.7. That failure alone merits denial of Plaintiffs' appeal since Plaintiffs bore the burden of proof at trial. "Generally, the party not having the burden of proof on an issue need not offer any evidence concerning it." *Maher*, 582 S.W.3d at 911 (quoting *Adoption of K.M.W.*, 516 S.W.3d at 382). If the trier of fact does not believe the evidence of the party bearing the burden, or if the party bearing the burden fails to put any on, the trier of fact "properly can find for the other party." *Id.* (quoting *Adoption of K.M.W.*, 516 S.W.3d at 382). What this means is that "substantial evidence supporting a judgment against the party with the burden of proof"—in this case, Plaintiffs—"is *not* required or necessary." *Id.* (emphasis added) (quoting *Adoption of K.M.W.*, 516 S.W.3d at 382). Even if the Secretary submitted no

[6] Mr. Nicholson's testimony centers on page 3 of Exhibit 12, which references "Attachments #1-3 through 1-9." Trial Tr. 67:14–22.

evidence, the circuit court was justified in ruling against the party that made no effort to meet their burden.[7]

In this instance though, the Secretary did introduce evidence, and that evidence corroborates the assertions made in the summary statement. The Secretary "produced maps" of the two redistricting plans "demonstrating that a number of cities split by House Bill 2909 were kept intact by House Bill 1." D133 pp.7–8; *see* D131, 132. The first map, Exhibit A, depicted the congressional districts formed by HB 2909 and included two zoomed-in images of the St. Louis and Kansas City areas. D133 pp.7–8; *see* D131, 132. These images identified nearby cities and showed that congressional boundary lines in both areas cut through multiple municipalities. D133 pp.7–8; *see* D131, 132. The second map, Exhibit B, depicted the congressional districts formed by HB 1. By comparing the two maps, it becomes apparent that the same cities split by HB 2909 are kept intact by HB 1. The clearest demonstration of this occurs along the I-70 corridor outside of St. Louis, where District 3's aforementioned claw-like configuration cut through a chain of cities under the 2022 plan. HB 1 eliminates that configuration and moves the nearest boundary line further south. The district lines now miss the cities along the I-70 corridor in their entirety.

[7] Plaintiffs had every opportunity to introduce evidence disproving the Secretary's assertion that the new map split fewer cities. Their witness Mr. Nicholson testified at trial that he had access to and familiarity with the ArcGIS program that hosts the official shapefiles for HB 1 and its predecessors. Trial Tr. 36:25–38:10. That system would allow an operator to identify split cities by layering data. *Id.* 37:24–38:10; *see also* Arc GIS Program, https://redistrictmo.maps.arcgis.com/apps/instant/basic/index.html?appid=b30ec69d8b0f46ebaf6e080ca54b8ed1.

Despite Plaintiffs' protestations, the two maps submitted by the Secretary constitute competent evidence. The circuit court did not err in citing them in its opinion. "The Office of Administration and the Missouri House have published official versions of the map implemented by House Bill 1." D133 p.2 ¶ 12. In fact, HB 1's text mandates that a "graphical map representation of the official congressional district boundaries" be published as an appendix to the Missouri Revised Statutes. D125 p.15. Exhibit A and Exhibit B are among the maps published by the State. They were disclosed to Plaintiffs during the course of discovery, D129 pp.7–8, and were part of the joint stipulation entered into by the parties, D101, D105, D107. Plaintiffs cite to no evidence that would undermine the maps' credibility. What's more, judicially known facts about the Missouri's geography verify what the maps show. Missouri courts may take judicial notice of the location of Missouri cities and counties and the distance between them. *See Maxwell v. City of Hayti*, 985 S.W.2d 920, 922 (Mo. App. S.D. 1999). Applying that information to HB 1's and HB 2909's district lines confirm that more cities are kept intact under the map than the prior one. The record has more than enough support to justify the circuit court's ruling.

C. Removing the word "existing" from the summary statement was proper. (Addresses Points Relied Upon I).

Next, Plaintiffs take issue with the circuit court's elision of "existing" from the revised summary statement. Appellants' Br. 32–40. Their contentions are meritless. The circuit court's removal of the word "existing" ensured accuracy and clarified the meaning of the statement—clarification made necessary by Plaintiffs' insistence that the word implied the suspension of HB 1. The circuit court's limited extraction of the word "existing" from the

summary statement provided by the Secretary properly ensured the accuracy of the statement. First, Plaintiffs attempt to attack the circuit court's removal, suggesting that it is inaccurate. To support their position, Plaintiffs attempt to use this case to undermine collaterally the Cole County Circuit Court's final judgment in *Maggard v. State*, No. 25AC-CC09120 (Cole Cnty. Cir. Ct. Mar. 27, 2026). While Plaintiffs clearly have views on the *Maggard* litigation, this case is an improper vehicle, and this Court an improper venue, to voice those opinions.

It is old soil in Missouri that collateral attacks on final judgments in *other* cases are impermissible. *See McNair v. Biddle*, 8 Mo. 257, 264 n.a (Mo. 1843) ("A judgment cannot be attacked collaterally."); *Mayes v. Saint Luke's Hosp. of Kansas City*, 430 S.W.3d 260, 274 (Mo. banc 2014) ("Generally, a party cannot attack the validity of a judgment by a collateral attack." (citing *Reimer v. Hayes*, 365 S.W.3d 280, 283 (Mo. App. W.D. 2012))). And, "[g]enerally, the validity of a judgment can only be attacked by direct appeal, not by collateral attack." *Reimer*, 365 S.W.3d at 283. Here, Plaintiffs try to use this appeal as a vehicle to attack collaterally a case currently before the Missouri Supreme Court and outside of this Court's jurisdiction: *Maggard*. That attempted retrofitting is improper. As part of their collateral attack, Plaintiffs provide their own legal reasoning to wave away the *Maggard* judgment. *See* App. Br. 36. Once again, that case is not before this Court. And that case could *not* be before this Court as the Supreme Court exercises appellate jurisdiction on that matter.

Even if this Court considers Plaintiffs' musings to roll back the circuit court's elimination of "existing," they are unpersuasive. Plaintiffs' only engagement with

Maggard is an off-handed expression of opinion that "that decision is not binding and undoubtedly wrong on the merits." Appellants' Br. at 36. Plaintiffs surround this conclusory remark with serial cites to several referendum-related cases. However, they misread the case law and miss the mark. Crucially, the 2022 map is not the "existing" map because the 2025 map is not *suspended* until the signatures are deemed sufficient. As the *Maggard* court held, the proposition that "automatic suspension occurs upon mere submission of a referendum petition conflicts with the plain text of the Missouri Constitution, the statutory framework of Chapter 116, and controlling Missouri precedent." J. at 17, *Maggard*, No. 25AC-CC09120 (Cole Cnty. Cir. Ct. Mar. 27, 2026). The *Maggard* court found that "no automatic suspension exists." *Id.* The suspension is not automatic because Missouri law dictates that the Secretary is independently responsible for certifying the referendum. *See* §§ 116.140, 116.120.1, RSMo.

Litigating *Maggard* is not necessary here. HB 1 is currently in effect and Plaintiffs do not and cannot point to any case enjoining HB 1. Thus, the 2022 map, as the circuit court elucidated, cannot be accurately described as the "existing" map.

Plaintiffs' concerns over the limitations on the circuit court's ability to revise summary statements likewise fall short. Plaintiffs cite concerns relevant to protecting the Secretary's statutory duty to create summary statements and predictability at trial. Appellants' Br. at 34. However, these concerns are not relevant here because the Secretary has consented to the Court's adjustment and Plaintiffs' highlighted the potential issue for the trial court on multiple occasions. *See*, *e.g.*, D119 p.4–5.

As part of its prerogative to consider alternative language, when the circuit court determines a statement is deficient, Missouri law empowers the court to "revise the existing summary 'while modifying the [existing] language in the most limited fashion possible.'" *Pippens*, 606 S.W.3d at 713 (alteration in original). Here, the circuit court limited its revisions to correcting deficiencies in the underlying statement. Since the 2022 map is no longer the "existing" map, the circuit court eliminated the "existing" language—after all, HB 1 implements the existing 2025 map, it does not repeal this map. The most "limited fashion," *id.*, to ensure an accurate statement was through the elimination of the word "existing." The circuit court merely clarified that the 2025 map is enacted with the full force of law.

Now, unsatisfied with the outcome, Plaintiffs' attempt to hide behind their complaint and suggest that the revision was unfair to the Secretary. Neither argument can succeed. Plaintiffs' complaint provides little protection. Plaintiffs were the "master[s]" of [their] complaint." *Hope v. Nissan N. Am., Inc.*, 353 S.W.3d 68, 76 (Mo. App. W.D. 2011). And while they did not delve into the phrase "existing," they aimed broad challenges at the summary statement and did not amend their claims that the summary statement as a whole was unfair and insufficient. *See* D95 ¶¶ 37, 41(a).

Moreover, Plaintiffs demonstrated throughout trial that the term existing was intertwined with "gerrymandered congressional plan." Trial Tr. 33:3–9, 34:19–23. The elimination of the word "existing" became necessary only because Plaintiffs insisted that the term conclusively meant that the 2022 map was currently in effect. Plaintiffs advanced this argument at multiple stages throughout the litigation. *E.g.* D119 pp.4–5; Trial Tr.

28:22–5. Thus, any argument that Plaintiffs did not have a fair chance to argue for the inclusion of the word or that the Secretary was surprised by the exclusion holds no water. Ultimately, the circuit court's decision to remove the term "existing" from the summary statement was a proper, narrow revision that ensured accuracy.

II. House Bill 1 enacted a new congressional redistricting map; the trial court correctly referenced said maps when assessing the referred measure's central features. (Addresses Points Relied Upon II).

The Secretary has maintained the same position throughout the pendency of this litigation: to ascertain the fairness and sufficiency of a summary statement, one must compare the drafted language with the underlying measure. *State ex rel. Kander*, 462 S.W.3d at 849. It just so happens that in this instance, the underlying measure repeals a previous redistricting plan and replaces it with a new set of congressional districts. Thus, in order to do a proper comparison, the review must consist of the bill enacted by the General Assembly, the bill repealed by the General Assembly, and visuals of the two redistricting plans affected by the measure, as each pertains to the bill's legal and probable effects as well as its central features. The Secretary informed Plaintiffs' of this position in discovery, *e.g.*, D103 pp.5–6 (Response to Interrogatory 3), and the Secretary adhered to it at trial, submitting to the circuit court maps of the 2022 and 2025 plans and walking through the maps and bill text with Plaintiffs' witness, Mr. Nicholson, during cross examination, *see*, *e.g.*, Trial Tr. 55:9–61:15.

Nevertheless, Plaintiffs balk at the Secretary's use of the redistricting maps as part of its case-in-chief, claiming that the summary statement (and the court's review of it) must be limited to the language in HB 1. Appellants' Br. at 40. This stance flouts the very

purpose of a summary statement, which is designed to give voters sufficient information about the referendum so that they can understand its subject as well as the legal and probable effects of a yes-or-no vote. *See Brown*, 370 S.W.3d at 654. In the context of legislation that repealed a prior bill, a summary statement may need to rely on the prior bill to provide voters adequate information about the measure. Likewise, in the context of redistricting, a summary statement will to need to reference the content of the two redistricting plans so that voters can understand the proposed change. *Brown*, 370 S.W.3d at 654 ("Sometimes it is necessary for the . . . summary statement to provide a context reference that will enable voters to understand the effect of the proposed change.").

"Redistricting plans . . . are visualized and understood by the public as maps." D133 p.2 ¶ 11. It makes no sense, as Plaintiffs imply, to have the summary statement reference VTD assignments over the physical characteristics of the newly enacted plan given that voters have little familiarity with the former and the latter aligns with how voters understand the legislation. This is why the General Assembly mandated in HB 1 that a graphical map of the 2025 congressional boundaries be published. D125 p.15. As the circuit court noted in its findings of fact, the Missouri House of Representatives published maps alongside HB 1 and HB 2909 when the bills were passed.[8] D133 p.3 ¶¶ 13–14. The maps are considered part and parcel of the legislation.

Moreover, the physical characteristics of the two maps have legal and practical significance. As explained above, Article III, Section 45 of the Missouri Constitution

[8] Plaintiffs' witness Mr. Nicholson reviewed the maps published by the Missouri House in preparation for trial. Trial Tr. 52:11–17.

directs the legislature to enact congressional districts that are "as compact as may be." It is one of three substantive requirements each plan must meet and the only one that can be assessed without specialized data. *See id.* The preservation of counties, meanwhile, has been recognized as an important public policy because counties are important government units that reflect how people build coalitions and work together, *Preisler*, 362 S.W.2d at 556, and Missouri courts have incorporated keeping counties and cities intact into the constitutional requirement of compactness, *see Johnson*, 366 S.W.3d at 28. Each characteristic certified in the final summary statement plays a significant role in determining whether a redistricting plan complies with the law. The circuit court had a sound basis for concluding that the descriptions at issue constituted the bill's central features. It was likewise justified in citing the maps submitted by the Secretary in verifying the statement as true.

III. The Circuit Court Acted Within Its Broad Discretion When Taking Judicial Notice as Requested by the Secretary. (Address Points Relied Upon VI).

The circuit court ruled in favor of the Secretary with respect to the disputed language, in part, because Plaintiffs failed to meet their burden of proof. D133 p.8. Unable to conjure additional evidence on appeal, Plaintiffs attempt to distract this court by casting a shadow over information properly noticed by the circuit court. In particular, Plaintiffs argue that the circuit court acted outside of its broad discretion by taking judicial notice of certain facts that allowed it to determine whether HB 1 "keeps more cities and counties intact." Appellants' Br. at 60–61. As with Plaintiffs' other argument, their claim of judicial error does not make up for their lack of proof against the accuracy and fairness of the Secretary's

language. Not only have Plaintiffs waived review, but they are unable to show that the circuit court acted outside of its broad discretion.

"In Missouri, judicial notice may be taken of (1) a fact which is common knowledge of people of ordinary intelligence or (2) a fact, not commonly known, but which can be reliably determined by resort to a readily available, accurate and credible source." *State v. Gay*, 566 S.W.3d 622, 626 (Mo. App. S.D. 2018) (cleaned up). When judicial notice is taken, the opposing party may nevertheless offer evidence to rebut the noticed fact. *Morrison v. Thomas*, 481 S.W.2d 605, 607 (Mo. App. 1972). "A party's '[f]ailure to specifically object to the court taking judicial notice constitutes a waiver.'" *Chandler v. Hemeyer*, 49 S.W.3d 786, 792 (Mo. App. W.D. 2001) (quotation omitted). The facts noticed by the circuit court fits the articulated standard exactly. Plaintiffs have no grounds to claim error.

A. Plaintiffs failed to preserve this argument.

Plaintiffs have waived any challenge to the circuit court's taking judicial notice by failing to "specifically object" in the circuit court. *Chandler*, 49 S.W.3d at 792 (quotation omitted). At the February 4 hearing, the Secretary asked the court to take judicial notice of "the Office of Administration's GIS website that contains [depictions of the congressional maps]." Hr'g Tr. 22:10–19 (Feb. 4). When the circuit court asked if Plaintiffs objected to the use of judicial notice, Plaintiffs stated: "I guess not . . . Yeah, just take notice." *Id.* 22:24–23:4; *see also id.* 24:6–7 ("No objection of you taking judicial notice."). The circuit court then took judicial notice as requested. Hr'g Tr., 23:1–2 (Feb. 4). Plaintiffs proceeded to ask their witness questions about the GIS system stating:

"[W]hen we were here for the last hearing . . . the Secretary of State attorneys asked the Judge to take judicial notice of GIS." Trial Tr. 36:25–27:2. Likewise, Plaintiffs failed to raise objections to the Secretary's request that the Court take notice of the geographical locations of all cities in Missouri. Trial Tr. 95:3–14.

Further, Plaintiffs did not object to the circuit court's taking judicial notice based on the stipulation entered by the parties, again waiving any ability for Plaintiffs to raise the stipulation as a bar to judicial notice. *See Handshy v. Nolte Petroleum Co.*, 421 S.W.2d 198, 202 (Mo. 1967) ("[A] party seeking the correction of error must stand or fall on the case which was made in the trial court, and thus it follows that only those objections or grounds of objection which were urged in the trial court, without change and without addition, will be considered on appeal."). Plaintiffs contend that they preserved this issue through "negotiating a stipulation that barred the Secretary from offering evidence . . . and objecting to the Secretary offering improper 'evidence' that exceeded the stipulation." Appellants' Br. at 60. But Plaintiffs' misstate the record. Their cited objections relate to testimonial evidence and not to the court's decision to take judicial notice. *See* Trial Tr. 82:10–83:15 (objecting "because of what [Secretary's counsel was] getting ready to say" about the visual depictions of HB 1 and HB 2909); Trial Tr. 85:12–13 (objecting "to the testimony"). Contrary to Plaintiffs' suggestion, these objections did not preserve the court's taking judicial notice for appellate review. Rather, the record unambiguously "indicates that [Plaintiffs] waived any objection that [they] had to the court's taking judicial notice." *Chandler*, 49 S.W.3d at 792.

B. Even if Plaintiffs preserved the issue, the circuit court did not abuse its discretion in taking judicial notice.

Plaintiffs first contend that the circuit court abused its discretion by taking judicial notice of the ArcGIS data hosted by the Office of Administration because, in their opinion, a witness must advise the trial court as to what these records and maps show. Appellants' Br. at 66. However, Missouri courts have routinely upheld decisions of trial courts in taking judicial notice of administrative records—like the ArcGIS system and data. *Hammack v. Mo. Clean Water Comm'n*, 659 S.W.2d 595, 599 (Mo. App. S.D. 1983) (Geological Survey Map from the United States Department of Interior); *State v. Abeln*, 136 S.W.3d 803, 808 n.3 (Mo. App. W.D. 2004) (Official Highway Map of Missouri); *Borrson v. Mo.-Kan.-Tex. R. Co.*, 172 S.W.2d 835, 837 (Mo. 1943) (State Highway Department records); *Kansas City v. City of Raytown*, 421 S.W.2d 504, 513 (Mo. banc 1967) (State Auditor records); *Gershman Inv. Corp. v. Danforth*, 475 S.W.2d 36, 37–38 (Mo. banc 1971) (loan rates published by Department of Housing and Urban Development); *Pippens*, 606 S.W.3d at 705 & n.10 (historical consumer price index). The court can, in its discretion, give the information the weight it is due. *See Cox v. Kan. City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 114 (Mo. banc 2015) ("A trial court 'enjoys considerable discretion in the admission or exclusion of evidence, and, absent clear abuse of discretion, its action will not be grounds for reversal." (quotation omitted)).[9]

[9] Plaintiffs need not look further than the Secretary's Reply to their suggestions in opposition to the motion to quash, where the Secretary helpfully provided a link to the ArcGIS system to clear up any confusion about the contents of the ArcGIS system. D120 p.4, n.1.

Turning to geographic locations of cities, Plaintiffs do not support their contention the circuit court abused its discretion in taking notice of the location of cities in the State. *See* App. Br. at 66–67. Nor could they. *See Goforth*, 593 S.W.3d at 130 n.4 ("We take judicial notice of the geographical location of cities in the State and the approximate distance between them." (citation omitted)); *Maxwell*, 985 S.W.2d at 922; *Moulder v. Webb*, 527 S.W.2d 417, 419 (Mo. App. S.D. 1975). Instead, Plaintiffs quibble that the location of cities is "meaningless" without comparison. Appellants' Br. at 67. But the manner in which the circuit court may have used the location of cities in reaching its decision has no bearing on whether taking judicial notice of cities was an abuse of discretion. The circuit court did not abuse its discretion in taking notice of the geographic location of cities across the state. *See Goforth*, 593 S.W.3d at 130 n.4.[10]

Plaintiffs' suggestion that to request judicial notice of these facts, the Secretary needed to present evidence or verification misunderstands the purpose and function of judicial notice, which is to "assume the existence of [a] fact without proof." *Endicott*, 443 S.W.2d at 126. The ArcGIS system and the geographic location of the cities in Missouri are proper subjects for judicial notice. *See Reineman v. Larkin*, 121 S.W. 307, 311 (Mo. 1909) ("Courts take judicial notice of facts of current history, of geographical and scientific facts and of facts commonly known to all mankind. This, [sic] because courts should not admit themselves more ignorant than the rest of mankind."). Plaintiffs have no grounds to object

[10] In any event, Plaintiffs, not the Secretary bear the burden of demonstrating that the summary statement is unfair and inaccurate. Plaintiffs, not the Secretary, should have provided the court with the information. *See Endicott v. St. Regis Inv. Co.*, 443 S.W.2d 122, 126 (Mo.1969).

to the court exercising its discretion to admit and cite basic, reliable facts relevant to their claims. This Court should rule against Plaintiffs and confirm that facts will not be excluded simply because they are inconvenient.

CONCLUSION

For the above reasons, this Court should affirm the circuit court's judgment and revised summary statement.

Date: April 16, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 13,309 words, complies with Missouri Supreme Court Rule 84.06(b), includes the information required by Rule 55.03, and includes information on how the brief was served on the opposing party.

/s/ Madeline S. Lansdell
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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2026, a true and accurate copy of the foregoing was electronically filed by using the Court's CM/ECF system to be served via operation of the Court's electronic filing system upon all counsel of record.

/s/ Madeline S. Lansdell
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