IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

JAKE MAGGARD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 25AC-CC09120
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

STATE DEFENDANTS' TRIAL BRIEF

INTRODUCTION

This case will decide whether a referendum campaign can freeze a duly enacted state law before the Secretary—following decades-old statutory procedures—ensures that a referendum petition has (1) adequate signatures and (2) is legal. The straightforward answer is "no", and the Court should reject Plaintiffs' implausible contrary claim for several reasons.

To start, Plaintiffs lack standing because they are asserting a textbook generalized grievance. Plaintiffs assert only a generic interest in the law being followed—which the Missouri Supreme Court has held cannot support standing. *See Missouri Coal. for Env't v. State*, 579 S.W.3d 924, 926–27 (Mo. banc 2019).

Next, the Court need not reach the merits because Plaintiffs are estopped from challenging House Bill 1 ("HB1"). Two months ago, the referendum's organizer—People Not Politicians ("PNP")—explicitly conceded in federal court that the new HB1 map would *not* suspend upon PNP's filing of its referendum petition. *See Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *1, *4 n.4

(E.D. Mo. Dec. 8, 2025). In light of this concession, the court "expressly found" that PNP is "preclud[ed]" from making "any argument to the contrary in future litigation." *Id.* at *4 n.4. Given their inherently close relationship, a referendum's signers should be judicially estopped from contradicting a referendum campaign's representations made in court to secure a legal advantage for the referendum campaign. *See Deutsche Bank Nat'l Tr. Co. v. Luna*, 655 S.W.3d 820, 832 n.8 (Mo. App. W.D. 2022) (corporation estopped by representations of shareholders in prior litigation); *St. Louis Typographical Union No. 8, AFL-CIO v. Herald Co.*, 402 F.2d 553, 556 (8th Cir. 1968) (estopping union from bringing claim after 154 individual employees previously lost a similar claim). And although the State need not present evidence of actual coordination between PNP and Plaintiffs, the State will present substantial evidence at trial showing a sufficiently close relationship between PNP and Plaintiffs. Given that close relationship, the Court should judicially estop Plaintiffs from contradicting PNP's representation in federal court—especially where PNP would otherwise receive an unjust benefit from its absence in this case. Stopping such maneuvers by closely related parties "is a core purpose of judicial estoppel." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013).

Plaintiffs' claim also fails on the merits. Their briefing consistently skates over the governing constitutional text. Article III, § 52(b) of the Missouri Constitution provides, "Any 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) (emphasis added). Plaintiffs never explain *when* they think a measure is "referred to

the people." Rather, they simply assume that a measure is "referred to the people" at the moment a referendum petition is filed. But Missouri law provides otherwise. A measure is "referred to the people" only after the Secretary of State certifies the associated referendum petition as legally sufficient. *See* Mo. Const. art. III, §§ 52(a), 52(b); §§ 116.120–116.150, 116.200, RSMo.

Notably, just two months ago, in PNP's case about the exact referendum petition at issue here, the U.S. District Court for the Eastern District of Missouri heard arguments and rejected Plaintiffs' current position, explaining:

> ***After*** the timely submission of a final petition, the Secretary of State must 'examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116]' and verify whether there are enough valid signatures to trigger a statewide vote. *Id.* § 116.120. ***If*** the Secretary finds that the petition satisfies ***both*** requirements, *see id.* § 116.150, the challenged law is displaced and will only 'take effect when approved by a majority of the votes cast thereon,' Mo. Const. art. III, § 52(b).

von Glahn, 2025 WL 3514277, at *1 (emphasis added) (alteration original). Here, the parties have jointly stipulated that "[t]he Secretary of State has not yet issued a 'certificate' addressing the sufficiency of 2026-R004[1] under Section 116.150, RSMo." Joint Stip. ¶ 19. That should be the end of this case.

This Court should enter judgment for Defendants.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Missouri General Assembly enacts HB1, and People Not Politicians starts a campaign seeking a referendum vote on HB1.

On September 12, 2025, the General Assembly passed House Bill 1, an Act

[1] The "petition for referendum" challenging House Bill 1 ("HB1") "was denominated 2026-R004." Joint Stip. ¶ 13.

redistricting Missouri's eight federal congressional districts. Joint Stip. ¶¶10–11. HB1 passed by an overwhelming margin of the People's elected representatives—21 to 11 in the Senate and 90 to 65 in the House of Representatives. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Ass., Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Ass., Sept. 9, 2025). But because of the map's impact on federal congressional elections, large donors and out-of-state interests took notice. *See, e.g.*, Ex. 118, Jason Rosenbaum, *Democratic National Committee Will Contribute to Blocking Missouri Congressional Map*, St. Louis Public Radio (Sept. 29, 2025).[2] These donors funneled money to People Not Politicians, an organization established for the express purpose of opposing Missouri's new HB1 map. *See* von Glahn Dep. Tr. at 8–9, 54–56.

To achieve this objective, PNP launched a petition campaign hoping to trigger a referendum on the new HB1 map. *See* Joint Stip. ¶¶ 13–15. PNP's campaign had two main objectives: First, PNP wanted to prevent the new HB1 map from governing Missouri's congressional elections in the long term, including in the 2028 and 2030 elections. *See* von Glahn Dep. Tr. at 9. Second, as relevant for this case, PNP thought it could suspend the new HB1 map in the short term as to the 2026 election. *See id.* at 31; Ex. 101, Press Release, *People Not Politicians* (Dec. 9, 2025).[3] PNP believed that it could achieve its short-term objective merely by *filing* a petition for a referendum on HB1. *See* Ex. 101.

[2] https://www.stlpr.org/government-politics-issues/2025-09-29/democratic-national-committee-will-contribute-to-blocking-missouri-congressional-map

[3] https://peoplenotpoliticiansmo.org/missouri-voters-mobilize-in-defense-of-core-democratic-rights-with-historic-referendum-submission-halting-missouris-super-gerrymander/.

II. To obtain dismissal of a federal case, PNP argued that HB1 would remain effective until the Secretary *certified* PNP's referendum petition or a court ordered him to do so. The federal court agreed.

Knowing PNP's objective, the Missouri General Assembly, the Secretary of State, and the State of Missouri decided to act. On October 15, 2025, they sued PNP and PNP's executive director Richard von Glahn in the U.S. District Court for the Eastern District of Missouri. *See* Complaint, ECF Doc. 1, *Missouri Gen. Assembly v. von Glahn*, No. 4:25-cv-1535 (E.D. Mo., Oct. 15, 2025). Among other things, the State sought declaratory and injunctive relief establishing that a referendum on a congressional map would violate the Elections Clause of the U.S. Constitution, U.S. Const. art. I, § 4, and that the Missouri Constitution does not authorize referenda on congressional maps. *See id.* ¶¶ 1–7, 64–74. To establish standing, the State alleged: "*If* a referendum petition gains enough signatures to qualify for a vote before the people," HB1 would become "frozen pending the public vote" and the General Assembly would suffer the injury of "los[ing] its authority over redistricting pending that public vote." *Id.* ¶ 48 (emphasis added) (citing Mo. Const. art. III, § 52(b)).

In response, PNP and von Glahn moved to dismiss and argued that the State lacked standing, among other things. *See Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *2 (E.D. Mo. Dec. 8, 2025). The federal district court then held a hearing, and the court paid special attention to the State's alleged injury for purposes of standing. The court questioned the parties extensively about whether PNP and von Glahn could unilaterally suspend the new HB1 map merely by *filing* their referendum petition, or whether the Secretary of State played

an intervening role in reviewing the petition for sufficiency. In an early colloquy with the State's counsel, the Court asked, "The map would be frozen post certification; is that right?" Ex. 119, Tr. at 36:1–2. The State candidly acknowledged the existence of "some uncertainty" on the question, but argued that "it is only after final certification of the signatures that the map would be frozen." *Id.* at 36:3–14.

Judge Bluestone then asked PNP for its position on the same question: "[T]he freeze wouldn't occur on the new maps until after the certification. Is that right?" *Id.* at 44:25–45:1. At first, PNP repeatedly suggested that the mere submission of unverified signatures should freeze HB1, *id.* at 44:21–48:7—precisely the position Plaintiffs take here. But after Judge Bluestone repeatedly suggested that position might cost PNP its federal case, PNP's counsel agreed with Judge Bluestone that "the law would go into effect" even after PNP's submission of the referendum petition. *Id.* at 48:9–50:10. Counsel for the State and Judge Bluestone later confirmed exactly what PNP conceded:

> Mr. Capozzi: It's also still quite unclear to me what the status of the map will be when they submit their signatures. I think eventually, my friend conceded, that the map stays in effect unless and until they can win a state court challenge . . .
>
> The Court: That's where I think everybody wound up. And Mr. Hatfield is nodding his head yes. I do think that's very important. And I think, as we talked about earlier, that the arguments for dismissal will be very flat if that weren't the case. But I do think—I mean, it is ***abundantly clear***, though, from the record that's been developed at this hearing, that that's ***their*** position, right or wrong.

Id. at 52:14–53:1 (emphasis added).

In light of PNP's and von Glahn's "abundantly clear" concessions, *id.*, the district court granted the motion to dismiss. *Missouri Gen. Assembly v. von Glahn*,

2025 WL 3514277 (E.D. Mo. Dec. 8, 2025). The court's order emphasized, "Critically, PNP concedes that Plaintiff Denny Hoskins has the authority as Secretary of State to reject their petition . . . Moreover, PNP agrees that, absent a successful court challenge, this determination would . . . prevent the displacement of the new map." *Id.* at *1. Later in its order, the court again noted PNP's concession that "the new [HB1] map would go into effect." *Missouri Gen. Assembly v. von Glahn*, 2025 WL 3514277, at *4 n.4 (E.D. Mo. Dec. 8, 2025). The district court also "expressly found that PNP affirmatively waived" any position "to the contrary in future litigation (to say nothing of the ethical ramifications of counsel breaching their duty of candor to this tribunal)." *Id.* Consistent with that concession, Judge Bluestone made clear he agreed that HB1 could not be frozen until *after* the signature-verification process:

> ***After*** the timely submission of a final petition, the Secretary of State must "examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116]" and verify whether there are enough valid signatures to trigger a statewide vote. *Id.* § 116.120. ***If*** the Secretary finds that the petition satisfies ***both*** requirements, *see id.* § 116.150, the challenged law is displaced and will only "take effect when approved by a majority of the votes cast thereon," Mo. Const. art. III, § 52(b).

Id. (emphasis added). PNP's concession and the district court's order could not be more clear. The court's order establishes that PNP's filing of its referendum petition does not suspend the new HB1 map. Further, the court's order establishes that the HB1 map would remain valid until the Secretary certified the legal sufficiency of the petition or PNP won a state court challenge ordering the Secretary to certify PNP's petition. *See id.*

III. PNP files its referendum petition on December 9, 2025, and demands immediate suspension of HB1—despite PNP's prior representations and the federal district court's order.

PNP filed its referendum petition with the Secretary of State on December 9, 2025—the day after the federal court's order. Joint Stip. ¶ 15. But despite PNP's "abundantly clear" representations in federal court, Ex. 119, Tr. at 52:14–53:1, PNP switched positions publicly and claimed that its mere filing of the referendum petition unilaterally suspended the HB1 map. A Press Release on PNP's website stated, "HB1 Cannot Take Effect Without a Statewide Vote" and "[o]nce signatures are submitted, HB1 must be paused until Missourians vote on it at the ballot box." Ex. 101, Press Release, *People Not Politicians* (Dec. 9, 2025).[4]

Remarkably, PNP also threatened legal action if the Secretary did not immediately suspend the HB1 maps. The same December 9 Press Release stated, "If the Secretary of State refuses to certify the referendum or attempts to put HB1 into effect prematurely, People Not Politicians is prepared to take immediate action in state court." *Id.* PNP's attorney, Chuck Hatfield, also threated suit in interviews with the media. *See, e.g.*, Ex. 111, Jason Rosenbaum, *Missouri redistricting foes may have dealt a big blow to Trump-backed congressional map*, St. Louis Public Radio (Dec. 9, 2025) ("Hatfield agreed that if a court finds that Hoskins and Hanaway are wrong that the map wasn't frozen as soon as People Not Politicians turned in their signatures, then there's no way for the map to go into effect during the 2026 election cycle. 'If it turns out that they're going to make us go to court on every single step of

[4] https://peoplenotpoliticiansmo.org/missouri-voters-mobilize-in-defense-of-core-democratic-rights-with-historic-referendum-submission-halting-missouris-super-gerrymander/.

this process, I guess that's what we'll do,' he said.").[5]

Then, on December 16, 2025—exactly a week before Plaintiffs filed this lawsuit—PNP's executive director Richard von Glahn told the media that a forthcoming state court lawsuit was imminent. *See* Ex. 112, Jason Rosenbaum, *Missouri's stack of redistricting lawsuits expected to grow over whether new map is in effect*, St. Louis Public Radio (Dec. 16, 2025). Von Glahn said that when state officials "actually take steps to try to implement [HB1] . . . — yeah, *there will be* a lawsuit. . . . [The Secretary of State] has to issue a certificate of sufficiency or insufficiency, and until that point, the law is suspended." *Id.* (emphasis added).

Despite PNP's threats of legal action, "HB1 was codified as Sections 128.345, 128.346, 128.348, 128.471, 128.472, 128.473, 128.474, 128.475, 128.476, 128.477, 128.478, and 128.479, RSMo, with an effective date of December 11, 2025." Joint Stip. ¶ 18. However, to date, PNP and von Glahn have never sued in their own name.

IV. Plaintiffs Jake Maggard and Gregg Lombardi suddenly appear, represented by sophisticated nationwide counsel paid for by a third party that Plaintiffs cannot identify.

A week after PNP's executive director told the media "there will be a lawsuit," Ex. 112 at 3, Plaintiffs Maggard and Lombardi emerged and filed this case. *See* Pet. Maggard and Lombardi both signed PNP's referendum petition challenging HB1. Joint Stip. ¶¶ 3, 6. And despite the federal court's order and PNP's concessions, Maggard and Lombardi allege that HB1 must freeze before the Secretary decides to certify PNP's referendum petition. *See* Pet. ¶¶ 15–46. Plaintiffs thus advance the

[5] https://peoplenotpoliticiansmo.org/missouri-redistricting-foes-may-have-dealt-big-blow-to-trump-backed-congressional-map/.

position that Judge Bluestone "expressly found" that "PNP affirmatively waived" in any "future litigation." *von Glahn*, 2025 WL 3514277, at *4 n.4.

Plaintiffs, in their own words, are individual voters who simply object to HB1's "current effectiveness" statewide. Plfs. SIO MTD at 9. Both Plaintiffs admitted during their depositions that they are not congressional candidates, and they articulated no particularized application of HB1 to them individually. *See* Lombardi Dep. Tr. at 15; Maggard Dep. Tr. at 14–15. Rather, Plaintiffs identified only generalized interests. For example, Plaintiff Gregg Lombardi, who is a lawyer himself, summarized his interests during his deposition. In his own words, Lombardi said that he is "a very strong believer in the rule of law," and he "believe[s] that the Missouri Secretary of State is not following the rule of law, and [he] find[s] that highly offensive." Lombardi Dep. Tr. at 13. Lombardi continued, "[W]hen I feel that something is wrong, being done wrong, I want to stand up and stand against the thing that I feel is being done wrong." *Id.*

Plaintiffs also admitted that their counsel recruited them to bring this lawsuit. Lombardi Dep. Tr. at 26–27; Maggard Dep. Tr. at 37–38. Plaintiffs both explained during their depositions that counsel from the Missouri ACLU first contacted them, and then ACLU counsel connected Plaintiffs with their attorneys from Perkins Coie. Lombardi Dep. Tr. at 40; Maggard Dep. Tr. at 16–17. Bizarrely, Plaintiffs also admitted during their depositions that a third party—who Plaintiffs cannot identify—is funding Plaintiffs' representation by counsel from Perkins Coie. Lombardi Dep. Tr. at 21–25, 37–42; Maggard Dep. Tr. at 17–21. During Maggard's

deposition, Plaintiffs' counsel interrupted and attempted to testify that this unknown third party is specified in Plaintiffs' retainer agreements. Maggard Dep. Tr. at 19–21. But neither Plaintiff could recall their retainer agreement specifying who is paying their lawyers. Lombardi Dep. Tr. at 21–25, 37–42; Maggard Dep. Tr. at 17–21. Maggard's counsel tried to correct this testimony on re-direct examination during Maggard's deposition. Maggard Dep. Tr. at 43. Yet when the State's counsel asked further questions after re-direct, Maggard again affirmed that he could "not recall all the information of what's in" the retainer agreement. *Id.* at 44.

In light of this admission, both Plaintiffs acknowledged during their deposition that they responded to the State's interrogatories 8 and 17 (about who is funding this lawsuit) based on representations from their counsel, and not based on their personal knowledge. *Compare id.* at 38–41; Lombardi Dep. Tr. at 37–42, *with* Ex. 105, Maggard Interrogatory Resp.; Ex. 107, Lombardi Interrogatory Resp. Accordingly, Lombardi explicitly stated that—contrary to his sworn interrogatory responses—"I don't know" whether People Not Politicians, Richard von Glahn, or their lawyers are funding and supporting this lawsuit. Lombardi Dep. Tr. at 37–42. Plaintiff Jake Maggard also explicitly testified that he does not know who is funding this lawsuit, and that he merely relied on his attorney's representations in responding to the State's interrogatories. Maggard Dep. Tr. at 38–41, 43–44.

V. Through third-party discovery, the State has found evidence of a relationship between Plaintiffs and People Not Politicians.

The unusual nature of this lawsuit has also forced the State to collect third-party discovery from PNP and its lawyers who waived PNP's objections to HB1's current effectiveness in *Missouri General Assembly v. von Glahn*, No. 4:25-cv-1535 (E.D. Mo.). Although the State has been forced to proceed at breakneck speed, the State has uncovered evidence showing a relationship between Plaintiffs and PNP.

For example, PNP's executive director Richard von Glahn testified that he knew about this lawsuit nearly a week before it was filed. von Glahn Dep. Tr. at 40–41, 46–47. Von Glahn elaborated that he knew the ACLU was preparing this lawsuit, and he learned about this lawsuit because someone told *his* attorney, Chris Grant. *Id.* at 46–47. PNP even created strategy documents in anticipation of the lawsuit's filing. *Id.* at 19–20, 40–41, 46–47. The State has tried to obtain those strategy documents, but PNP has refused to turn them over—even though PNP has not asserted any privilege. *See* Ex. 98 at 6–7; Ex. 99 at 6–7. Von Glahn and Hatfield also acknowledged that PNP thought about suing in its own name, but that such a lawsuit is unnecessary because Plaintiffs filed this case through the ACLU. von Glahn Dep. Tr. at 36, 42–43, 52–53; Hatfield Dep. Tr. at 19, 45.

The State tried to discover whether the same entity is funding this case and PNP's litigation efforts. Von Glahn claimed that PNP is funding its own litigation expenses. von Glahn Dep. Tr. at 23. The State then tried to ascertain if third parties were providing PNP this litigation funding. *Id.* at 23–27, 43–46, 53–57. Von Glahn affirmed, "Yes, we have received" donations "for the purpose of litigation expenses."

Id. at 56–57. But he refused to directly answer any other questions. *See id.* at 23–27, 43–46, 53–57. His counsel made long speaking objections, counsel instructed von Glahn not to answer at various points, and von Glahn ultimately refused to provide a straight answer to the State. *See id.* Later, during the State's deposition of Charles Hatfield (PNP's attorney), the State tried to corroborate von Glahn's testimony that PNP is funding its own legal fees. Hatfield Dep. Tr. at 10–11. Bizarrely, Mr. Hatfield testified that he does not know who is paying his bills in PNP's various referendum-related cases. *Id.*

At the close of discovery, the State has several pending motions to compel. The State has moved to compel Plaintiffs to identify the third party funding their attorney's fees from Perkins Coie. *See* Mot. to Compel (filed Feb. 3, 2026); Mot. to Compel (Feb. 5, 2026). Western District precedent explicitly states that "fee arrangements between the attorney and a client are not attorney-client privileged communications." *State ex rel. Koster v. Cain*, 383 S.W.3d 105, 119 (Mo. App. W.D. 2012). But Plaintiffs are refusing to provide this information anyway. The State has also moved to compel von Glahn to answer the State's questions about litigation funding and to provide the strategy documents that PNP created about this lawsuit. *See* Mot. to Compel (filed Feb. 4, 2026). Von Glahn and PNP are still withholding this evidence despite not assertion of privilege. *See* Ex. 98 at 6–7; Ex. 99 at 6–7. These motions to compel remain pending.

VI. As this suit progresses, election officials are continuing to process PNP's proposed referendum.

Before this Court, Plaintiffs have repeatedly made baseless claims that the

State is delaying the processing of their referendum petition. To the contrary, back in December, the Secretary promptly referred the referendum to officials in 116 local election jurisdictions. Those election officials are continuing to go through the painstaking process of reviewing PNP's signatures. That task includes checking for things like duplicate signatures, non-registered voters, and even fraud. This task is extremely laborious and it takes time. That is why state law gives the local election officials until Tuesday, July 28, 2026, to finish their work and report the results to the Secretary of State. § 116.130.2, RSMo.

Once the local election officials finish reviewing their signatures, the Secretary is required to make a certification decision on the referendum. As part of that decision, Missouri law makes the Secretary independently responsible for preventing the counting of "forged or fraudulent signatures." § 116.140. Missouri law also requires the Secretary to perform a legal assessment to determine whether the proposed referendum is lawful. § 116.120.1. If the Secretary certifies the referendum, state and local election officials will work collaboratively to re-implement that old congressional map that Plaintiffs favor.[6] But at this time, the

[6] Today, the State filed its Respondent's brief in *Luther v. Hoskins*, No. SC101412, which involves a separate and legally distinct challenge to the General Assembly's new HB1 map. The Missouri Supreme Court has docketed this case for oral argument on March 10, 2026—well into the filing period for congressional candidates. The State's brief in *Luther* notes that the U.S. Supreme Court recently declined to alter Texas's newly-enacted redistricting map a week *before* the candidate filing period *opened* in Texas. The Supreme Court invoked the longstanding *Purcell* principle, which establishes that "courts should ordinarily not alter the election rules on the eve of an election." *See Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (quoting *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020)); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). To be clear, however, the *Purcell* principle governs whether *courts* may alter election laws in the lead-up to an election. The *Purcell* principle does not override the Secretary's and local election authorities' statutory obligations to review PNP's referendum petition for legal sufficiency and to certify PNP's petition if it is legally sufficient. *See* §§ 116.120–116.150, RSMo.

State does not know whether the proposed referendum is legally sufficient; therefore the State stands by its position that HB1 remains in effect for the time being. *See Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277 (E.D. Mo. Dec. 8, 2025).

LEGAL STANDARD

Plaintiffs constitutionally challenge several duly enacted laws of the Missouri General Assembly. Plaintiffs facially challenge the "current effectiveness" of HB1 itself. Plaintiffs also lodge as-applied challenges to §§ 116.130 and 116.150, RSMo, to the extent that either statute "permits the Secretary of State to delay suspension of a referred law until" the Secretary's certification decision. *See* Plfs. SIS MPI at 10 n.2 (filed Jan. 14, 2026). In all cases involving a challenge to state statutes, Plaintiffs can succeed "only" if the statute "'clearly and undoubtedly violates a constitutional provision.'" *Int. of E.G.*, 683 S.W.3d 261, 265 (Mo. banc 2024) (internal quotation omitted). As to their facial challenge, Plaintiffs "must establish that no set of circumstances exists under which the statute would be valid." *E.N. v. Kehoe*, No. SC 100933, 2026 WL 96912 (Mo. banc. Jan. 13, 2026) (slip op. at 3) (cleaned up). Comparatively, Plaintiffs' "as-applied challenge requires [them] to *show* the statute was unconstitutionally applied *to their individual circumstances*." *F.S. v. Missouri Dep't of Corr., Div. of Prob. & Parole*, 709 S.W.3d 321, 326 (Mo. banc 2025) (emphasis in original) (internal quotation omitted). In light of this standard, this Court and the Missouri Supreme Court have rejected as-applied challenges when, as here, Plaintiffs merely rely on a joint stipulation and provide no particularized evidence of how the

challenged law applies to Plaintiffs specifically. *Id.* at 326–27.

Unfortunately, this case also involves Plaintiffs' withholding of important evidence. The Court can—and should—draw an adverse inference against Plaintiffs to the extent that gaps in evidence are based on Plaintiffs' and PNP's concealment of this evidence. *See J.A.R. v. D.G.R.*, 426 S.W.3d 624, 631–32 n.11 (Mo. banc 2014) ("It is a well-settled principle that the failure of a party, having knowledge of the facts and circumstances vitally affecting the issues at trial, to testify on his or her own behalf raises a strong presumption that such testimony would have been unfavorable to the party."); *Pasternak v. Mashak*, 428 S.W.2d 565, 568 (Mo. Div. 1 1967) (noting that it is "well established" that the fact finder can draw an "unfavorable inference" based on concealment of evidence and a "trial court's refusal to permit such argument when proper may constitute reversible error").

ARGUMENT

This Court should enter judgment in favor of the State and the Intervenor for three reasons. First, Plaintiffs lack standing and this case is unripe. Second, Plaintiffs are estopped from challenging HB1's "current effectiveness" because Plaintiffs are proxies of People Not Politicians and Richard von Glahn. PNP and von Glahn expressly waived Plaintiffs' merits argument, "precluding any argument to the contrary in future litigation." *von Glahn*, 2025 WL 3514277, at *4 n.4. PNP should not be allowed to benefit from Plaintiffs—closely related parties—coming into this Court and taking the opposite position. Third, as to the merits, Plaintiffs repeatedly ignore the text and precedent. No constitutional provision, statute, or case provides

that an unverified referendum petition can unilaterally suspend state law. Also, Plaintiffs' half-baked constitutional challenge to §§ 116.130 and 116.150 fails to prove that these 45-year-old statutes "clearly and undoubtedly violates a constitutional provision." *Int. of E.G.*, 683 S.W.3d at 265 (internal quotation omitted). The Court should enter judgment for Defendants.

I. Plaintiffs lack standing and this action is unripe.[7]

This Court should reject Plaintiffs' constitutional challenge because Plaintiffs allege only a "generalized interest" in "constitutional governance," which "does not invoke standing." *See Missouri Coal. for Env't v. State*, 579 S.W.3d 924, 926–27 (Mo. banc 2019) (internal quotation omitted). In their own words, Plaintiffs challenge the "current effectiveness" of the HB1 map statewide "notwithstanding [PNP's] submission of signed petitions." Plfs. SIO MTD at 9. Plaintiffs argue that they have standing to seek injunctive and declaratory relief because "Plaintiffs" and "the People" of Missouri are allegedly injured "*right now*" by HB1's "current effectiveness" statewide. *Id.* at 4–5, 9–10 . Plaintiffs also repeated these generalized interests during their depositions. For example, Lombardi testified that he is "a very strong believer in the rule of law," and he "believe[s] that the Missouri Secretary of State is not following the rule of law, and [he] find[s] that highly offensive." Lombardi Dep. Tr. at 13. This is a textbook generalized grievance under Missouri Supreme Court precedent. *Missouri Coal. for Env't*, 579 S.W.3d at 926–27.

[7] The State incorporates by reference all its arguments about justiciability from its Suggestions in Support of its Motion to Dismiss (filed Jan. 7, 2026) and its Reply Supporting the Motion to Dismiss (filed Jan. 16, 2026). For the sake of brevity the State will not rehash the details of all those arguments, which sufficiently apprise the Court of the State's position.

Plaintiffs' challenge to HB1 is also unripe. Plaintiffs allege that HB1 suspended at the moment that PNP filed its referendum petition because the "lodging of a *timely, legal, and sufficient* referendum petition" suspends an act of the General Assembly. Pet. ¶ 18 (quoting *State ex rel. Kemper v. Carter*, 165 S.W. 773, 779 (Mo. banc 1914)) (emphasis added). But the Court lacks authority to analyze the legal sufficiency of PNP's referendum petition at this stage. Missouri law vests the Secretary of State with exclusive authority to judge the legal sufficiency of a referendum petition before the Secretary's certification decision. §§ 116.120–116.150, RSMo. And it is only "*[a]fter* the secretary of state certifies a petition as sufficient or insufficient" that "any citizen may apply to the circuit court of Cole County to compel him to reverse his decision." § 116.200.1, RSMo.

Further, even aside from this statutorily mandated sequence, this Court cannot yet ascertain whether HB1 is legally sufficient. Making such a judgment depends on future events yet unknown to the Court. This includes, for example, the findings of Missouri's 115 local elections authorities about the validity of the signatures on PNP's referendum petition, and whether the petition contains enough valid signatures to trigger a referendum vote. Right now, Plaintiffs can only present a stipulation that PNP "submitted 691 boxes of referendum petitions." Joint Stip. ¶ 15. That is insufficient, on its own, to prove that PNP's petition is legally sufficient. *See* Mo. Const. art. III, § 52(a) (requiring the signatories to be "the legal voters . . . in the state"); §§ 116.120–116.150, RSMo. But that is all the Plaintiffs can provide at this stage. Thus, Plaintiffs' claim "is not ripe for adjudication" because it "rests upon

contingent future events that may not occur as anticipated, or indeed may not occur at all." *Geier v. Missouri Ethics Comm'n*, 474 S.W.3d 560, 569 (Mo. banc 2015) (internal quotation omitted).

II. The Court should judicially estop Plaintiffs' challenge.

Even if this Court finds that this case is justiciable, it should still decline to reach the merits. PNP previously told a federal court that HB1 is not frozen "unless and until unless and until they can win a state court challenge" forcing the Secretary to certify PNP's referendum petition. Ex. 119, at 52:14–53:1. This directly contradicts Maggard's and Lombardi's entire case. If PNP were the plaintiff bringing this case, PNP's suit would bear all the usual hallmarks for application of judicial estoppel. *See Vacca v. Missouri Dep't of Lab. & Indus. Rels.*, 575 S.W.3d 223 (Mo. banc 2019). Indeed, (1) PNP would contradict its earlier position; (2) PNP persuaded a court to adopt its position; and (3) PNP would unfairly prejudice the State of Missouri and the Secretary of State. *See id.* at 232–33.

The Court can also apply judicial estoppel to Plaintiffs here. "[J]udicial estoppel is not a cause of action with elements that must be proven and that are prerequisites to its application." *Id.* at 235. Rather, it is "a flexible, equitable doctrine" whose "contours normally have been governed by whether the need to protect the integrity of the judicial process has required its application to particular facts." *Id.* at 225, 235. Accordingly, many courts have applied judicial estoppel even when the parties are not identical. *See, e.g.*, *Deutsche Bank Nat'l Tr. Co. v. Luna*, 655 S.W.3d 820, 832 n.8 (Mo. App. W.D. 2022) (rejecting the argument that "judicial estoppel . . . only precludes a 'party' who took a position and benefitted from that

position in an earlier legal proceeding from taking a contrary position in a subsequent legal proceeding."); *Capsopoulos on Behalf of Capsopoulos v. Chater*, No. 95 C 3274, 1996 WL 717456, at *3 (N.D. Ill. Dec. 9, 1996) ("[A] rigid rule requiring the estopped party to be the identical party as in the earlier proceeding would unnecessarily diminish the protective function of the doctrine of judicial estoppel.").

Here, the Court should not allow PNP to avoid the consequences of its representation in federal court by allowing signatories of PNP's referendum to advance the referendum's interests in PNP's absence. *See* Joint Stip. ¶¶ 3, 6. PNP is simply too closely related to Plaintiffs to allow them to contradict PNP's representations in federal court. Maggard and Lombardi signed PNP's referendum petition, Joint Stip. ¶¶ 3, 6, and they are thus fully aligned with PNP's interests here. In prior cases where parties had a similarly close relationship, courts have not allowed those parties to take contradictory positions in court. For example, the Eighth Circuit affirmed estoppel of a union's lawsuit based on prior litigation by 154 of the union's members. *See St. Louis Typographical Union No. 8, AFL-CIO*, 402 F.2d at 556. The court acknowledged that in the prior case, "all of the members-employees themselves instituted and prosecuted the suit, whereas here Union is the only plaintiff." *Id.* But the court nonetheless estopped the union because it was acting "solely as the representative of the same employees who were plaintiffs in the [prior] case." *Id.*

The same is true here. Signatories to a referendum petition associate with the petition's organizer to make their voices heard. The organizer is the one who is

"responsible for drafting the initiative petition, causing it to be filed with the Secretary of State, expending time and money in support of it and the like." *Allred v. Carnahan*, 372 S.W.3d 477, 484 (Mo. App. W.D. 2012). After signing a petition, the signatories depend on the organizer to ensure that the petition is filed properly. *See id.*; *Prentzler v. Carnahan*, 366 S.W.3d 557, 563 (Mo. App. W.D. 2012). Further, signatories "are not ensured the right to have their signatures counted" because "[n]othing prevents the proponents or petitioners of an initiative petition from withdrawing the initiative petition before the submission deadline." *Id.* Both Maggard and Lombardi acknowledged during their depositions that they relied wholly on PNP to present their signatures to the Secretary of State. Lombardi Dep. Tr. at 26; Maggard Dep. Tr. at 23–24. Their interests are thus fully aligned with PNP's interests, just like the interests of the union and its members in *St. Louis Typographical Union No. 8, AFL-CIO*, 402 F.2d at 556. As the Eighth Circuit emphasized, "substance over form controls." *Id.* Consequently, the Court can enter judgment on the State's judicial estoppel defense as a matter of law—without considering any evidence.

Judicial estoppel also applies in other contexts. Another "core" application "of judicial estoppel" includes preventing suits where estopped non-parties use the plaintiff as a proxy. *See Grochocinski*, 719 F.3d at 797; *Toyo Tire & Rubber Co. v. Hong Kong Tri-Ace Tire Co.*, 281 F. Supp. 3d 967, 983–84 (C.D. Cal. 2017) (applying judicial estoppel because "the Court would be misused and misled" "if [the proxy] were to prevail in challenging the OPMT trade dress and [the non-party using the

proxy] were to receive the lion's share of the recovery."); *see also Taylor v. Sturgell*, 553 U.S. 880, 895 (2008) ("[A] party bound by a judgment may not avoid its preclusive force by relitigating through a proxy."). Thus, the State has also tried to gain evidence showing a proxy relationship between Plaintiffs and PNP. The State did so (1) at a breakneck pace demanded by Plaintiffs, (2) faced with refusals by Plaintiffs and PNP to turn over clearly relevant discovery, and (3) unable to seek evidence from Plaintiffs' lawyers, who are most likely to know whether the State's allegations are correct.

Despite these constraints, the State found significant circumstantial evidence showing a close relationship between PNP and Plaintiffs. The State can prove:

- PNP's executive director (von Glahn) and lead counsel (Chuck Hatfield) publicly promised that a lawsuit would be brought arguing that HB1 was frozen by the mere submission of an unverified referendum petition;[8]
- PNP knew that the Missouri ACLU was preparing this lawsuit five days before it was filed;[9]
- The Missouri ACLU proactively recruited Plaintiffs Maggard and Lombardi to file this lawsuit;[10]
- PNP created strategy documents about this lawsuit before it was filed;[11] and
- von Glahn and Hatfield admitted that PNP has not sued in its own name because the Plaintiffs here sued instead.[12]

[8] Ex. 101; Ex. 102; Ex. 110; Ex. 111; Ex. 112.
[9] von Glahn Dep. Tr. at 40–41, 46–47.
[10] Lombardi Dep. Tr. at 26–27; Maggard Dep. Tr. at 37–38.
[11] von Glahn Dep. Tr. at 19–20, 40–41, 46–47.
[12] von Glahn Dep. Tr. at 36, 42–43, 52–53; Hatfield Dep. Tr. at 19, 45.

This is sufficient evidence for the Court to find a sufficiently close relationship between PNP and Plaintiffs—so that Plaintiffs should be estopped from contradicting PNP's representation in federal court.

Moreover, the Court can and should assign weight to the fact that Plaintiffs and PNP intentionally frustrated the State's ability to obtain two pieces of highly relevant discovery that could bolster its estoppel defense. First, Plaintiffs and PNP wrongfully withheld information about who is funding their lawsuits. *See* von Glahn Dep. Tr. at 23–27, 43–46, 53–57; Lombardi Dep. Tr. at 21–25, 37–42; Maggard Dep. Tr. at 17–21. Bizarrely, Plaintiffs Maggard and Lombardi lack knowledge of the identity of the anonymous third-party funder. Lombardi Dep. Tr. at 21–25, 37–42; Maggard Dep. Tr. at 17–21. Plaintiff Lombardi also explicitly acknowledged that he signed inaccurate interrogatories representing that PNP is not directly funding their case. Lombardi Dep. Tr. at 37–42. This evidence was also wrongfully withheld on privilege grounds—even though the State confronted the relevant lawyers with the holding of the Western District Court of Appeals that such information is *not* privileged. *See Cain*, 383 S.W.3d at 119 ("[F]ee arrangements between the attorney and a client are not attorney-client privileged communications."). Moreover, this information could have shown that the same entity (or two closely related entities) is funding this case and PNP's litigation efforts. That fact would have bolstered the State's estoppel defense. *See, e.g.*, *Grochocinski*, 719 F.3d at 796–97 (estopping proxy plaintiff when non-party provided proxy litigation-related funding).

Second, PNP withheld strategy documents that it created about this case *before*

it was filed. During his deposition, von Glahn admitted that such documents exist. *See* von Glahn Dep. Tr. at 19–20, 40–41, 46–47. These documents are clearly relevant because they could show more pre-filing coordination between Plaintiffs and PNP. Even still, PNP has withheld these documents despite the State's repeated demands for them. *See* Mot. to Compel (filed Feb. 5, 2026).

These two failures to disclose relevant evidence justify drawing an adverse inference against Plaintiffs. In particular, the Court can and should find that Plaintiffs and PNP coordinated before the filing of this lawsuit—a fact that clearly establishes the State's estoppel defense. Of course, it is well settled that trial courts can draw adverse factual inferences against parties who conceal evidence. *See J.A.R.*, 426 S.W.3d at 631–32 n.11 ("It is a well-settled principle that the failure of a party, having knowledge of the facts and circumstances vitally affecting the issues at trial, to testify on his or her own behalf raises a strong presumption that such testimony would have been unfavorable to the party."); *Pasternak*, 428 S.W.2d at 568 (noting that it is "well established" that the fact finder can draw an "unfavorable inference" based on concealment of evidence and a "trial court's refusal to permit such argument when proper may constitute reversible error").

The Court should thus judicially estop Plaintiffs, and enter judgment for Defendants.

III. Plaintiffs are wrong on the merits.

Finally, Plaintiffs are wrong on the merits. Article III, § 52(b) does not require suspension of HB1 at the moment that PNP filed its unverified referendum petition.

In making the argument that depositing a pile of unverified signatures freezes a duly enacted state law, Plaintiffs remarkably ignore the text of Article III, § 52(b) and Chapter 116 of Missouri's Revised Statutes. Article III, § 52(b) provides that "[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) (emphasis added). Thus, a law suspends when it is "referred to the people." *Id.*

Plaintiffs' argument fails because laws challenged by citizen-led referendum petitions are "referred to the people" only when they are filed with the Secretary of State *and* the Secretary certifies the petition for legal sufficiency. *See* Mo. Const. art. III, § 52(a); §§ 116.120–116.150, 116.200, RSMo. Indeed, until the Secretary verifies that a referendum petition is legally sufficient, Missouri law *bars* the Secretary from referring it for a vote of the people. *See* §§ 116.120–116.150, 116.200, RSMo. Thus, unless this Court is prepared to invalidate Missouri's statutory system for verifying referendum petitions, it must enter judgment against Plaintiffs.

A. Text, precedent, and common sense all establish that the mere filing of a referendum petition does not suspend Missouri law.

Plaintiffs' position makes little sense. They contend that an unverified referendum petition suspends the General Assembly's statute at the moment it is filed—regardless of whether the petition has adequate signatures and is deemed legal. But neither text, precedent, nor common sense support this approach.

Text. Start first with the text of the 1945 Missouri Constitution. Article III, Section 52(b) provides, "Any 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) (emphasis added). The question for this case, then, is *how* and *when* measures are "referred to the people." *Id.*

The answer starts with Article III, Section 52(a), which provides that "[a] referendum may be ordered" (1) "by the general assembly" directly "or" (2) "by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state." While the General Assembly can refer a measure directly, a citizen-led petition includes an intervening step: "Referendum petitions shall be filed with the secretary of state." Mo. Const. art. III, § 52(a). Once a petition is filed with the Secretary, the Secretary is then tasked with referring the measure to the people for a vote. *See id.*

Indeed, *State ex rel. Moore v. Toberman*, 250 S.W.2d 701 (Mo. banc 1952)—an authority on which Plaintiffs heavily rely—explicitly contemplates the Secretary "referring" measures for a vote of the people. Citizens cannot refer measures themselves. The *Toberman* opinion discusses the Secretary "referring" a challenged measure to the people many times. *See, e.g.*, *id.* at 702–03 ("[The Secretary] officially declared he intended to take the constitutional and statutory procedures *to refer* Senate Bill 267 for approval or rejection by the people"; "On May 3, 1952, interveners filed in the Circuit Court of Cole County, Missouri, a suit for injunction praying that *the Secretary of State be enjoined from referring* Senate Bill 267"; "[A sufficient number of valid signatures] authorizes *the Secretary of State to refer* Senate Bill 267 *to a vote of the people* at the general election to be held November 4, 1952, if said bill is otherwise referable." (emphasis added)). The *Toberman* opinion also repeatedly

characterizes citizen-led petitions as "petitions *to* refer"—meaning that citizens "petition" the Secretary "to refer" legislation, but the Secretary himself refers a measure for a vote. *See id.* at 703, 706 (emphasis added); *cf. Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 828 (Mo. banc 1990) ("[T]he Secretary of State makes [the] decision to submit, or refuse to submit, an initiative issue to the voters.").

Although the Constitution contemplates the Secretary referring measures to the people, the Constitution is silent about *what* the Secretary must do before he refers a measure. *See* Mo. Const. art. III, §§ 52(a), 52(b). The Constitution also never addresses *when* the Secretary must refer a measure for a vote. *See* Mo. Const. art. III, §§ 52(a), 52(b). Instead, Missouri statutory law has always supplied those details. Today's controlling law on this subject, §§ 116.120–116.150 and 116.200, was first enacted by the General Assembly in 1980. These statutes require the Secretary to thoroughly review each referendum petition to ensure it contains enough signatures and is otherwise legal; and they allow the Secretary to certify petitions for a vote only after completing the mandatory review process. Indeed, these statutes give the Secretary a specific deadline by which to finish this task: "The secretary of state shall issue a certificate pursuant to [§ 116.150] not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election," which is August 4, 2026, this election cycle. § 116.150.3.

Section 116.120.1 provides that "[w]hen an initiative or referendum petition is submitted to the secretary of state, he or she shall examine the petition to determine

whether it complies with the Constitution of Missouri and with" Chapter 116 of Missouri's Revised Statutes. § 116.120.1. This involves a thorough review process to ensure that the petition's signatures are valid. §§ 116.120–116.140. The Secretary typically requests help from local election authorities during this process, §§ 116.120–116.130, though the Secretary still holds the ultimate responsibility to ensure that each signature is not "forged or fraudulent," § 116.140. Then, "[a]fter the secretary of state makes a determination on the sufficiency of the petition and if the secretary of state finds it sufficient, the secretary of state shall issue a certificate setting forth that the petition … compl[ies] with the Constitution of Missouri and with" Missouri law. § 116.150.1. Alternatively, "[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. The Secretary may *not* refer a referendum to voters if the referendum petition is legally insufficient. *See id.* Additionally, if the Secretary mistakenly certifies an "insufficient" petition, a court of competent jurisdiction "*shall* enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot." § 116.200.2 (emphasis added).

Plaintiffs ignore the text of these provisions altogether. They improperly assume that a measure is "referred to the people" upon the mere filing of a referendum petition. *Compare* Pet. ¶ 41, *with* Mo. Const. art. III, § 52(b). They ignore that Chapter 116 bars referral for a vote until the Secretary completes his review process. *See* §§ 116.120–116.150, 116.200. And they presume that the Secretary can effectively "un-refer" and "un-suspend" a law if he later finds that a referendum

petition is legally insufficient. *See, e.g.*, Plfs.' SIS Prelim. Inj. at 12 (arguing that once a referendum petition is filed, the legislation is "referred" and "suspended" *until* the Secretary issues a certificate of insufficiency under § 116.150.2, which would allow the law to go back into effect).

Plaintiffs' assumptions make no sense of Article III, Section 52(b). Indeed, once a measure is "referred to the people," Article III, Section 52(b) explicitly says the measure cannot go back into effect until a referendum vote. Article III, Section 52(b) states, "Any measure *referred to the people* shall take effect when approved by a majority of the votes cast thereon, and *not otherwise*." (emphasis added). In other words, once a matter is referred, the Secretary cannot then "un-refer" and "un-suspend" a law through a certificate of insufficiency § 116.150.2. Of course, if § 116.150.2 allowed the Secretary to unilaterally "un-suspend" Missouri law after referral, it would be unconstitutional under Article III, § 52(b). Plaintiffs ignore this problem, hoping to assure the Court that their theory does not require a vote on legally insufficient referendum petitions. But Plaintiffs' legal theory clashes with the plain text of Article III, § 52(b). The text contemplates only one referral, and once that referral occurs, the Secretary cannot "un-suspend" and "un-refer" a law of the General Assembly. The logical end of Plaintiffs' reading thus conflicts with Article III, Section 52(b) itself.

Precedent. Plaintiffs' legal theory also clashes with precedent. Two cases address the questions at issue under Article III, § 52(b) and Chapter 116. Both cases support the State. The first is *Missouri General Assembly v. von Glahn*, No. 4:25-CV-

1535-ZMB, 2025 WL 3514277 (E.D. Mo. Dec. 8, 2025). There, in a dispute about the exact referendum at issue here, the court resolved *if* and *when* PNP's referendum petition would suspend HB1. Applying Article III, Section 52(b) and Chapter 116, the court held that HB1 would not suspend until the Secretary completed his review under Chapter 116. The court explained:

> ***After*** the timely submission of a final petition, the Secretary of State must 'examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116]' and verify whether there are enough valid signatures to trigger a statewide vote. *Id.* § 116.120. ***If*** the Secretary finds that the petition satisfies ***both*** requirements, *see id.* § 116.150, the challenged law is displaced and will only 'take effect when approved by a majority of the votes cast thereon,' Mo. Const. art. III, § 52(b).

von Glahn, 2025 WL 3514277, at *1 (emphasis added) (alteration original). The parties here have jointly stipulated that "[t]he Secretary of State has not yet issued a 'certificate' addressing the sufficiency of 2026-R004[13] under Section 116.150, RSMo." Joint Stip. ¶ 19. So under the *von Glahn* decision, HB1 remains valid and enforceable.

The second precedent is this Court's decision in *Kaw Transport Co. v. Whitmer*, No. CV181-778CC (Cole Cnty. Cir. Ct. Sept. 29, 1981)—which was admittedly decided in a different procedural posture than this case. There, the Secretary of State had made a finding of legal sufficiency under § 116.120, and private plaintiffs sued to force a suspended law to go back into effect. *Id.* Still, *Kaw Transport* usefully comments on whether the Secretary must make a finding of legal sufficiency under Chapter 116 before a referendum petition can suspend state law. This Court answered

[13] The "petition for referendum" challenging House Bill 1 ("HB1") "was denominated 2026-R004." Joint Stip. ¶ 13.

affirmatively. The Court deemed it "reasonable" to stay the "effective date" of the "legislation in question" because "the Secretary of State ha[d] complied with the criteria set forth in Section 116.120" and the Secretary "found that the [referendum] petitions in question complied with the Constitution of the State of Missouri and with the provisions of Section 116." *Id.* at 2.

To be sure, the *Kaw Transport* opinion is wrong to the extent it suggests the Secretary can refer a law to the people—and suspend the law—without a formal certification decision. *See id.* The text of Chapter 116 does not contemplate a determination of legal sufficiency aside from certification. *See* §§ 116.120–116.150, 116.200. But even if this Court agrees with *Kaw Transport* completely, that would still inure to the State's benefit. Contrary to Plaintiffs' claims, *Kaw Transport* indisputably acknowledges that the Secretary's finding of legal sufficiency under Chapter 116 plays some role in the analysis. *Id.* at 2. So even if a formal certification decision is unnecessary, the Secretary must make *some* finding of legal sufficiency before the matter is referred to the people—triggering suspension. *Id.*

Here, the Secretary has made no finding of legal sufficiency under Chapter 116—unlike the Secretary in *Kaw Transport*. This is well within the Secretary's discretion. Nothing in the Missouri Constitution or Chapter 116 requires the Secretary to make a preliminary finding of legal sufficiency. Rather, § 116.150 merely speaks to a timeline for *certification*. Thus, the Secretary *at least* has discretion to refrain from making a legal sufficiency determination until certification. Indeed, when a statute is "defined in a manner that gives discretion" to "the secretary

of state," courts must defer to the Secretary's discretionary authority—recognizing that "elections have consequences." *Brown v. Carnahan*, 370 S.W.3d 637, 669 (Mo. banc 2012) (Fisher, J., concurring); *see also id.* at 669–70 (Fisher, J., concurring) ("Judicial intervention is not an appropriate substitute for the give and take of the political process.") (quoting *State ex rel. Humane Soc'y of Mo. v. Beetem*, 317 S.W.3d 669, 674 (Mo. App. W.D. 2010)).

Precedent from other states also supports the State's position. *See, e.g.*, *Barnes v. State ex rel. Pinkney*, 204 A.2d 787, 793 (Md. 1964); *Thomson v. Wyoming In-Stream Flow Comm.*, 651 P.2d 778, 785–86 (Wyo. 1982); *see also State v. Allen*, 625 P.2d 844, 846 (Alaska 1981) ("[T]he filing of a referendum petition does not suspend the effect or operation of the act referred." (quoting *Walters v. Cease*, 388 P.2d 263, 268 (Alaska 1964)); *State v. Howard*, 248 P. 44, 45–46 (Nev. 1926) ("The people make their own Constitution, and, when they have not seen fit to provide that the filing of a referendum petition shall suspend the operation of a law, we are not authorized to read such a provision into the Constitution.").

The Maryland Court of Appeal's decision in *Barnes* usefully illustrates the practice in other jurisdictions.[14] In *Barnes*, Maryland citizens filed a referendum petition seeking review of a public accommodations law. 204 A.2d at 788. After proponents filed their referendum petition, a restaurant owner challenged the public accommodations law's ongoing validity, "contend[ing] that the law was suspended by petitions for a referendum." *Id.* at 788–89. Like Plaintiffs here, the challenger argued

[14] At the time of *Barnes*, the Maryland Court of Appeals was Maryland's highest court.

that, regardless of the petition's ultimate validity, "the filing of the petition of itself suspended the law, unless and until it was judicially determined that the valid signatures on the petitions were insufficient." *Id.* at 793. The Maryland Court of Appeals rejected that argument. *Id.* The court emphasized that the Maryland Secretary of State is "the official designated in the Constitution to receive a referendum petition," and an act subject to a referendum becomes "suspended" only when "the Secretary of State has accepted the referendum petition as valid." *Id.*

Importantly, *Barnes* understood this outcome to be mandated by a Maryland statute even though the Maryland Constitution was silent about *what* the Secretary must review when he receives a petition. *See id.* at 790–93 ("If the Secretary had applied only the Constitutional limitations and not those contained in Section 169, each petition, upon its face, would have sufficed."). The court also rejected the restaurant owner's attempts to characterize the statute's provisions as "only directory" and not "mandatory." *Id.* at 792–93. The court explained that "[i]f the provisions of the [statute] were only directory, laws enacted by the Legislature could be suspended, even if the Secretary of State had found that the referendum petition lacked the necessary number of valid signatures." *Id.* at 793. Of course, such an outcome would have produced an absurd result. Thus, the court rejected the restaurant owner's challenge. *Id.* This Court should hold likewise here.

Common sense. Plaintiffs' contrary position—that an unverified petition's *filing* suspends state law—borders on the absurd. It completely ignores Chapter 116, which requires the Secretary to guard against fraud through a careful review of

referendum petitions. *See* §§ 116.120–116.150. As in *Barnes*, the logical implication of Plaintiffs' position is that *even* a completely fraudulent referendum petition would initially suspend state law through its mere filing. 204 A.2d at 793. In Plaintiffs' world, even a foreign government could submit 300,000 fraudulent signatures, and a duly enacted Missouri law would nonetheless suspend without any action by the Secretary.

Barnes rightly understood the absurdity of this outcome. As was true in Maryland, the Missouri Constitution gives a small minority of citizens the ability to freeze a law supported by the people's elected representatives. Mo. Const. art. III, § 52(a). But *Barnes* rightly rejected a political minority's ability to unilaterally suspend state law through unverified referendum petitions. *See* 204 A.2d at 791. Indeed, it is Plaintiffs—not the State—who advance an inherently undemocratic position. As *Barnes* recognized, basic procedures ensuring integrity "safeguard the privilege which the Constitution grants," and "[t]hey facilitate checking of the petitions by interested persons to ensure that only qualified persons have signed." *Id.* at 791. Likewise, the Arizona Supreme Court has emphasized the importance of requiring "referendum proponents to strictly comply with all constitutional and statutory requirements." *Feldmeier v. Watson*, 123 P.3d 180, 183 (Ariz. 2005). "The referendum power is subject to this exacting standard *because* it permits a minority to hold up the effective date of legislation which may well represent the wishes of the majority." *Id.* (emphasis added).

The potential for fraudulent or otherwise invalid signatures is not a mere

hypothetical. With prior referendum petitions, a substantial percentage of submitted signatures have not been valid—for one reason or another. Error rates vary, but can easily be in the 30–40 percent range. *See* Ex. 120–Ex. 125. Sometimes, they can be even higher. For example, with ballot petition 2022-059, the error rate for signatures from Congressional District 1 was a 64.9 percent—meaning the Secretary could verify only 35.1 percent of the signatures as valid. *See* Ex. 120. As another example, for ballot petition 2018-048, the error rate for Congressional District 5 was a whopping 69.8 percent—meaning the Secretary could verify only 30.2 percent of the signatures as valid. *See* Ex. 121. Thus, no one can know with certainty whether a referendum contains enough valid signatures on the day it is filed.

Missouri courts have also convicted many individuals of referendum petition fraud within the last decade. During the Kander administration, for example, several circulators drafted and submitted fraudulent referendum petition signatures—producing about 300 petitions with falsified signatures. *See, e.g.*, *State v. Williams*, Case No. 15BA-CR01112-01; *State v. Hayes*, Case No. 15BA-CR01115-01; *State v. Coker*, Case No. 15BA-CR01114-01; *State v. Jones*, Case No. 15BA-CR01654-01; *see also* Ex. 126, Alan Burdziak, *Two arrested in 2014 ballot petition forgery case*, Columbia Daily Tribune (Aug. 26, 2016).[15] Given these facts, this Court should proceed with caution and reject Plaintiffs' implausible reading of Chapter 116 and Article III, Sections 52(a) and 52(b). The Court should not allow unverified signatures to enable "a minority to hold up the effective date of legislation which may

[15] https://www.columbiatribune.com/story/news/crime/2016/08/26/two-arrested-in-2014-ballot/21831122007/

well represent the wishes of the majority." *Feldmeier*, 123 P.3d at 183.

B. Both of Plaintiffs' counterarguments fail.

Plaintiffs advance two main counterarguments, but each fails for the reasons explained below.

1. Plaintiffs misunderstand precedent and ignore the General Assembly's reforms to referendum procedure through Chapter 116.

Plaintiffs boldly claim that immediate suspension is "consistent with more than a century of precedent and practice." Plfs. SIO MTD at 1. But no Missouri court has ever adopted Plaintiffs' approach. In arguing otherwise, Plaintiffs rip statements out of context from precedents that long predate Missouri's current statutory scheme for processing referenda. *See State ex rel. Kemper v. Carter*, 165 S.W. 773 (Mo. banc 1914); *State ex rel. Barrett v. Dallmeyer*, 245 S.W. 1066 (Mo. banc 1922); *State ex rel. Moore v. Toberman*, 250 S.W.2d 701 (Mo. banc 1952). Plaintiffs also fail to grapple with any of the nuances in these older opinions. Nor do they consider how changes in the law may limit the applicability of some of these cases.

First, *Carter* and *Dallmeyer* provide no support to Plaintiffs. Both cases were decided under Article IV, Section 57, which was the referendum provision of the Missouri Constitution of 1875. At the time of *Carter* and *Dallmeyer*, Missouri law provided the Secretary very little authority to review the legal sufficiency of referendum petitions. *See* §§ 6748–6756, R.S. (1909). For example, the Secretary did not independently verify the validity of signatures on a petition. *See* § 6749, R.S. (1909). Instead, "the person who circulated" the petition verified its authenticity simply by signing an "affidavit." *Id.* Surveying this law, *Carter* explained that "[t]he

duties of the Secretary of State as to filing a referendum petition and dealing therewith are with us purely ministerial," and his duty to verify that a petition had enough signatures "manifestly" "involve[d] more of arithmetic than . . . discretion." 165 S.W. at 780. The court continued that, under the law at that time, the Secretary "must file the [referendum] petition as presented to him, and leave to the courts the determination of questions of latent fraud, forgery, and hermetic illegality." *Id.* at 781. Of course, this is not the law today. Nowadays, the Secretary *must* review petitions for fraud and courts *cannot* intervene until the Secretary certifies—or declines to certify—the referendum for a vote. *See* §§ 116.120–116.150, 116.200.

Other courts have refused to apply *Carter* in light of *Carter*'s reliance on outdated statutes. For example, the Wyoming Supreme Court distinguished *Carter* because, unlike Missouri law in 1914, Wyoming law requires "the Secretary to do much more than just count the signatures" and "depend on the verifications" of others before certifying a referendum petition. *See Thomson*, 651 P.2d at 785 (discussing *Carter*, 165 S.W. at 780–81). The Wyoming Supreme Court also noted that Missouri's enactment of Chapter 116 partially abrogated *Carter*: "[S]ince the time frame of *State ex rel. Kemper v. Carter*, supra, there has been a reform of the initiative and referendum procedures in [Missouri]. [Missouri] now requires processing of petitions by the secretary of state." *Id.* Then, after declining to apply *Carter*, the Wyoming Supreme Court held that "the specific statutory review requirements placed on the Secretary show an intent on the part of the legislature that those seeking to exercise the right of initiative in this state must, *as a condition precedent*, comply with the

conditions prescribed." *Id.* at 785–86 (emphasis added). Chapter 116 requires this Court to hold likewise here.

Additionally, even setting aside Chapter 116's abrogation, *Carter* itself emphasized that only a "legal, sufficient, and timely" petition could suspend "acts of the Legislature." 165 S.W. at 779. Further, *Carter* explicitly stated, "We are not saying that the Secretary of State must file a referendum petition upon which either there is not enough congressional districts represented by the signers thereon, or not enough signers from such or any of such districts." *Id.* at 781. Thus, even when the Secretary's authority was "purely ministerial" a century ago, *id.* at 780, the Missouri Supreme Court agreed that an insufficient petition cannot suspend state law. The court also emphasized that the Secretary may not approve a legally insufficient referendum petitions. *Id.* at 781. Plaintiffs ignore these nuances.

Dallmeyer is even further afield than *Carter*. *See* 245 S.W. at 1067–68. The opinion itself is cursory and does not address the Secretary of State's role in processing referendum petitions. The opinion also does not interpret the 1875 Constitution or applicable statutes. *Dallmeyer* held that "the operation of a statute may be deferred by the invocation of a referendum," but the Court's lone explanation for this holding was to analogize to the fact that "the Legislature" retains authority to "enact a law to take effect upon the happening of a future event or contingency." *Id.* at 1068. That does not address, however, *when* suspension occurs under Article III, § 52(b) of the 1945 Constitution, nor does it address *what* the Secretary must do under Chapter 116 before he refers a referendum petition to the people. The State,

of course, agrees that legislation is suspended when it is "referred to the people." Mo. Const. art. III, § 52(b). But nothing in *Dallmeyer* comments on that question under controlling law today.

Plaintiffs next highlight *State ex rel. Moore v. Toberman*, 250 S.W.2d 701 (Mo. banc 1952). Unlike Plaintiffs' other cases, *Toberman* was at least decided under Article III, § 52(a) of the Missouri Constitution of 1945. But *Toberman* was not decided under Chapter 116, which now requires exhaustive review of referendum petitions by the Secretary. For example, in 1952, Missouri law still provided that "the person who circulated" a petition was responsible for verifying the validity of the signatures they submitted. § 126.040, RSMo (1949).

Nonetheless, *Toberman* explicitly affirms that the filing of a legally insufficient referendum petition *does not* suspend the effective date of a statute. Plaintiffs claim that *Toberman* involved a "referred congressional map." Plfs. SIS Prelim. Inj. at 9 (emphasis omitted). But the exact opposite is true. *Toberman* involved an *unsuccessful* referendum petition that tried to challenge a congressional map. The Secretary of State initially accepted the referendum petition as "legally sufficient," and he "officially declared he intended to take the constitutional and statutory procedures to refer Senate Bill 267 for approval or rejection by the people." *Toberman*, 250 S.W.2d at 702. However, the Secretary later determined that the referendum petition lacked enough signatures to warrant referral. *Id.* In a subsequent lawsuit, this Court held that, "[t]he *filing of petitions* for referendum prior to April 24, 1952, which said petitions have been proved to be legally insufficient, *did*

not suspend the effective date of Senate Bill 267." *Id.* at 703 (emphasis added). On appeal, the Missouri Supreme Court affirmed. *Id.* at 707.

Plaintiffs brush aside all these details, and they focus on an isolated quotation in the *Toberman* opinion. But in the section of the opinion that Plaintiffs cite, the court was interpreting the phrase "ninety days after the final adjournment of the session of the general assembly" in Article III, § 52(a). *See id.* at 705–06. The court's reasoning implicitly assumes that the Secretary could quickly refer a measure to the people—because that was consistent with the Secretary's limited review at that time. *See* § 126.040, RSMo (1949). But the court's opinion repeatedly characterized the Secretary as "referring" measures "to the people," 250 S.W.2d at 702–03, and its opinion affirms that "[t]he *filing of petitions* for referendum prior to April 24, 1952, which said petitions have been proved to be legally insufficient, *did not suspend* the effective date of Senate Bill 267," *id.* at 703. Thus, *Toberman* supports the State, not Plaintiffs.

Fast forward now to 1980, when the General Assembly enacted §§ 116.120–116.150 and 116.200. This legislation is pivotal to the Court's analysis here. Again, Article III, Sections 52(a) and 52(b) jointly provide that "[r]eferendum petitions shall be filed with the secretary of state," and a referendum petition suspends a measure only when the Secretary "refer[s]" the measure "to the people." But the Constitution is silent about *what* the Secretary must do with a referendum petition, and *when* the Secretary must refer a measure. That is why Chapter 116 is necessary to fill in these important gaps.

Former Secretary of State James Kirkpatrick "proposed" §§ 116.120–116.150 and 116.200, and the General Assembly enacted these statutes in 1980. *See Official Manual of the State of Missouri 1981–1982*, at 14 (Kirkpatrick, J.C. & Johnson, K.M. ed.). The Secretary's office characterized these important reforms as an "overhaul of the initiative and referendum process." *Id.* After these reforms, the Secretary's review of referendum petitions is no longer ministerial. *Compare Carter*, 165 S.W. at 780, *with* §§ 116.120–116.150; *Thomson*, 651 P.2d at 785. The Secretary is now obligated to analyze the legal sufficiency and validity of a referendum petition, and courts can become involved only after the Secretary completes his review process. *Compare Carter*, 165 S.W. at 780–81, *with* §§ 116.120–116.150, 116.200. Further, Chapter 116 bars the Secretary from referring a measure for a vote of the people until he finishes his review. *See* §§ 116.150.1, 116.200.2 ("If the court decides the petition is insufficient, the court shall enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot.").

Again, Plaintiffs cannot cite a single case after the enactment of Chapter 116 that supports their position. Instead, all available precedent supports the State. *See von Glahn*, 2025 WL 3514277; *Kaw Transport*, No. CV181-778C. Lacking any judicial authority, Plaintiffs cite two news articles claiming that Secretary Jay Ashcroft understood the mere submission of a referendum petition in 2017 to suspend Missouri's right-to-work law. *See* Plfs. SIS Prelim. Inj. at 7–8. But these articles contain no direct quotations from the Secretary, and they contain no explanation of the Secretary's reasoning. Further, even if these articles fairly summarized

Secretary Ashcroft's position, Secretary Ashcroft is not the chief legal officer of Missouri. Here, Secretary Hoskins has reasonably relied on the legal opinion of the Attorney General and on a directly-applicable court order in assessing his review obligations, which precede referral of PNP's referendum to voters. *See von Glahn*, 2025 WL 3514277, at *1; §§ 116.120–116.150, 116.200.

2. Plaintiffs' passing constitutional challenge fails.

In a footnote of their brief supporting a preliminary injunction, Plaintiffs raise an as-applied challenge to §§ 116.130 and 116.150. In full, the footnote states:

> 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 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.

Plfs. SIS Prelim. Inj. at 10 n.2. The Court should reject this half-baked challenge. "Statutes are presumed valid and will be construed in favor of constitutional validity." *Int. of E.G.*, 683 S.W.3d at 265 (internal quotation omitted). Further, Missouri courts may "invalidate a statute only after finding the statute clearly and undoubtedly violates a constitutional provision." *Id.* (internal quotation omitted). Plaintiffs' footnote comes nowhere close to clearing this hurdle.

Plaintiffs ignore the text of Article III, Sections 49, 52(a), and 52(b). None of these provisions establishes a timeline for the Secretary's referral of a measure to the people. Unsurprisingly, no court has held that the Missouri Constitution itself imposes a time limit on the Secretary's certification. Rather, courts have always looked to Missouri statutes to fill in the details. This was clearly the courts' approaches in *von Glahn*, 2025 WL 3514277, at *1, and in *Kaw Transport*, No. CV181-

778C, which both viewed a finding of legal sufficiency under Chapter 116 as a prerequisite to suspension under Article III, Section 52(b). Furthermore, even under Article IV, Section 57 of the Missouri Constitution of 1875, courts looked to Missouri statutes to fill in the details about the nature of the Secretary's review authority. For example, the 1914 *Carter* opinion explicitly relied on Missouri statutes in holding that the Secretary's duties are ministerial. *See Carter*, 165 S.W. at 780–81; *see also Thomson*, 651 P.2d at 785 ("[S]ince the time frame of *State ex rel. Kemper v. Carter*, supra, there has been a reform of the initiative and referendum procedures in [Missouri]. [Missouri] now requires processing of petitions by the secretary of state."). Plaintiffs provide no textual or precedential basis to depart from *von Glahn*, *Kaw Transport*, and *Carter*, which unflinchingly relied on Missouri statutes to supply details where the Constitution is silent.

The *Barnes* decision also illustrates this point. There, the restaurant owner challenged the constitutionality of Maryland's statutory procedures for verifying the validity referendum petitions. 204 A.2d at 789–90. The court acknowledged that "[i]f the Secretary had applied only the Constitutional limitations and not those contained in [the challenged statute], each [referendum] petition, upon its face, would have sufficed." *Id.* at 790. But despite this burden, the court nonetheless rejected the restaurant owner's challenge. *Id.* at 791–92. It explained that these gap-filling statutes "safeguard the [referendum] privilege which the Constitution grants." *Id.* at 791. For example, the statutory requirements "that the residence of each signer and the precinct or district in which he is a registered voter must be appended to his

signature are only proper means to endeavor to assure that the provisions of the Constitution as to who may sign referendum petitions are met." *Id.* (collecting cases upholding "[s]imilar provisions . . . as reasonable"). Likewise here, §§ 116.130 and 116.150 preserve the right of referendum by allowing adequate time for the Secretary's review. And the Missouri Constitution's silence on a timeline for referral does not cut against the validity of either statute. *See* Mo. Const. art. III, §§ 49, 52(a), and 52(b).

Plaintiffs' atextual constitutional challenge also suffers from an obvious defect: If the Missouri Constitution creates a timeline, then what timeline does the Constitution create? Plaintiffs' brief is unclear on this point. They seem to imply that §§ 116.130 and 116.150 are unconstitutional to the extent they "allow[] a referred law to go into effect." Plfs. SIS Prelim. Inj. at 10 n.2. But this makes little sense for two reasons. First, Plaintiffs improperly assume that §§ 116.130 and 116.150 apply in the context of "a referred law." *Id.* They do not. Article III, Section 52(b) provides for suspension only when a measure is "referred to the people," and the Secretary holds referral authority in the context of a citizen-led initiative petition. *See* Article III, § 52(a) ("Referendum petitions shall be filed with the Secretary of State . . ."); *Toberman*, 250 S.W.2d at 702–03 (The Secretary to hold referral authority after citizens submit "petitions to refer."). Sections 116.130 and 116.150 address the Secretary's duties *before* referral, so they cannot be invalidated by a constitutional provision that provides for suspension only *after* referral. Plaintiffs' argument ignores this constitutionally mandatory sequence altogether.

Second, Plaintiffs' position is practically untenable because it would require the Secretary to instantly comply with Chapter 116's review process upon filing of a referendum petition. This is impossible. Plaintiffs ignore that Article III, Section 29 provides that a statute "shall take effect" "ninety days after the adjournment of the session . . . at which it was enacted." Yet that is also the precise timeline for submitting a referendum petition under Article III, Section 52(a). If Plaintiffs believe that their referendum right invalidates the timelines allowed in Chapter 116, then that means that the Secretary and local election authorities must fulfill their Chapter 116 duties almost instantly upon the filing of a referendum petition. Indeed, Plaintiffs challenge §§ 116.150 and 116.130 only "[t]o the extent [that they] permit[] the Secretary of State to delay suspension of a referred law until the issuance of a certificate of sufficiency." Thus, if Plaintiffs' constitutional challenge succeeds, the Secretary will still hold all his review duties under §§ 116.120, 116.130, 116.140, and 116.150, and he will be vested with the impossible task of reviewing and referring submitted initiative petitions almost instantly. The Constitution does not require this. The Court should reject Plaintiffs' atextual reading of the Missouri Constitution, and allow Missouri statutory law to fill in the gaps in the referendum process—just as it always has.

CONCLUSION

Plaintiffs' claim fails because HB1 will not suspend until the Secretary "refer[s]" HB1 "to the people." Mo. Const. art. III, § 52(b). Under Chapter 116, the Secretary cannot refer HB1 to the people until he reviews PNP's referendum petition

for legal sufficiency. *See* §§ 116.120–116.150, 116.200. The Secretary has not completed this review process, *see* Joint Stip. ¶ 19, and he therefore has not referred HB1 to the people yet. HB1 thus remains operative law. The Court should enter judgment for Defendants.

Date: February 9, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, a true and accurate copy of the above 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.

Louis J. Capozzi, III