

**IN THE CIRCUIT COURT OF
COLE COUNTY, MISSOURI**

JAKE MAGGARD et al.,)

Plaintiffs,)

v.)

STATE OF MISSOURI et al.,)

Defendants.)

Case No. 25AC-CC09120

**PLAINTIFFS' COMBINED SUGGESTIONS IN OPPOSITION TO
MOTIONS TO DISMISS**

Plaintiffs submit their suggestions in opposition to the motions to dismiss filed by Defendants, *see* Defs.' Suggestions in Supp. of Mot. to Dismiss ("Defs. MTD"), and Intervenor Put Missouri First ("PMF"), *see* Intervenor Put Mo. First's Suggestions in Supp. of Mot. to Dismiss ("PMF MTD").

INTRODUCTION

Defendants and PMF fundamentally misunderstand (or, at least, serially mischaracterize) what this case is actually about. Plaintiffs do *not* "challenge the Secretary of State's refusal to certify a referendum." Defs. MTD 2 (emphasis omitted). Plaintiffs do not dispute that the certification process is statutorily delegated to the Secretary of State, and nothing in Plaintiffs' requested relief seeks to interfere with that process. Instead, Plaintiffs ask the Court for a declaration that, consistent with more than a century of precedent and practice, House Bill 1 ("HB1") is currently suspended while the certification process plays out. Such relief is necessary because Defendants are enforcing HB1 as though it is currently in

effect—an unconstitutional position that violates Missourians’ referendum rights and directly injures Plaintiffs *every day* the referred legislation goes unsuspended. Plaintiffs have therefore come to Court with more than a “mere difference of opinion,” *id.* at 1 (citation modified); Defendants’ conduct is daily imposing the irreparable injury of constitutional deprivation, one that only grows in magnitude with the passage of time.

Defendants’ myopic focus on the purportedly “contingent” nature of harm stemming from use of the HB1 map is therefore misplaced. To be sure, Plaintiffs would *also* be injured if HB1’s new congressional map were used in the upcoming midterm elections, which is why they have sought injunctive relief to forestall that further harm. But even setting aside that there is nothing “vague,” “hypothetical,” or “generalized” about that injury, *id.* at 1–2—after all, Secretary of State Denny Hoskins and Attorney General Catherine Hanaway have made clear their intent to use HB1’s new map, an unconstitutional result that would impose a direct injury on voters—that is *not* the only harm Plaintiffs have alleged. The constitutional referendum process requires that legislation be suspended and *not go into effect* until the People have their say. This is a logical, necessary, and well-established predicate for vindication of Missourians’ referendum rights. Because HB1 is currently in effect, Plaintiffs are currently experiencing direct, cognizable harm—and they therefore have standing to seek relief from this Court.

For these reasons and those that follow, the motions to dismiss should be denied.¹

ARGUMENT

I. Plaintiffs' claims are ripe because their constitutional rights are currently being violated.

Defendants suggest that “Plaintiffs allege only one injury”: that use of HB1’s new congressional map in the 2026 midterms would violate their referendum rights. Defs. MTD 13. This is untrue. Unlawful use of HB1’s congressional map in the upcoming election cycle is indeed *an* injury Plaintiffs would suffer, but that is not the only injury alleged in their petition. More fundamentally, their referendum rights are being violated *right now*.

“[B]eing subject to an unconstitutional statute, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019) (quoting *Elrod v. Burns*, 427 U.S. 347, 373

¹ Defendants continue to advance their misguided belief that Plaintiffs are somehow estopped from bringing this lawsuit. *See* Defs. MTD 3–4 n.1, 25 n.11. Not only is that argument procedurally improper in a motion to dismiss—it strays well outside the allegations in the petition—but it is also meritless, as demonstrated by Plaintiffs’ responses to Defendants’ requests for production. *See* Exs. 1–2. To be clear: This lawsuit is not directed or funded by, and Plaintiffs were not recruited by and are not proxies for or coordinating with, People Not Politicians or its counsel. Simply put, there is no *there* there; Defendants’ theory of estoppel is factually (and legally) baseless, all smoke and no fire. Plaintiffs’ responses to Defendants’ discovery requests (which, it should be noted, seek materials and information plainly protected by various privileges and the U.S. Constitution) should put this conspiracy theory to rest and allow the case to proceed. *See* Defs.’ Opp’n to Pls.’ Prelim.-Inj. Schedule & to Consolidation of Trial on Merits with Prelim.-Inj. Hr’g. 6 (requesting that Court refrain from ruling on Plaintiffs’ preliminary-injunction motion until Plaintiffs produce discovery).

(1976)). Here, HB1's purported effectiveness renders it presently unconstitutional because it violates the People's referendum rights.

"In establishing the right of referendum, the people of Missouri constitutionally reserved a share of the legislative power for themselves to serve as a check on the legislature." *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 486, 489 (Mo. banc 2022). As a vital component of the referendum process, "once a referendum petition has received sufficient signatures to be placed on the general election ballot, the referred measure . . . has no further legal effect or consequence." *Stickler v. Ashcroft*, 539 S.W.3d 702, 713 n.9 (Mo. App. W.D. 2017) (citation modified). Referred legislation *must* be suspended before it goes into effect; otherwise, the referendum process would be undermined (if not destroyed altogether) because the "[p]urpose 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 proposition, and require their approval *before it become operative as a law*; and its purpose does not intend to invalidate a law already operative." *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 706 (Mo. banc 1952) (emphasis added) (citation modified); *see also Calzone v. Ashcroft*, 559 S.W.3d 32, 36 (Mo. App. W.D. 2018) ("[A]ny measure referred to the people takes effect *when approved by voters*." (emphasis added)). Given the ninety-day synchronicity of the petition-submission deadline and the effective date of legislation, it logically

follows that suspension is triggered by the submission of signed referendum petitions.²

Referred legislation must be suspended in order for the People’s referendum rights to be vindicated. Accordingly, if referred legislation is *not* suspended, then the People’s referendum rights are violated. There is nothing contingent, conjectural, or hypothetical about that injury; because HB1 is in effect *right now*, Plaintiffs are being harmed *right now*, and they thus have standing to protect their constitutional rights. *See Held v. State*, 560 P.3d 1235, 1249 (Mont. 2024) (“[A]lleging facts stating a claim that a [law] violates a plaintiff’s constitutional right is sufficient to show an injury, and seeking to vindicate those constitutional rights confers standing.”). The “time-sensitive nature of the referendum process” further justifies immediate judicial intervention. *No Bans*, 638 S.W.3d at 489 n.9. And because improper enforcement of referred legislation threatens the People’s referendum rights, this litigation—which seeks a declaration suspending HB1 and injunctive relief to that effect—*does* “affect Plaintiffs’ ability to exercise” those rights, and their “asserted interest” is “implicated in the underlying action.” PMF MTD 6.

Defendants’ standing analysis as to the harm caused by use of HB1’s congressional map is wrong in any event. As Plaintiffs allege in their petition, unlawful, pre-referendum use of the HB1 map is not merely possible but imminent:

² For further discussion of this point, see Pls.’ Suggestions in Supp. of Mot. for Prelim. Inj. & Consolidation with Hearing on Merits 5–12.

HB1 was prematurely codified on December 11, 2025, Pet. for Declaratory J. & Injunctive Relief (“Pet.”) ¶ 31; the candidate-filing period begins on February 24, 2026, *id.* ¶ 36 (citing § 115.349(2), RSMo); and Secretary Hoskins intends to use the new map in 2026 based on an (unspecified and incorrect) opinion from Attorney General Hanaway, who in turn has stated the new map is in effect, *id.* ¶¶ 32–35. Though Defendants have left open the possibility that HB1 will be suspended if Secretary Hoskins issues a certificate of sufficiency, *see* Defs. MTD 14, they acknowledge that he has until August 4, 2026—*primary day*—to do so, *see id.* at 13 & n.8, and Secretary Hoskins has given every indication of delay. The articles Plaintiffs cite in their petition quote him as “promis[ing] a ‘slow and steady’ review of the signatures” and that he is “going to do everything [he] can to protect . . . the map the General Assembly passed.” David A. Lieb & Hannah Schoenbaum, *Opponents of Trump-Backed Redistricting in Missouri Submit a Petition to Force a Public Vote*, PBS News (Dec. 10, 2025), <https://bit.ly/491AIKs>; *see also* Alisa Nelson, *When Does Missouri’s New Congressional Map Take Effect? That Depends on Who You Ask*, Missouri.net (Dec. 10, 2025), <https://bit.ly/4apTGwH> (quoting Secretary Hoskins as suggesting certification “will take a significant amount of time”); *Mo. Church of Scientology v. Adams*, 543 S.W.2d 776, 777 (Mo. banc 1976) (considering articles attached to petition on motion to dismiss). These articles confirm that Plaintiffs’ concerns about delay are far from “conclusory.” Defs. MTD 17.

Use of HB1 in the upcoming congressional elections is neither unduly speculative nor impermissibly remote; the machinery of State government is already in motion to conduct the 2026 midterms under an unlawful congressional map, and “[a] party does not need to wait for actual harm to occur for a claim to be ripe.” *Alverson v. Brown County*, No. 3:22-CV-03018-RAL, 2023 WL 3764958, at *4 (D.S.D. June 1, 2023) (citing *S.D. Mining Ass’n v. Lawrence County*, 155 F.3d 1005, 1008–09 (8th Cir. 2000)).

In sum, Defendants’ standing analysis is overly blinkered. Although imminent use of HB1’s new congressional map does indeed present a ripe dispute for adjudication, the present and ongoing violation of Plaintiffs’ referendum rights caused by the effectiveness of HB1 separately and sufficiently creates a justiciable controversy.

II. Defendants’ and PMF’s discussion of certification and judicial review is a red herring.

Defendants next spend several pages discussing the Secretary of State’s certification process and the availability of judicial review, suggesting that Plaintiffs’ claim is “also unripe” for this reason. Defs. MTD 17; *see also* PMF MTD 15–17 (arguing that declaratory judgment is improper here because statutes provide for judicial review of certification). But again, this argument rests on a mischaracterization of Plaintiffs’ claim. Crucially, Plaintiffs *do not seek a ruling* on Secretary Hoskins’s certification process. They do not ask this Court or any other to rule on the sufficiency of the signatures or otherwise interfere with or adjudicate

the statutory review process. *See* Pet. 9 (requested relief). Instead, Plaintiffs seek a declaration that HB1 is *currently suspended*—regardless of the status of Secretary Hoskins’s review. Plaintiffs allege (and decades of consistent authority confirm) that HB1 was suspended as an operation of law upon the submission of signed petitions on December 9, 2025. This automatic suspension is independent of (indeed, has nothing to do with) the signature-verification process.³

Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. banc 1990) (per curiam), which Defendants cite, demonstrates the critical distinction at play here. There, the Missouri Supreme Court explained that “[a]ny controversy as to whether the prerequisites of article III, § 50”—the constitutional provision laying out the signature and timing requirements for initiative petitions—“have been met is ripe for judicial determination when the Secretary of State makes a decision to submit, or refuse to submit, an initiative issue to the voters. At that point, a judicial opinion as to whether the constitutional requirements have been met is no longer hypothetical or advisory.” *Id.* at 828 (emphasis added). But here, Plaintiffs’ claim has nothing to do with determining whether 2026-RO04 satisfies the procedural requisites for referenda, and they do

³ As Defendants note, Plaintiffs’ petition requested that use of HB1’s congressional map be enjoined “until voters approve or reject it through the constitutional referendum process.” Pet. 9. The use of the phrase “constitutional referendum process” naturally presupposes a *legally compliant* referendum process; Plaintiffs do not seek to enjoin HB1 indefinitely even if the 2026-RO04 vote is foreclosed as a matter of law. Nor do they seek to prevent Secretary Hoskins from making a decision about certification. But since Defendants seem to have misconstrued this nuance, *see* Defs. MTD 17–21, Plaintiffs offer this clarification.

not seek to prevent Secretary Hoskins from making that determination. Plaintiffs' requested relief instead concerns whether referred legislation like HB1 is suspended as a matter of law upon the submission of signed petitions—again, *regardless* of whether those petitions are ultimately deemed to have satisfied constitutional prerequisites.⁴

III. Plaintiffs' injuries are not unduly generalized because their own constitutional rights are being violated.

Defendants conclude by claiming that Plaintiffs “lack any individualized injury caused by HB1.” Defs. MTD 21. This misses the mark: *HB1 itself* is not the source of Plaintiffs' injury but rather its current effectiveness notwithstanding the submission of signed petitions—which, in turn, directly violates Plaintiffs' referendum rights for the reasons discussed above. *Supra* pp.4–5. This is not “a generalized grievance against governmental conduct of which [Plaintiffs] do not approve”; unlike the claimed injury of, say, “[a] plaintiff who complains of gerrymandering, but who does not live in a gerrymandered district,” the violation of Plaintiffs' own referendum rights imposes harm that is “individual and personal

⁴ For this reason, Plaintiffs' lawsuit is readily distinguishable from *Prentzler v. Carnahan*, 366 S.W.3d 557 (Mo. App. W.D. 2012), on which PMF places great weight. There, the putative intervenors' interests as “signatories and supporters” of an initiative petition did “not establish that [they had] a direct and immediate claim upon the subject matter of the underlying [statutory ballot-title] actions in which they s[ought] to intervene.” *Id.* at 562. This case, by contrast, is *not* a challenge to Secretary Hoskins's certification process, statutory or otherwise. Plaintiffs seek to vindicate their own individual referendum rights, and their requested relief seeks only that result. There is thus no “disconnect” here between the requested relief and Plaintiffs' asserted interests. PMF MTD 5.

in nature.” *Gill v. Whitford*, 585 U.S. 48, 66–67 (2018) (first quoting *United States v. Hays*, 515 U.S. 737, 745 (1995); and then quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)).

In other words, Plaintiffs are currently experiencing “disadvantage to themselves as individuals” and “seek relief in order to protect or vindicate an interest of their own”—their referendum rights. *Baker v. Carr*, 369 U.S. 186, 207–08 (1962); *see also State ex rel. Mink v. Wallace*, 84 S.W.3d 127, 129–30 (Mo. App. E.D. 2002) (affected party had standing “to contest whether [referendum] election . . . is being properly conducted in accordance with state law”). That all Missouri voters might share this injury is of no moment; “[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016). And because the relief Plaintiffs seek will ensure that the referendum process is not vitiated by Defendants’ unlawful enforcement of HB1, Plaintiffs’ “claimed harms” are, in fact, “implicated by the litigation.” PMF MTD 5.⁵

IV. This case does not present a nonjusticiable political question.

PMF, for its part, makes the remarkable claim that this case “presents a nonjusticiable political question and should be dismissed,” PMF MTD 15— notwithstanding the myriad opinions from the Missouri Supreme Court safeguarding the People’s referendum rights and ensuring that the legislative and

⁵ At any rate, Plaintiffs’ injuries are more direct than the average voter’s because they signed the HB1 referendum. Pet. ¶ 5.

executive branches do not infringe them, *see, e.g., No Bans*, 638 S.W.3d at 492 (statutory prohibition on collecting referendum-petition signatures prior to Secretary of State’s certification of official ballot title was unconstitutional because it “interferes with and impedes” constitutional right of referendum by unreasonably shortening timeframe for petition circulation); *Moore*, 250 S.W.2d at 706 (“To construe § 52(a) to prohibit referendum of laws made effective by § 29 would enable the general assembly to defeat the purpose of 52(a) by passing bills and then recessing for thirty days or more after prescribing by joint resolution that they should take effect ninety days after the beginning of the recess.”). Whether HB1 was suspended upon the submission of signed petitions is not an “initial policy determination,” PMF MTD 13, but rather a critical (and, until now, uncontroversial) facet of the constitutional referendum process, *see supra* pp.4–5. Again, Plaintiffs are *not* asking “the Court [to] preempt the statutory process and substitute its own judgment for that of the Secretary of State,” PMF MTD 15; the automatic suspension of referred legislation operates apart from the statutory certification process and is unaffected by this litigation.

CONCLUSION

Defendants’ decision to enforce HB1 notwithstanding its automatic suspension under the Missouri Constitution’s referendum provisions is currently imposing direct, particularized harm on Plaintiffs. Their claim is ripe for adjudication, they have standing to assert it, and, for these reasons and those

above, Defendants' and PMF's motions to dismiss should be denied and this case should proceed to expedited resolution.

Respectfully submitted,

**AMERICAN CIVIL LIBERTIES UNION
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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, a true and correct copy of the above was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case.

s/ Tori Schafer
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