

**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' PRETRIAL BRIEF

Plaintiffs Jake Maggard and Gregg Lombardi submit this brief in advance of the trial on the merits scheduled for February 10, 2026.

INTRODUCTION

“The voters of Missouri first adopted a constitutional amendment establishing the right of referendum more than 100 years ago,” thus “reserv[ing] a share of the legislative power for themselves” and “ensur[ing] that ‘those who have no access to or influence with elected representatives may take their cause directly to the people.’” *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 486, 489 (Mo. banc 2022) (quoting *Missourians to Protect Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990)). Because the People’s referendum power is meant “to serve as a check on the legislature,” *id.* at 489, referred legislation is necessarily suspended until a referendum vote occurs. This *must* be the rule; otherwise, referred legislation could take effect before the People have their say, vitiating the referendum process and rendering these constitutional provisions decidedly hollow.

Logic and precedent notwithstanding, Defendants have taken the position that House Bill 1 (“HB1”)—an act creating new congressional districts in Missouri that has been referred to the People for approval or rejection—is currently in effect, and they intend to use its new map in the upcoming midterm elections. Defendants are wrong: Upon the submission of 691 boxes of signed referendum petitions to the Secretary of State’s office on December 9, 2025, HB1 was suspended as an operation of law, and it remains so until either the referendum vote occurs or the referendum is determined to be insufficient or otherwise invalid. In the meantime, HB1’s new congressional map cannot be used without violating the referendum provisions of the Missouri Constitution.

This case presents a narrow legal question and rests on only a few stipulated facts. The issue is *not* how, whether, or when Secretary of State Denny Hoskins verifies the nearly 50,000 pages of signed referendum petitions submitted to refer HB1 to the People; Plaintiffs do seek to control that process. Instead, the dispositive question before the Court is straightforward: What is the status of HB1 *in the meantime*, while the signatures are being verified? Longstanding Missouri Supreme Court caselaw and common sense compel the same result: HB1 is currently suspended to preserve Missourians’ referendum powers. Otherwise, their fundamental constitutional rights could be subject to manipulation—and even nullification—by a Secretary of State’s personally or politically motivated decisions about when and how to conduct the verification process. No official

should be permitted to subvert Missourians' constitutional rights based on a (publicly stated, in this case) desire to advance a partisan objective.

When holding more than a century ago that referred legislation must be suspended upon the submission of signed petitions, the Missouri Supreme Court expressly rejected the contention that suspension occurs only when the sufficiency of a petition is certified, asking,

[W]ould it not be to follow the flimsiest shadow, and not the substance, if we were to say that the mere postponement of the determination of the definite and exact number of signers on a referendum petition till a less pressing and more convenient season would operate to defeat the will of those signers and prevent a vote upon a matter which might be of grave moment to the people? That the instant facts do not rise to the stature of so grave and momentous a matter is beside the question. The rule we announce must needs be general.

State ex rel. Kemper v. Carter, 165 S.W. 773, 779–80 (Mo. banc 1914). That general rule prevailed undisturbed for over one hundred years. But now, this Court is confronted with precisely the “grave and momentous” case *Kemper* foresaw: Defendants are attempting to subvert the constitutional referendum process by delaying review and verification and thus, in their erroneous view, allow HB1 to take effect even though it has been referred to the People.

Defendants' gambit would “serve[] as an end run around the constitutionally protected right of the people of Missouri” to approve or reject legislation, denying them their constitutional prerogative and imposing a clear and irreparable injury. *Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27, 34 (Mo. banc 2015). Fortunately, logic and precedent are on the People's side: Under well-

settled authority, HB1 was suspended on December 9 and remains suspended today. This Court can and must declare the legislation suspended and enjoin premature implementation of its new congressional map until completion of the constitutional referendum process.

BACKGROUND

On September 12, 2025, the General Assembly truly agreed to and finally passed HB1, an act “to enact ... twelve new sections relating to the composition of congressional districts.” Joint Stipulation of Facts & Exs. (“Stipulation”) ¶ 10; *see also id.* Ex. 1 (true and correct copy of HB1). HB1 redrew Missouri’s congressional map, with the new districts to be “effective beginning with the election of the 120th Congress.” *Id.* Ex. 1, at 2. HB1 did *not* include an emergency clause affecting the People’s referendum rights. *See generally id.* Ex. 1. The special session that passed HB1 adjourned on September 12. *Id.* ¶ 12.

On September 29, the Secretary of State’s office received a petition for referendum asking to refer HB1 to voters for approval or rejection, which was denominated 2026-R004. *Id.* ¶ 13. Secretary Hoskins certified the official ballot title for 2026-R004 and approved it for circulation on November 13. *Id.* ¶ 14. Because the special session that enacted HB1 adjourned on September 12, supporters of 2026-R004 had 90 days—until December 11—to submit approximately 107,000 signatures from 6 of Missouri’s 8 congressional districts, *see* Mo. Const. art. III, § 52(a).

On December 9, 2026-R004's organizers submitted 691 boxes containing 49,773 pages of referendum petitions to the Secretary of State's office. *Id.* ¶ 15, *id.* Ex. 2 (true and correct copy of box receipt issued by Secretary of State's office); *id.* Ex. 3 (true and correct copy of referendum receipt form issued by Secretary of State's office). Secretary Hoskins has not issued a certificate of insufficiency for 2026-R004 under Section 116.150, RSMo. *Id.* ¶ 19. Nevertheless, HB1 purportedly took effect on December 11, 2025. *Id.* ¶ 18.

Plaintiffs are qualified Missouri voters who signed the petition to refer HB1 to voters for approval or rejection. *Id.* ¶¶ 1, 3–4, 6. They are both residents of the Fifth Congressional District under Missouri's 2022 redistricting map and, under HB1, would be relocated to the Fourth Congressional District. *Id.* ¶¶ 2, 5.¹

¹ Given these stipulated facts, Plaintiffs have standing to assert their claim because they “have a personal stake arising from a threatened or actual injury,” *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013) (per curiam) (citation modified)—specifically, preservation of their constitutional referendum rights, which Defendants are currently violating by enforcing HB1 as if it is in effect even though the legislation must be suspended until completion of the referendum process, *see Mo. Coal. for Env't v. State*, 579 S.W.3d 924, 926 (Mo. banc 2019) (“For a party to have standing to challenge the constitutionality of a statute, he must demonstrate that he is adversely affected by the statute in question to ensure there is a sufficient controversy between the parties so that the case will be adequately presented to the court.” (citation modified)). And Plaintiffs’ claim is ripe for adjudication because their referendum rights are *currently* being violated because Defendants are enforcing HB1 as though it is *currently* in effect. *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.”); *see also* Pls.’ Combined Suggestions in Opp’n to Mots. to Dismiss 3–10 (further explaining Plaintiffs’ standing).

ARGUMENT

Under longstanding and well-settled authority, HB1 was suspended on December 9, 2025, when the Secretary of State's office received 691 boxes containing nearly 50,000 pages of signed referendum petitions. Defendants' contrary position—that HB1 will not be suspended until and unless Secretary Hoskins issues a certificate of sufficiency under Section 116.150, RSMo—conflicts with both a century of precedent and the Missouri Constitution and must be rejected.²

² Defendants continue to pursue their misguided estoppel defense. *See* State Defs.' Trial Br. ("Defs. Br.") 19–24. Their theory is both legally and factually baseless for the reasons explained in Plaintiffs' opposition to Defendants' pending discovery motions, which Plaintiffs incorporate by reference. *See generally* Pls.' Combined Suggestions in Opp'n to State Defs.' Disc. Mots. Notably, Defendants' trial brief proposes an even more expansive—and even more indefensible—theory of estoppel: that “a referendum’s *signers* should be judicially estopped from contradicting a referendum campaign’s representations made in court.” Defs. Br. 2 (emphasis added). Simply put, *no* authority Defendants have cited supports such a broad application of the equitable doctrine of judicial estoppel, and the Court should reject Defendants' attempt to deny Plaintiffs the opportunity to safeguard their constitutional referendum rights. Indeed, that Plaintiffs here seek to vindicate their *own* individual rights—not the rights of the HB1 referendum's organizers—readily distinguishes this case from *St. Louis Typographical Union No. 8 v. Herald Co.*, where the plaintiff “Union concededly ha[d] no beneficial interest in any recovery” and “prosecute[d] this action solely as the representative of the same employees who were plaintiffs in the state case.” 402 F.2d 553, 556 (8th Cir. 1968).

A. It has long been the law that referred legislation is suspended upon the submission of signed petitions.

Article III, Section 49 of the Missouri Constitution provides that “[t]he people ... reserve power to approve or reject by referendum any act of the general assembly.” The referendum process is as follows:

A referendum may be ordered ... by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.

Mo. Const. art. III, § 52(a). Significantly, “[a]ny measure referred to the people shall take effect when approved by a majority of the votes cast thereon, *and not otherwise.*” *Id.* art. III, § 52(b) (emphasis added). In practice, this means that,

once a referendum petition has received sufficient signatures to be placed on the general election ballot, the referred measure is placed before the people for their consideration as an original proposition; the prior action by the General Assembly and the Governor on the referred measure is suspended or annulled, and 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). This rule ensures that referred legislation is not made effective before the People exercise their right to approve or reject it, reflecting that the referendum power is meant “to serve as a check on the legislature.” *No Bans*, 638 S.W.3d at 489 (citing *State ex rel. Drain v. Becker*, 240 S.W. 229, 230–31 (Mo. banc 1922)).

This principle is not new. For more than a century, the Missouri Supreme Court has *repeatedly* emphasized that referred legislation is suspended—and cannot go into effect—until voters give their approval. After all, if “the Legislature

may postpone the effective date of a law by an analogy of reasoning it must also follow that the operation of a statute may be deferred by the invocation of the referendum, for the exercise of legislative power by the people through the referendum is simply a reservation to themselves of a share of the legislature power.” *State ex rel. Barrett v. Dallmeyer*, 245 S.W. 1066, 1068 (Mo. banc 1922). Accordingly—and, until now, uncontroversially—“the mere lodging of a timely, legal, and sufficient referendum petition with the Secretary of State is all that” must be done to “halt[]” the “law affected”—“regardless of any affirmative act on the part of the Secretary of State or the Attorney General.” *Kemper*, 165 S.W. at 779. The *Kemper* Court emphasized that this position is logical to the point of obviousness:

When we consider the primary object of the adoption of the referendum and have regard to the evils which its friends had in mind to correct by it, any view other than that it suspends the taking effect of the act against which it is invoked till a vote be had is illogical and well-nigh unthinkable.

Id. at 778.

More than a century of consistent authority and practice notwithstanding, Defendants now suggest that suspension of referred legislation occurs only when the Secretary of State certifies a referendum petition as legally sufficient. *See, e.g.*, Defs.’ Suggestions in Supp. of Mot. to Dismiss (“MTD”) 13–14. Their motion to dismiss cited no authority for this proposition, and little wonder—it contradicts decades of practice and precedent and imperils the People’s referendum rights.

The referendum process is carefully designed to ensure that referred legislation *does not go into effect* until the People have their say. Consider the

timing of the process: “Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.” Mo. Const. art. III, § 52(a). This ninety-day clock mirrors the effective date of legislation. *See id.* art III, § 29 (“No law passed by the general assembly ... shall take effect until *ninety days* after the adjournment of the session ... at which it was enacted.” (emphasis added)). The interplay of these constitutional provisions is apparent: Legislation goes into effect after ninety days *unless* a referendum petition is timely submitted suspending its effectiveness.

This conclusion has the support not only of the constitutional text but also intuition; simply put, it would make no sense for legislation to take effect only to be later suspended pending a referendum. The Missouri Supreme Court held as much more than a half-century ago in a case *involving a referred congressional map*, explaining that, if Section 52(a) allowed effective legislation to later be suspended upon the submission of a referendum petition,

then great confusion will result and much mischief may ensue....

To hold that § 52(a) has this effect would destroy the concept of the referendum. [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....

It seems clear that the intendment of the framers of the Constitution was that all laws, except those declared non-referable, should be subject to referendum *if petitions to refer them were duly filed before their effective date*[.]

State ex rel. Moore v. Toberman, 250 S.W.2d 701, 706 (Mo. banc 1952) (emphasis added) (citation modified). Referred legislation *must* be suspended before it goes into effect; otherwise, the purpose of the referendum process would be undermined (if not destroyed altogether).

Defendants' position must therefore be rejected. The referendum statutes—which, of course, *cannot* trump the constitutional right to referendum, *see No Bans*, 638 S.W.3d at 492 (“The legislature must not be permitted to use procedural formalities to interfere with or impede this constitutional right that is so integral to Missouri’s democratic system of government.”)—give the Secretary of State until “the thirteenth Tuesday prior to the general election or two weeks after the date the election authority certifies the results of a petition verification ... , whichever is later,” to issue a certificate of sufficiency, § 116.150(3), RSMo. Applied here, Secretary Hoskins has until August 4, 2026—*primary day*—to issue a certificate for the HB1 referendum. *See* MTD 13 & n.8. Section 116.150, RSMo, thus allows the Secretary of State to certify a referendum long after the ninety-day default for legislative effectiveness. Since the referendum power allows voters to approve or reject legislation that has not already gone into effect, suspension *must* therefore occur before the deadline for the issuance of a certificate of sufficiency—specifically, at the time a referendum petition is submitted by the ninety-day constitutional deadline.³

³ To the extent Section 116.150 or 116.130, RSMo, permits the Secretary of State to delay suspension of a referred law until the issuance of a certificate of

This Court reached the same conclusion decades ago in a case involving a 1980s referendum on trucking legislation. The plaintiffs in *Kaw Transport Co. v. Whitmer* argued that “a certification process by the Secretary of State [was required] before the staying effect of a referendum petition takes effect.” No. CV181-778CC, slip op. at 1 (Cole Cnty. Cir. Sept. 29, 1981). The Court rejected the claim, explaining in part that “[t]he right of the people of this State ... by use of the referendum process to stay the operation of legislative upon the happening of certain events, and to submit that legislation to a vote of all the people is superior to any right possessed by the plaintiffs.” *Id.* at 2. The *Kaw Transport* case was no outlier; Missouri’s judiciary, including the Supreme Court, has repeatedly rejected attempts to limit the People’s referendum power by manipulating timing and process. *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

sufficiency—and thus allows a referred law to go into effect—those statutes conflict with Article III, Sections 49, 52(a), and 52(b) of the Missouri Constitution, at least as applied to the facts here, and are unconstitutional.

more after prescribing by joint resolution that they should take effect ninety days after the beginning of the recess.”).

None of this is to say that Secretary Hoskins has no recourse to *unsuspend* HB1 (or any other referred legislation) if the submitted petitions are legally insufficient. At the outset, his office could have “rejected [the petitions] as insufficient” as soon as they were submitted if they were not “submitted in accordance with this section, disregarding clerical and merely technical errors.” § 116.100, RSMo. He also remains empowered to “examine the petition to determine whether it complies with the Constitution of Missouri and with” the referendum statutes, including by “verify[ing] the signatures on the petition by use of random sampling of five percent of the signatures”; “[i]f the random sample verification establishes that the number of valid signatures is less than ninety percent of the number of qualified voters needed to find the petition sufficient in a congressional district, the petition shall be deemed to have failed to qualify in that district.” § 116.120(1)–(2), RSMo. He “may send copies of petition pages to election authorities to verify that the persons whose names are listed as signers to the petition are registered voters. Such verification may either be of each signature or by random sampling[.]” § 116.130(1), RSMo. He retains “authority not to count signatures on initiative or referendum petitions which are, in his opinion, forged or fraudulent signatures.” § 116.140, RSMo. And, *at any time*, “[i]f the secretary of state finds the petition insufficient, the secretary of state shall issue a certificate stating the reason for the insufficiency.” § 116.150(2), RSMo.

The occurrence and timing of these safeguards serve as a check on the automatic suspension of referred legislation.⁴ As the Missouri Supreme Court observed when considering an earlier iteration of the verification process, “our statutes, it would seem, have provided full and ample machinery for every condition and contingency, and for the protection and safeguarding of both protagonists and antagonists of the act sought to be referred.” *Kemper*, 165 S.W. at 781. What was true in 1914 is true today: Missouri law still provides full and ample machinery to ensure that only legislation properly referred to the People proceeds to a vote.⁵ But until one of these safeguards is triggered (and, of course,

⁴ The Legislature also has a check: A referendum may *not* be ordered “as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools.” Mo. Const. art. III, § 52(a); *see also id.* art. III, § 29 (provision that laws cannot take effect fewer than ninety days after legislative adjournment does not apply to appropriation acts or emergency legislation). HB1, for its part, does not implicate any of these exceptions.

⁵ The *Kemper* Court noted yet another safeguard against fraud in the referendum process, one that allows the Secretary of State to accept with confidence submitted petitions:

Clearly the warning provided for by statute, which recites that a breach of the law as to a referendum petition constitutes a felony, and the careful provisions for verification of the stated facts as to residence, names, and qualifications of signers, indicate that these provisions were deemed such adequate safeguards against fraud and forgery as that compliance therewith, showing *prima facie* sufficiency and regularity, was intended to import such sufficient verity to the Secretary of State as to make it his duty to file petitions bearing such legal indicia when such were presented to him for filing.

165 S.W. at 781. A similar prophylactic still exists today. *See* § 116.030, RSMo (requiring referendum petitions to include statement that “[i]t is a class A

the process for judicial review is allowed to take its course, *see* MTD 18–19), referred legislation is suspended; the Secretary of State “has no discretion in the matter.” *Kemper*, 165 S.W. at 781.

Thus far in this case, Defendants have suggested only one counterargument: that, because “[a]ny measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise,” Mo. Const. art. III, § 52(b), legislation once referred can be unsuspended only by the People—meaning suspended legislation cannot be unsuspended by the Secretary of State even if the referendum petitions are ultimately found to be insufficient. This argument misses a critical nuance: If a referendum petition was not legally sufficient when submitted, then the legislation suspended as an operation of law was *not* constitutionally “referred to the people”—and therefore its wrongful suspension can be undone by the Secretary of State. Put differently, the Secretary of State’s post-suspension certification process operates as a review *nunc pro tunc*, confirming (or disconfirming) whether legislation was actually referred to voters consistent with constitutional requirements. *See Kemper*, 165 S.W. at 781 (“[T]he acts of the Secretary of State ... relate back to a date as of the day of filing the petition[.]”). Section 52(b) does not, therefore, undermine Plaintiffs’ position; to

misdemeanor punishable ... for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any referendum petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter”).

the contrary, the plain language of the provision *compels* the conclusion that HB1 was suspended upon submission of signed referendum petitions, since otherwise the law would take effect before approval by a majority of voters.

Defendants' counterargument ultimately underscores the fundamental and fatal flaw of their position. They claim that the suspension of referred legislation can be delayed months (even years, in certain circumstances) until the Secretary of State's signature review is completed, but that would allow legislation to take effect even though the Missouri Constitution prohibits this result before the People have their say. Defendants do not and cannot reconcile their (newfound) position with these constitutional imperatives. Plaintiffs' position, by contrast, gives meaning and effect to all relevant constitutional provisions, statutes, and caselaw, safeguarding the referendum right while recognizing the Secretary of State's necessary role in confirming that legislation is properly referred to the People.

B. HB1 is now suspended as an operation of law.

Application of these principles to this case is straightforward: HB1 is now suspended, full stop. The Secretary of State's office received 691 boxes with nearly 50,000 pages of referendum petitions for HB1 on December 9, 2025, Stipulation ¶ 15, two days ahead of the applicable deadline. Upon that submission, HB1 was "halted" as a matter of law. *Kemper*, 165 S.W. at 779. Nothing further is required to effectuate HB1's suspension—not the Secretary of State's issuance of a certificate of sufficiency under Section 116.150, RSMo, or anything else. Although Secretary Hoskins has myriad tools to review the 2026-RO04 petitions for sufficiency and

may find the referendum invalid at any time, *see supra* pp.12–14, this has not occurred; no certificate of insufficiency has issued and the referendum has not otherwise been deemed noncompliant, Stipulation ¶ 19. HB1 is therefore suspended, and the purported effectiveness of the legislation, *id.* ¶ 18, is unconstitutional and must be enjoined.⁶

CONCLUSION

For these reasons, Plaintiffs are entitled to judgment in their favor and an order from this Court (1) declaring that HB1 is suspended until voters approve or reject it through the constitutional referendum process (or the referendum is finally ruled noncompliant or otherwise invalid) and (2) enjoining Defendants, including their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them, from using HB1's congressional map until the constitutional referendum process is completed.

⁶ “The elements of a claim for permanent injunction include: (1) irreparable harm, and (2) lack of adequate remedy at law.” *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258, 265 (Mo. App. W.D. 2010). These elements are readily satisfied: Plaintiffs (and all Missouri voters) will suffer irreparable harm absent judicial intervention because “being 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) (citation modified), and no “monetary remedies can[] provide adequate compensation for [such] improper conduct.” *Glenn v. City of Grant City*, 69 S.W.3d 126, 130 (Mo. App. W.D. 2002) (citation modified).

Respectfully submitted,

**AMERICAN CIVIL LIBERTIES UNION
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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 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
Attorney for Plaintiffs