

IN THE SUPREME COURT OF MISSOURI

No. SC101805

RICHARD VON GLAHN,

APPELLANT,

VS.

DENNY HOSKINS, SECRETARY OF STATE OF MISSOURI,

RESPONDENT.

On Appeal from the Circuit Court of Cole County, Missouri

The Honorable Daniel R. Green, Judge

APPELLANT'S BRIEF

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INTRODUCTION

This appeal poses the following questions for the Court:

1. Does the people’s reserved power to conduct a referendum on “any act of the general assembly” apply to House Bill 1 (“HB 1”), an act of the General Assembly proposing to change Missouri’s existing congressional districts? (Point I)
2. If the people did reserve that power, does federal law bar them from exercising it? (Points II–IV)
3. In reaching its conclusions, should the Court also consider, or do something about, the potential consequences of the Secretary’s belated certification decision on the November election and, if so, what? (Points V–VIII)
4. Should the partisan political committees be here at all? (Points IX and X)

This appeal continues a disagreement that began when the General Assembly decided to conduct mid-decade congressional redistricting—a practice not previously undertaken, though not precluded by the Constitution. *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. banc 2026). That redistricting was accomplished through HB 1.

Missouri citizens, led by Plaintiff-Appellant, submitted a referendum petition to force a popular vote on HB 1. His “mere physical delivery of referendum petitions” did not “automatically suspend” the bill. *Maggard v. State*, 733 S.W.3d 411, 418 (Mo. banc 2026). But if the petition “is ultimately

determined to be sufficient, article III, section 52(b) applies.” *Id.* Thus, if the petition is sufficient, “HB 1 did not take effect on December 11” 2025 and was instead referred to the people “as of December 9” 2025—and will not take effect unless approved by a majority of voters. *Id.*

So here we are. Plaintiff, as the statutes allow, asks this Court to declare the petition sufficient. That determination turns on the plain language of the Missouri Constitution.

The Secretary and Intervenors ask this Court to do what the Framers did not: add a redistricting exception to Sections 49 and 52(a). Their primary vehicle is a “clear statement requirement” they perceive in the U.S. Constitution’s Elections Clause. But the United States Supreme Court answered this question more than a century ago. In *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916), the Court held that a challenge to a referendum on congressional redistricting was “plainly without substance.” *Id.* at 569. That holding has never been disturbed, and *Moore v. Harper*, 600 U.S. 1 (2023), reaffirmed it. Their Guarantee Clause argument is even weaker: *Davis* rejected the claim that referendum “annihilates representative government,” and *Luther v. Borden*, 48 U.S. 1 (1849), established that such questions are nonjusticiable.

The Missouri Constitution allows a referendum on HB 1 because it is an “act of the general assembly,” and no law negates that clear reservation of right. The only remaining question is practical: what follows if the petition is sufficient?

If sufficient, this Court's ruling in *Maggard* could not be clearer: HB 1 is not, and has never been, the law. It might become law—but only after the people vote on it in November. The 2026 congressional elections must therefore be conducted using districts that *have been* lawfully enacted. The 2022 and 2024 elections were conducted using those districts, and no one has questioned their validity.

Nevertheless, the State and Intervenors ask this Court to sanction using districts that have never been law. The response is straightforward—and this Court has already provided it. *Maggard* held that a sufficient petition means HB 1 “is suspended, and is not in effect.” 733 S.W.3d at 424. A suspended law is not operative. It does not establish congressional districts. If HB 1 is not in effect, Missouri's districts are governed by the map that preceded it—the 2022 map, enacted by HB 2909, used in the last two general elections. That is not a new map. It is not judge-drawn. It is existing law that remained in force because HB 1 never took effect.

The consequences that most concerned the trial court—a new primary, ballot chaos, disenfranchised voters—if they came to pass, would result from the Secretary's tactical delay in determining sufficiency. But those hypothetical problems are not a reason to ignore the law and are extremely overblown.

As a threshold matter, this Court need not fashion a remedy at all—there might never be a challenge to the primary results. The only live question in this Section 116.200 action is whether the Secretary properly rejected the petition. If

he did not, the Constitution supplies the consequence: HB 1 was suspended by operation of Section 52(b), and the 2022 map—enacted by HB 2909—remains in force. No court need draw a line or choose a map. The law operates of its own force.

But if the Court concludes the use of the HB 1 districts means the primaries were improper and some remedy is necessary now, Missouri law already provides one. Congressional candidates must be elected from districts established by state law. If no candidates have been elected in lawful districts, those who “won” the primaries are disqualified because they were not lawfully nominated. Section 115.363 then governs: the political party committees fill vacancies by selecting replacement candidates.

This is not a gap in the law. It is the statute the General Assembly enacted for exactly this situation—candidate disqualification after a primary. The party committees convene and select nominees—likely the same candidates who “won” the primary. The general election proceeds in November on the existing calendar. No new primary. No new map. No special election. No disruption.

This is not a novel remedy or a creative workaround. It is the ordinary operation of Missouri election law applied to the ordinary consequence of an election run in districts that were never the law because the Secretary chose to gamble. The supposed emergency is a product of the Secretary’s own decision to delay—not the referendum. He knew his constitutional arguments by October 2025, when he raised them in federal court. He knew about the risk when

Maggard was decided in May. After more than 300,000 signatures were submitted, he waited until the final statutory day to act. When he finally issued a certificate, he did not even address the signature count. He rejected the petition on the theory that redistricting bills are categorically exempt from referendum—a theory with no footing in the constitutional text and no support in the caselaw.

This Court should not permit that strategy to succeed. *Maggard* is the law. It was unanimous. It was decided a few months ago after full briefing and argument. And it was decided with the practical stakes of this referendum already in view.

The question before this Court is whether the petition is sufficient. That question is easily answered and, once it is, the remaining issues follow from existing law as this Court has interpreted it. The Court should reverse, order the Secretary to certify the referendum petition as sufficient, and direct that the lawful, existing districts be used for the November congressional election.

JURISDICTIONAL STATEMENT

The trial court's judgment released its jurisdiction if a notice of appeal was filed. Rule 81.045; D63:P37; A37. Plaintiff filed his notice of appeal on August 19, 2026. D64. On August 20, 2026, this Court entered an Order that assumed jurisdiction over this appeal under Rule 83.01, without determining whether the appeal invokes this Court's exclusive appellate jurisdiction.

STATEMENT OF FACTS

This case starts where *People Not Politicians v. Hoskins*, No. SC101801, also pending before the Court, leaves off. See Appellants' Brief, Case No. SC101801. Where that case concerns the form of the referendum petition, signature collection, and counting, this case concerns the final steps of the process—the Secretary's review of the petition, his sufficiency determination, and judicial review of that decision. The case was tried on stipulated facts and exhibits, so the Court reviews them *de novo*. *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024).

I. Historical Application of Referendum to Congressional Redistricting

The referendum provisions of the Missouri Constitution have long been understood to apply to congressional redistricting. Missouri conducted a referendum on congressional redistricting in 1922 (with Missourians rejecting a redistricting proposal by large margins). D17-18. This Court reviewed signature sufficiency on a proposed referendum on congressional redistricting in 1952. *State ex rel. Moore v. Toberman*, 250 S.W.2d 701 (Mo. banc 1952). In 1962, this Court declined to overturn an allegedly illegal redistricting bill, reasoning in part that “[t]he people of this state have a remedy for even valid redistricting, which they do not like, through our initiative and referendum provisions.” *Preisler v. Hearn*, 362 S.W.2d 552, 557 (Mo. banc 1962). That understanding remained undisturbed until now.

II. HB 1 and the Launch of the Referendum Campaign

The General Assembly enacted HB 1 in an extraordinary session on September 12, 2025. D63:P1 (¶ 1); A1. HB 1 would repeal Missouri’s existing congressional districting plan—enacted in 2022—and establish eight new congressional districts. *Id.* Plaintiff Richard von Glahn and People Not Politicians (“PNP”) then launched a referendum campaign and von Glahn submitted a referendum sample sheet to the Secretary. D63:P1 (¶ 4); A1; D23; D24. Governor Kehoe signed HB 1 on September 28, 2025. D63:P1 (¶ 3); A1. The relevance of the Governor’s signature and whether signatures collected before the Secretary’s approval are valid are disputed in the Court’s other case (SC101801), but the Secretary approved the sample sheet on October 14, 2025. D23; D24.

The approval letter stated that “after circulation and upon submission of signatures, the Secretary must examine the petition to determine whether ‘it complies with the Constitution and with this chapter.’ § 116.200, RSMo.” D24. It went on to say: “If statutory or constitutional deficiencies become apparent during verification or before certification—such as failure to meet signature thresholds, improper timing under Article III, Section 52(a), or defects affecting the validity of the referendum—the Secretary may decline to certify the petition for placement on the ballot. Any such determination remains subject to judicial review.” D24.

III. The Secretary's Federal Lawsuit and Delayed Review

The very next day (October 15, 2025), the Secretary, General Assembly, and State of Missouri filed suit against Plaintiff and PNP in federal court. D28. They asked the federal court to declare the referendum unconstitutional under state and federal law and to take the unprecedented step of enjoining Plaintiff and PNP “from continuing to seek a referendum on the General Assembly’s redistricting bill.” D28:P23. Because that relief would have prevented timely submission—thereby precluding any referendum campaign—and Missouri law provides a process for reviewing referenda—Plaintiff sought dismissal. *See* D30:P2.

In the federal lawsuit, the Secretary made the same constitutional arguments he would later rely on in his certificate of insufficiency—the “clear statement” and Elections Clause arguments. D28:P14, P17. The Secretary’s constitutional objections were fully developed by October 2025. He claimed that even “a temporary displacement of the recently enacted map” harmed him and the State. D30:P8.

The federal court dismissed the lawsuit, explaining the Secretary could avoid this harm by promptly rejecting the referendum on constitutional grounds: “Fortunately, for the State, Secretary Hoskins has a tool at his disposal that almost no other litigant could boast—the power to declare the petition unconstitutional himself.” *Id.* The federal court also rejected as unpersuasive the Secretary’s claim that drafting a certificate of insufficiency would “require careful

analysis and collaboration between the Secretary and Attorney General,” finding it “hard to imagine that completing this constitutional assessment will impose measurable burden given that the State has completed an exhaustive analysis in briefing this case.” *Id.* The Secretary did not issue a certificate at that time.

IV. Submission of Signatures and the Secretary’s Continued Delay

On December 9, 2025, Plaintiff and PNP submitted more than 300,000 signatures seeking a referendum on HB 1. D38:P3; D63:P2 (¶ 5); A2. This triggered the Secretary’s statutory duty to review the petition. *Maggard v. State*, 733 S.W.3d 411, 416 (Mo. banc 2026). If the Secretary finds the petition insufficient, he “shall issue a certificate stating the reason for the insufficiency.” § 116.150.2, RSMo. The Secretary was required to complete his review “not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election.” § 116.150.3, RSMo. That deadline fell on Tuesday, August 4, 2026—the same day as Missouri’s primary elections.

Once signatures were submitted, Plaintiff and PNP awaited the Secretary’s review. Although the federal court had urged the Secretary to use his “unique self-help remedy,” the Secretary and Attorney General did not promptly act, even though they had already developed the arguments they later relied on. *See* D28; D29; D30:P8. The Attorney General stated in January 2026: “As long as the status quo is the new maps, delay works in our favor.” D38:P4. As of May 2026, the Secretary had not issued a certificate on sufficiency, claiming he was “still doing some research” on the referendum’s constitutionality. D37.

In *Maggard*, decided on May 12, this Court made crystal clear the consequences of a sufficiency determination:

If [] the December 9 referendum petition filing is ultimately determined to be sufficient, article III, section 52(b) applies. In that case, because a “legal, sufficient, and timely” referendum petition was filed on December 9—*before* HB 1 went into effect on December 11—HB 1 did not take effect on December 11, HB 1 was “referred to the people” as of December 9, and HB 1 “shall take effect when approved by a majority of the votes cast thereon, and not otherwise.”

733 S.W.3d at 420 (cleaned up). This Court also observed that the Secretary’s views about HB 1’s effectiveness do not “decide whether HB 1 did (or did not) go into effect on December 11,” and that “chapter 116 does not override the Missouri Constitution.” *Id.* at 419. Despite this guidance, which underscored the importance of prompt action to avoid election-administration difficulties, the Secretary still did not issue a determination.

Instead, the Secretary and Attorney General characterized *Maggard*’s holding in a way that did not accurately reflect it and proceeded to treat HB 1 as in effect. The Secretary sent a letter to local election authorities on May 14, stating, “On May 12, 2026, the Supreme Court of Missouri issued its rulings affirming the constitutionality and *legal effectiveness of House Bill 1*. . . . As of May 12, 2026, House Bill 1 remains in full force and effect until a determination and certification of sufficiency or insufficiency has been issued under the referendum process.” *von Glahn v. Hanaway*, Case No. 26AC-CC00248, Pet., Ex.

22 (emphasis added).¹ In Opinion Letter 3-2026, the Attorney General asserted: “In light of *Maggard*, the Secretary of State’s Office—and all of Missouri’s local election authorities—must continue enforcing HB 1 unless you make a finding of sufficiency as to petition 2026-R004 under § 116.150, RSMo.” *Id.* at Ex. 23. Rather than issuing a certificate under Section 116.150, as the federal court encouraged, the Secretary continued to refuse.

V. The Certificate of Insufficiency

Late in the day on the statutory deadline, with primary elections nearly completed, the Secretary issued his certificate of insufficiency. D27; A38-46. The certificate is unusual. It (1) incorporated an Attorney General opinion by reference, (2) rejected a referendum for reasons other than insufficient signatures, and (3) does not mention signature counts at all. *See* D27; A38-46. It is undisputed the referendum has more than enough signatures. D3; D4; D5; D21:P5 (¶¶ 48, 49). The Secretary rejected the petition solely on constitutional grounds—grounds he knew and had fully briefed in October 2025.

The certificate claims the Secretary “examined for compliance with the Missouri Constitution and Chapter 116, RSMo, Referendum Petition 2026-R004” and found “the referendum petition is insufficient under the Missouri Constitution because the Missouri Constitution does not authorize a referendum

¹ Plaintiff asks this Court to take judicial notice of the pleadings in 26AC-CC00248. *See Moore v. Mo. Dental Bd.*, 311 S.W.3d 298, 305 (Mo. App. 2010) (“Judicial notice of records from other related proceedings involving the same parties can be on the court’s own motion or at the request of a party.”).

on congressional redistricting plans passed by the General Assembly.” D27:P3; A39. On the face of the certificate, the Secretary said he reviewed for compliance *only* with the Missouri Constitution and Chapter 116.

The certificate purports to “incorporate[] by reference” the Attorney General’s opinion to more fully explain the stated grounds for insufficiency.

D27:P3; A39.² That opinion articulates the following reasons the referendum petition allegedly violates the Missouri Constitution:

- A clear statement is required to allow referenda on redistricting and there is no such clear statement in the Missouri Constitution.

D27:P4-5; A40-41; and

- Redistricting after the decennial census would be impossible if referenda were authorized on redistricting legislation. D27:P7; A43.

These are all the reasons the Attorney General claimed the referendum would violate the Missouri Constitution and is thus insufficient. The opinion *then* goes on to discuss why, even if the referendum is sufficient, *suspending* HB 1 (as *Maggard* states is the natural consequence of a sufficiency determination) would violate federal law. D27:P8; A44. According to the Attorney General, *Maggard*’s holding “would have disastrous consequences.” D27:P7; A43.

² “[O]pinions issued by the Attorney General . . . are entitled to no more weight than that given the opinion of any other competent attorney.” *Gershman Inv. Corp. v. Danforth*, 517 S.W.2d 33, 36 (Mo. banc 1974). Chapter 116 gives the Attorney General no formal role in the decision on sufficiency.

Citing the Elections Clause and the Guarantee Clause of the U.S. Constitution, the letter asserts Missouri is required “to implement the HB 1 map for the 2026 election.” D27:P8; A44. Rounding out the letter, the Attorney General further explains why, in her opinion (citing no relevant law), Missouri “cannot discard the HB 1 map for the November General Election now that the HB 1 map was used for the August Primary Election.” D27:P10; A46.

VI. **Procedural History**

The same day the Secretary issued his certificate of insufficiency, Plaintiff filed this suit. D2. The Petition was brought under Section 116.200, which allows “any citizen” to “apply to the circuit court of Cole County to compel [the Secretary] to reverse his decision.” § 116.200, RSMo. Plaintiff’s petition alleged the referendum is sufficient and asked the court to reverse the Secretary’s insufficiency determination. D2:P6-8. Based on *Maggard*’s holding, Plaintiff also asked the court to restrain the Secretary and anyone acting in concert with him from taking any further steps to implement or mandate use of HB 1. *Id.* Plaintiff did not ask the court to make any decision about the primary elections or comment on the general election. *Id.* He sought to prevent further use of a measure that, under *Maggard*, had not taken effect.

Despite the statute requiring this case to be placed at the top of the docket (and a subsequent letter from this Court emphasizing that requirement), the case was not resolved promptly. Even though he knew (and later agreed) the case

would be tried on stipulated facts (and thus subject to *de novo* review), the Secretary sought a change of judge on August 6, 2026. D10.

Following that, the Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee moved to intervene. D13. The Republican National Committee is the “national committee of the Republican Party.” D20:P2. The National Republican Congressional Committee is the national congressional committee of the Republican Party. *Id.* The Missouri Republican State Committee is the duly established state committee for the Missouri Republican Party. *Id.* Intervenors claimed an interest in the “safe and secure” conduct of Missouri elections and “in the implementation of House Bill 1” because it directly “affect[s] their respective ability to support and elect Republican candidates in Missouri to the United States House of Representatives.” D2:P4. Over objection, the trial court granted intervention as of right or, alternatively, permissively. D20. The day before trial, Intervenors and the Secretary filed nearly identical trial briefs. D60; D61.

More than two weeks after the Petition was filed, the case was tried on stipulated facts and exhibits. D1:P12. The Joint Stipulation of Facts and Exhibits included five statements of fact and 37 exhibits. D22; Tr. 8-9. Those exhibits do not contain any information about: the identity of who voted in the primaries, which voters were in different districts under the 2022 statutes and HB 1, or that would indicate that any primary result would have been different if the 2022 districts had been used. *See* D23-59.

At trial, the Secretary sought to rely on an affidavit of former Jackson County election official Tammy Brown to support the proposition that it was “logistically impossible to change the map.” D50; Tr. 52:9-17. The Secretary asked the trial court to find that “it is technically not feasible” to change maps. Tr. 54:13-14. The trial court expressly declined. Tr. 54:10-18. Also stipulated to was an affidavit of the current Boone County Clerk indicating it was technologically feasible to use the 2022 districts. D43:P3-4. While all parties agreed to admit the affidavits without hearsay objection, Plaintiff did not agree the Court could make any credibility determinations without the witness being present. Tr. 54:19-55:7. The trial court agreed: “That’s not the way trials work. I’ll just put them in the record.” Tr. 55:15-16. The trial court issued its judgment the same day, signing Intervenor’s proposed judgment with a few modifications (although the Secretary’s and Intervenor’s proposed judgments were remarkably similar). *Compare A47-85 with A86-96.*

Without referencing Section 116.200 or explicitly making a finding that the referendum petition “is insufficient” or “enjoining the secretary of state from certifying the measure” (see § 116.200.2, RSMo), the trial court entered judgment “dismissing” the petition and finding for Defendant. *See generally* D63; A1-37. The trial court concluded Missouri’s referendum provisions in Article III of the Constitution “do not apply to congressional redistricting enacted by the General Assembly pursuant to Article III, Section 45.” D63:P36; A36. It held that the

Secretary's decision not to certify the referendum petition was "lawful" and "HB 1 remains in full force and effect for the 2026 general election." *Id.*

The trial court reached this conclusion through several alternative theories. First, it held Article III, Section 49 does not apply to congressional redistricting because "[a] generic provision that says nothing about congressional redistricting cannot do the work of divesting the General Assembly of the dual mandate the Missouri and U.S. Constitutions assign to it." D63:P9 (¶ 44); A9. Second, the trial court held Article III, Section 7(h)—concerning redistricting for the state senate—applies to all redistricting, including congressional redistricting. D63:P9-10 (¶¶ 46-49); A9-10. Third, the trial court applied a "clear statement rule" ostensibly derived from Elections Clause jurisprudence, holding Missouri's Constitution lacks a "clear statement" to displace the General Assembly's authority over congressional redistricting. D63:P21-22 (¶¶ 100-106); A21-22.

The trial court further held that even if Missouri's referendum provisions apply to congressional redistricting, the Elections and Guarantee Clauses would forbid it. D63:P23-25 (¶¶ 107-122); A23-25. The concern was apparently not with subjecting redistricting bills to a vote, but rather with Article III, Section 52(b)'s suspension feature. The trial court reasoned that allowing "a small fraction of voters" to "freeze a congressional map duly enacted by the General Assembly before any majority of Missourians has voted for or against it" would "invert[] the constitutional design." D63:P23-24 (¶¶ 111-112); A23-24.

Finally, the trial court held that, even if the referendum were sufficient, it would not order changes to the congressional districts to be used at the general election, invoking the “*Purcell Principle*” and *Hadley v. Junior College District of Metropolitan Kansas City*, 460 S.W.2d 1 (Mo. banc 1970). D63:P31-36 (¶¶ 149-171); A31-36. It stated that changes at that stage would cause voter confusion and affect confidence in the electoral process. D63:P31 (¶ 151); A31. It also concluded that using the 2022 congressional districts “is not just ‘impractical,’ it is impossible,” citing the affidavit of Tammy Brown—over Plaintiff’s objection that no credibility determination could be made without live testimony—and its own ruling that “[t]hat’s not the way trials work.” D63:P35-36 (¶ 170); A35-36; Tr. 55:15-16.³ This appeal followed. D64.

³ The Secretary offered no affidavit, let alone live testimony, from anyone in his office on the functionality of MCVR or any other topic. This surely would have been the best source of information, since “MCVR . . . is maintained and administered by the Office of the Secretary of State.” 15 CSR 30-15.030.

POINTS RELIED ON

- I. **The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Because Article III, Sections 49 and 52(a) of the Missouri Constitution Subject Any Act of the General Assembly to the Referendum Except Emergency Legislation and Appropriations Bills, in that HB 1 is an Act of the General Assembly Without an Emergency Clause and It Does Not Appropriate Funds**

Luther v. Hoskins, 730 S.W.3d 567 (Mo. banc 2026)

Smith v. St. Louis Cnty. Police, 659 S.W.3d 895 (Mo. banc 2023)

State ex rel. Randolph Cnty. v. Walden, 206 S.W.2d 979 (Mo. banc 1947)

Mo. Const. art. III, § 49

Mo. Const. art. III, § 52(a)

- II. **The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Based on Federal “Clear Statement” Requirements Because No Such Requirement Applies to State Constitutional Referendum Provisions and the Missouri Constitution is Clear, in that the Missouri Constitution subjects “any act of the general assembly” to the referendum and HB 1 is an Act of the General Assembly**

Moore v. Harper, 600 U.S. 1 (2023)

Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916)

U.S. Const. amend. X

Mo. Const. art. III, § 49

Mo. Const. art. III, § 52(b)

III. The Trial Court Erred in Holding the Elections Clause

Invalidates Article III, Section 52(b) as Applied to Congressional

Redistricting Because the Elections Clause Does Not Prohibit

States from Subjecting Redistricting to the Referendum, in that

the United States Supreme Court Has Repeatedly Held the

Elections Clause Permits Referenda on Congressional

Redistricting Bills

Moore v. Harper, 600 U.S. 1 (2023)

Arizona State Legis. v. Arizona Indep. Redistricting Comm’n, 576 U.S. 787
(2015)

Smiley v. Holm, 285 U.S. 355 (1932)

Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916)

IV. The Trial Court Erred in Holding the Guarantee Clause

Invalidates Article III, Section 52(b) as Applied to Congressional

Redistricting Because the Guarantee Clause Does Not Preclude

Direct Democracy Mechanisms Such as Referenda, in that

Congress has not Precluded it or Made a Determination About

Missouri’s Form of Government

Ketcham v. Blunt, 847 S.W.2d 824 (Mo. App. 1992)

Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916)

Luther v. Borden, 48 U.S. 1 (1849)

§ 116.200, RSMo

V. The Trial Court Erred in Considering Whether Federal Law

Would Require a New Primary Election Because that Issue

Exceeds the Scope of this Action, in that This Case is an Action

for Judicial Review Under Section 116.200, Which is Limited to

Consideration of the Secretary's Sufficiency Determination

Under Section 116.150

Maggard v. State, 733 S.W.3d 411, 416 (Mo. banc 2026)

Mo. Elec Coops. v. Kander, 497 S.W.3d 905 (Mo. App. 2016)

Ketcham v. Blunt, 847 S.W.2d 824 (Mo. App. 1992)

Union Elec. Co. v. Kirkpatrick, 678 S.W.2d 402 (Mo. banc 1984)

VI. The Trial Court Erred in Concluding that Reversal Would

Require a New Primary Election Because No Federal Law

Requires Missouri Hold a New Primary Election if House Bill 1 is

Suspended in that the Authorities Cited in the Judgment Below

Do Not Require a New Primary

Maggard v. State, 733 S.W.3d 411, 416 (Mo. banc 2026)

Prosecuting Att'y, 21st Jud. Cir., ex rel. Williams v. State, 696 S.W.3d 853

(Mo. banc 2024)

State ex rel. Dep't of Health & Senior Servs. v. Slusher, 638 S.W.3d 496

(Mo. banc 2022)

Orthotic & Prosthetic Lab, Inc. v. Pott, 851 S.W.2d 633 (Mo. App. 1993)

52 U.S.C. § 20302

VII. The Trial Court Erred in Concluding that Reversal Would

Require a New Primary Election Because State and Federal Law

Provide Alternative Remedies for Candidate Disqualification, in

that if Reversal Requires Any Remedy, the August Nominees

Would be Disqualified and, pursuant to Chapter 115, Party

Committees Would Nominate Replacement Candidates Under

Existing Law

Brown v. Morris, 290 S.W.2d 160 (Mo. banc 1956)

2 U.S.C. § 2c

§ 115.363, RSMo

§ 115.013, RSMo

VIII. The Trial Court Erred in Concluding Equitable Considerations

Bar Using the 2022 Districts for the General Election Because

There is No Need to Resort to Equity and Even if There Were the

Equities Favor Enforcing the Referendum Provisions, in that (i)

the Secretary's Merits Arguments Were Baseless, (ii) He

Manufactured the Alleged Problem, (iii) Plaintiff and the Public

Will be Irreparably Harmed, (iv) Plaintiff Did Not Delay, and (v)

Using the 2022 Districts is Feasible

Frank v. Walker, 769 F.3d 494 (7th Cir. 2014)

Purcell v. Cape Girardeau Cnty. Comm'n, 322 S.W.3d 522

(Mo. banc 2010)

Brown v. Morris, 290 S.W.2d 160 (Mo. banc 1956)

Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806

(1945)

IX. The Trial Court Erred in Granting Intervention as a Matter of

Right Because Intervention as a Matter of Right Requires an

Interest in the Subject Matter, a Risk the Litigation Will Impair

the Interest, and Inadequate Representation by Existing Parties

in that Intervenors Do Not Have an Interest in the Sufficiency

Determination and the Secretary Adequately Represents

Intervenors' Interests in Opposing the Referendum's Sufficiency

Toder v. Hoskins, 730 S.W.3d 129 (Mo. App. 2026)

Prentzler v. Carnahan, 366 S.W.3d 557 (Mo. App. 2012)

Committee for Educ. Equal. v. State, 294 S.W.3d 477 (Mo. banc 2009)

State ex rel. Nixon v. Am. Tobacco Co., 34 S.W.3d 122, 127

(Mo. banc 2000)

Rule 52.12

X. The Trial Court Erred in Granting Permissive Intervention
Because Permissible Intervention Requires the Proposed
Intervenor to Assert Defenses Other than Those of Defendant in
that Intervenors Forwarded the Same Defenses as the Secretary
Toder v. Hoskins, 730 S.W.3d 129 (Mo. App. 2026)
Prentzler v. Carnahan, 366 S.W.3d 557 (Mo. App. 2012)
Committee for Educ. Equal. v. State, 294 S.W.3d 477 (Mo. banc 2009)
 Rule 52.12

ARGUMENT

I. The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Because Article III, Sections 49 and 52(a) of the Missouri Constitution Subject Any Act of the General Assembly to the Referendum Except Emergency Legislation and Appropriations Bills, in that HB 1 is an Act of the General Assembly Without an Emergency Clause and It Does Not Appropriate Funds

Standard of Review. “When a case is tried on stipulated facts, this Court needs to determine only whether the circuit court drew the proper legal conclusions from the facts stipulated, and review is *de novo*.” *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024).

Preservation. Plaintiff preserved this issue by alleging the referendum complied with the Missouri Constitution in his petition, D2:P6-7, and explaining why that was so in his trial brief, D62:P4-16.

* * *

The trial court did not apply the plain and unambiguous language of Article III, Sections 49 and 52(a). Without finding any ambiguity, it proceeded to apply canons of construction that are not supported by Missouri law. That was error.

“The people reserve power . . . to approve or reject by referendum any act of the general assembly, except as hereinafter provided.” Mo. Const. art. III, § 49. And “[a] referendum may be ordered (except as to laws making appropriations

for the current expenses of state government, of the maintenance of state institutions and for the support of public schools) . . . by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, § 52(a).

It is “improper for this Court to look beyond the plain language . . . and to construe [Article III, Sections 49 and 52(a)] contrary to both the plain language and this Court’s previous construction of the same [provisions].” *Smith v. St. Louis Cnty. Police*, 659 S.W.3d 895, 900-901 (Mo. banc 2023); *see also Spence v. BNSF Railway Co.*, 547 S.W.3d 769, 782 (Mo. banc 2018) (Powell, J., dissenting) (“This Court’s principles of interpretation are not intended to be applied haphazardly or indiscriminately to achieve a desired result.” (cleaned up)). Put simply, “when the plain language . . . is clear, this Court will *not* look beyond it.” *Smith*, 659 S.W.3d at 900-901 (emphasis added). The text of the Missouri Constitution “is interpreted to effectuate its plain, ordinary, and natural meaning.” *Luther v. Hoskins*, 730 S.W.3d 567, 570 (Mo. banc 2026) (cleaned up). “[T]his Court does not utilize canons of construction when the language of a constitutional provision is plain and unambiguous.” *Id.* (cleaned up).

When these well-trodden principles are applied, the question before this Court is easily resolved. Article III, Section 49 reserves to the people the “power to approve or reject by referendum *any act of the general assembly*, except as hereinafter provided.” *Id.* (emphasis added). HB 1 is an act of the General

Assembly. It does not fall within any exception in Article III, Section 52(a). That is the end of the analysis.

A. The Text is Plain and Unambiguous

Missouri voters reserved legislative power to themselves through a 1908 constitutional amendment establishing the referendum right. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 486 (Mo. banc 2022) (citing *Marsh v. Bartlett*, 121 S.W.2d 737, 742 (Mo. banc 1938)). This provision “recall[ed] all legislative power theretofore granted to the end that the whole power to be granted should be subject to the initiative and referendum.” *Marsh*, 121 S.W.2d at 742.

The referendum allows the public “to have some say with regard to the laws which shall be enacted.” 42 Am. Jur. 2d *Initiative & Referendum* § 1. Its purpose “is to suspend or annul laws which are not yet effective in order to provide the people a means of expressing their desire regarding a legislative proposition; a referendum amounts to a veto power over enactments of representative bodies.” *Id.* This Court and courts across the country have recognized this function. See *Toberman*, 250 S.W.2d at 258; *State v. Mata*, 934 N.W.2d 475, 485 (Neb. 2019); *Bernstein Bros., Inc. v. Dep’t of Revenue*, 661 P.2d 537 (Or. 1983); *Wilde v. City of Dunsmuir*, 470 P.3d 590 (Cal. 2020).

To make this power meaningful, courts construe referendum provisions “liberally to the end that [the people’s] right to determine all proper questions by free and open elections shall be secure.” *State ex rel. Voss v. Davis*, 418 S.W.2d

163, 167 (Mo. 1967); see also *Rekart v. Kirkpatrick*, 639 S.W.2d 606 (Mo. banc 1982).

Article III, Section 49 directly and unambiguously explains the referendum power's scope: it embraces *any act* of the General Assembly except as otherwise explicitly provided in the Constitution. It states: "The people reserve power to . . . approve or reject by referendum any act of the general assembly, except as hereinafter provided." The operative word is "any"—meaning "one, no matter which, of more than two" or, more simply, "without limit." *Webster's New World College Dictionary* at 64 (5th ed. 2014). This Court has "held the word 'any' to be all-comprehensive and the equivalent of 'every.'" *State ex rel. Randolph Cnty. v. Walden*, 206 S.W.2d 979, 983 (Mo. banc 1947). The Court must apply that text as written, wherever that may lead. See *Smith*, 659 S.W.3d at 901.

HB 1 falls squarely within that text. It is undisputed that the General Assembly passed HB 1 in compliance with the constitutional mandate that "[n]o law shall be passed except by bill." Mo. Const. art. III, § 21. HB 1 says it is an act of the General Assembly on its face. D23:P3. That ends the first step of the analysis.

Next, the Court looks to Section 52(a) to determine whether HB 1 falls within any exception. Section 52(a) supplies only two. The first is laws "necessary for the immediate preservation of the public peace, health or safety." The second is "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). The Constitution does not list redistricting. It does not list congressional elections. It does not list any other exception.

HB 1 fits neither exception. It is not a law “necessary for the immediate preservation of the public peace, health, or safety”—it contains no emergency clause. *Maggard*, 733 S.W.3d at 421 n.8.

Whether legislation qualifies as emergency legislation depends on whether the General Assembly included an emergency clause—a legislative determination, not a judicial characterization applied after the fact (though always subject to judicial review). *See State ex rel. Harvey v. Linville*, 300 S.W. 1066, 1068 (Mo. 1927); *State ex rel. Tyler v. Davis*, 443 S.W.2d 625 (Mo. banc 1969).

The General Assembly did not include one because there was no crisis HB 1 was passed to solve. *See Luther*, 730 S.W.3d at 572. If the General Assembly believed HB 1 was necessary for the immediate preservation of public peace, health, or safety, it needed to say so.⁴ It did not.

HB 1 also makes no appropriation. An appropriations bill sets aside a specific amount of money for a specific purpose from the state treasury. *Doyle v. Tidball*, 625 S.W.3d 459, 466 (Mo. banc 2021). HB 1 draws district lines; it does

⁴ The General Assembly did so when it redistricted in 2022. D42:P2. So, when they think it is an emergency to redraw congressional lines, they know how to tell us. This ability to declare an emergency and invoke an exception to the referendum power is one of several reasons the Attorney General’s alleged concerns about applying the referendum power to redistricting bills enacted in response to decennial census should not change the analysis. *See* D27:P6-7; A42-43. The General Assembly has tools to address *actual* emergencies, potentially including the need to comply with federal law.

not appropriate funds. That ends the inquiry. HB 1 is subject to the referendum power.

B. None of the Trial Court's Observations Justify Disregarding the Constitution's Plain and Unambiguous Text

The trial court did not apply the unambiguous text of Article III, Sections 49 and 52(a). Instead, it relied on several interpretive approaches to conclude redistricting bills are not subject to the referendum. Because the text is clear, that analysis was error.

1. ***Article III, Section 7(h) Does Not Apply to Congressional Redistricting***

The trial court concluded Article III, Section 7(h)—a provision that comes before, not “*hereinafter*” Section 49—applies to congressional redistricting. D63:P9-10; A9-10. That conclusion violates every rule on reading the Constitution. Section 7(h), by its plain language, does not apply to “acts of the general assembly.” It applies to a “redistricting plan.” One need only read the whole of Section 7 to understand that “redistricting plans” are created by a “bipartisan citizens commission.” Mo. Const. art. III, § 7(c).⁵

Only by reading Section 7(h) without its context and ignoring the meaning of “redistricting plan,” could this Court affirm this reasoning. A “constitutional provision should be considered as a whole.” *Luther*, 730 S.W.3d at 570. The plain

⁵ There is a parallel provision for state house districts. Mo. Const. art. III, § 3. It does not apply to congressional redistricting either.

language of the whole of Article III, Section 7 is the process for drawing state senate districts. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 393 (Mo. banc 2024) (“Article III, section 3 provides the parameters for redistricting the state house, and section 7 of article III incorporates the methods set forth in section 3 to redistricting the state senate.”). Each and every provision of Article III, Section 7—including Section 7(h)—addresses only state senate redistricting. This Court exhaustively explained that process in *Faatz*, 685 S.W.3d at 393-94.

Section 7 does not require, or even allow, an “act of the general assembly” to effectuate state senate redistricting—that’s the point; it took from the state legislature the option to draw their own districts and instead requires commission-created plans and maps. *See Mo. Const. art. III, § 7(d)*. That is fundamentally different from acts of the General Assembly drawing congressional districts under Section 45. Section 7(h)’s restriction on referendum of a redistricting plan cannot be exported to apply to redistricting legislation governed by Section 45.

The judgment acknowledges this at one point, but is internally inconsistent: it says “Article III, Section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting,” D63:P6; A6, yet applies Section 7(h)—clearly applicable only to state senate redistricting—to congressional redistricting. D63:P9-10; A9-10. If Section 45 is the only provision directly addressing congressional redistricting, then 7(h) cannot apply to it.

The absence of a similar referendum exemption in Section 45 is significant. That Section provides that “the general assembly shall by law divide the state into [congressional] districts.” Mo. Const. art. III, § 45. Had the Framers intended to exempt congressional redistricting from referendum—a right the people had reserved since 1908—they knew how to do so.

2. *There is No Clear Statement Requirement in Missouri*

Without finding the language ambiguous and notwithstanding this Court’s directive to use plain and ordinary language, the trial court resorted to principles of construction. It concluded that a “clear statement rule” applied in Missouri law. No such rule exists. The trial court’s statement that “the expectation of clarity is not novel in Missouri law,” D63:P7; A7, is true—but that clarity is found through plain and ordinary meaning, not a “clear-statement requirement.”

The trial court never found Article III, Sections 49 and 52(a) ambiguous, and no party identified any ambiguity. Even if there were some way to construe them as ambiguous, the asserted clear-statement rule is not the relevant interpretive canon.

Instead, this Court has long recognized the referendum power must be *liberally construed* to preserve the people’s reserved right. *Rekart*, 639 S.W.2d at 608; *Voss*, 418 S.W.2d at 167. If the plain language were ambiguous, that rule forecloses a construction that narrows the phrase “any act” based on an unenumerated exception drawn from federal case law discussing the limits on

Congress's power under a very different scheme of power distribution. The referendum provisions "should be liberally construed to permit rather than to restrict . . . the exercise of the right." *Voss*, 418 S.W.2d at 167.

The trial court cited *Luther* for the proposition that "deference due the General Assembly requires that doubt be resolved against nullifying its action." D63:P5; A5. But *Luther* was addressing whether the General Assembly could enact a mid-decade redistricting bill—not whether the people could subject such a bill to the referendum. The deference principle protects legislative *authority* from judicial overreach; it does not expand that authority at the expense of the people's reserved referendum power. If anything, the principle cuts the other way: the people reserved the referendum power over *all* legislation subject to narrow exceptions, and courts should not lightly infer that the General Assembly's enactment of a redistricting bill somehow nullifies that reservation.

The trial court also invoked *State v. Clay*, 481 S.W.3d 531, 537 (Mo. banc 2016), for the proposition that "doubt" must be resolved in favor of the General Assembly. D63:P8; A8. But *Clay* concerned the validity of legislative enactments—whether a statute is constitutional—not whether the people retain their reserved referendum power. The referendum does not "nullify" legislative action in that sense; it is a constitutionally prescribed mechanism through which the people exercise their own reserved legislative power. *Clay* does not override the rule that referendum rights are "liberally construed to make effective the

people's reservation of that power.” *MPIP v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990).

More fundamentally, there is no ambiguity requiring resort to any tie-breaking canon. The text, structure, and history of the Missouri Constitution all point in one direction: Sections 49 and 52(a) authorize referenda on *all* bills other than emergency legislation and appropriation bills. Canons of construction resolve doubt; they do not create ambiguity where none exists.

3. *The Absence of Historical Practice Does Not Negate a Constitutional Right*

The trial court relied on the alleged historical absence of successful redistricting referenda, observing that “no referendum petition directed at a congressional redistricting plan has ever reached the ballot” since 1945. D63:P10; A10. This does not account for the successful referendum effort in 1922. D39-40. It also does not account for the fact that mid-decade redistricting has never happened before either.

Regardless, the infrequent use of the referendum on congressional redistricting bills after 1945 merely reflects that Missourians use their referendum power judiciously—not that they understood it to exclude redistricting bills. There are many topics on which Missourians have not attempted referenda. The 1952 attempt was rejected only because the petition was untimely, not because the referendum power was unavailable. *See Toberman*, 250 S.W.2d at 705–06 (“[T]his does not mean that Senate Bill 267

was not subject to referendum prior to its effective date.”). The absence of successful referenda does not establish an unenumerated exception to the people’s expressly reserved power.

The trial court’s reasoning is also circular: concluding the absence of practice proves the right does not exist ignores that the absence could just as easily reflect that no other congressional redistricting after 1945 provoked sufficient opposition. Until now, Missouri has redistricted congressionally only following decennial censuses, with relatively little controversy. The 2025 mid-decade redistricting differs from that historical pattern, and it is therefore unsurprising that a new circumstance prompted an infrequently used response.

A properly applied liberal construction does not permit courts to extinguish a constitutional right based on limited use—non-use is not abandonment, and constitutional provisions do not lapse through desuetude. Section 49 reserves power over “any act of the general assembly,” not merely over acts that have previously been challenged.

4. *Chapter 116’s Procedural Limitations Cannot Negate a Constitutional Right*

The trial court’s reliance on statutory limitations in Chapter 116 was also erroneous. D63:P12; A12. The trial court assumed the legislature carefully considered the interplay between Chapter 116 and the referendum provisions of the Constitution. There is no evidence of that.

But even if it did, a statute cannot limit or abrogate a constitutional right. This Court was clear that Chapter 116 is subordinate to the Constitution in *Maggard*, 733 S.W.3d at 419. And this Court has made clear statutory provisions that “interfere with and impede” the exercise of the referendum right are invalid. *No Bans on Choice*, 638 S.W.3d at 489.

The trial court’s concern that Chapter 116 (enacted in the 1980s) limits ballot summaries to 100 words and provides no mechanism for “visual aids” proves nothing about what the Framers intended the referendum power to cover in 1945. As to this very measure (HB 1), the Secretary certified a ballot title (approved by the Attorney General) that did not include visual aids or any of the other things they both now argue are needed to make the title fair. Yet the Secretary, represented by the Attorney General, defended that ballot title as fair and sufficient. The Court of Appeals disagreed and wrote a title which is fair and sufficient as a matter of law. *People Not Politicians v. Hoskins*, 736 S.W.3d 518 (Mo. App. 2026).⁶

⁶ Initially, the Secretary “contested all of the Proponents’ challenges to the fairness of the summary statement” the Secretary had written. *Id.* at 523. At that stage, the Secretary maintained that he had three tries to rewrite a ballot title, but this Court invalidated the statute containing that process. *Nicholson v. State*, 731 S.W.3d 871 (Mo. banc 2026). “Within five days of the *Nicholson* decision, the Secretary” filed an amended answer which “now admitted that [certain phrases in the original statement he had written and initially defended] were argumentative and likely to prejudice voters in favor of the new congressional districts.” *Id.* at 524. But he *never* raised issues about length and visual aids he now brings to this Court. In fact, when the Circuit Court in that case rewrote the statement, the Secretary defended it on appeal as fair and sufficient. The Secretary’s current position is inconsistent with that prior defense.

In all events, if the Secretary thinks this statutory framework is inadequate, his remedy is legislative—the General Assembly cannot define away a constitutional right. “[C]ourts aren’t free to rewrite clear [provisions] under the banner of [their] own policy concerns. If the government doesn’t like [the legislature’s] policy choices, it must take its complaints there.” *Azar v. Allina Health Servs.*, 587 U.S. 566, 581 (2019); see also *Lamie v. U.S. Tr.*, 540 U.S. 526, 542 (2004) (“It is beyond our province to rescue [the legislature] from its drafting errors, and to provide for what we might think . . . is the preferred result.” (cleaned up)).

The trial court’s concern with certification deadlines under Section 116.150.3 was also misplaced. The issue is not the statute’s outer limit but the Secretary’s intentional delay in issuing his certification. As the federal court observed in December 2025, “it is hard to imagine that completing th[e] constitutional assessment will impose any measurable burden given that the State has completed an exhaustive analysis in briefing this case.” D30:P8. The Secretary’s use of the timing provisions in Chapter 116 cannot remove congressional redistricting from the referendum power.

5. *The Repudiation of Gordon Confirms Only the State-Redistricting Exemption*

The trial court similarly drew an unwarranted inference from the Constitutional Convention’s response to *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932). The Convention’s insertion of Section 7(h)—and the

similar provision in Section 3—shows that when the Framers wanted to exempt redistricting from referendum, they did so explicitly and limited it to *state* redistricting. Because the referendum had been successfully used on a congressional redistricting bill in 1922, the Framers were aware it might happen again—yet they did not address that possibility. It is not for the courts to second-guess that choice.

The trial court read the Convention’s action as reflecting “distrust of referenda in the redistricting sphere.” D63:P11-12; A11-12. But that is not what the Framers did. They could have written: “No redistricting plan, whether state or congressional, shall be subject to the referendum.” Instead, they wrote targeted exemptions placed exclusively within the state-redistricting provisions. The absence of comparable language in Section 45 is decisive. If we need to consider anything other than the plain language of each section, the principle of *expressio unius* applies: the express exemption of state redistricting, coupled with the conspicuous absence of any exemption for congressional redistricting, demonstrates the Framers drew the line exactly where they intended.

The historical evidence confirms the Framers’ concerns were specific to the commission-based state-redistricting process they were creating—not to redistricting generally. They exempted from the referendum a process they were simultaneously removing from legislative control. Congressional redistricting, by contrast, remained with the General Assembly and remained subject to the full

suite of popular checks, including the referendum. The Convention's response to *Gordon* therefore confirms only the state-redistricting exemption.

II. The Trial Court Erred in Refusing to Reverse the Secretary’s Determination that the Referendum Petition is Insufficient Based on Federal “Clear Statement” Requirements Because No Such Requirement Applies to State Constitutional Referendum Provisions and the Missouri Constitution is Clear, in that the Missouri Constitution subjects “any act of the general assembly” to the referendum and HB 1 is an Act of the General Assembly

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by alleging that the referendum complied with the U.S. Constitution in his Petition, D2:P7-8, and explaining the non-existence of a “clear statement” rule in his trial brief, D62:P11-15.

* * *

The trial court also refused to deem the referendum sufficient because “federal law independently confirms that Missouri has not ousted the General Assembly’s redistricting authority.” D63:P14-22; A14-22. It appeared to use federal law as an interpretive aid—construing Missouri law to avoid an unconstitutional interpretation, but without finding any ambiguity. It reasoned the Elections Clause requires state constitutions to contain a “clear statement” subjecting redistricting bills to the referendum. That conclusion is not supported

by law and reverses the direction of the relevant doctrine. Even if such a rule existed, Article III of the Missouri Constitution could hardly be clearer.

A. The Elections Clause Permits States to Subject to Redistricting Bills to the Referendum

The trial court's conclusion rests on the proposition that the Elections Clause requires a clear statement in the Missouri Constitution. The trial court *also* concluded the Elections Clause renders Article III, Section 52(b) unconstitutional as applied to redistricting bills. D63:P23-26; A23-26. That latter conclusion is addressed in the following Point.

The Supreme Court has repeatedly held—for more than 100 years—that the Elections Clause does not prohibit a state from subjecting its legislature's redistricting bills to the referendum. *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916); *Hawke v. Smith*, 253 U.S. 221, 230 (1920); *Smiley v. Holm*, 285 U.S. 355 (1932); *Moore v. Harper*, 600 U.S. 1, 23-27 (2023). These authorities are discussed more fully in Point III; none imposes a clear-statement requirement on a state constitution.

Davis considered Ohioans' rejection of a redistricting bill after subjecting it to their constitutional referendum provision. 241 U.S. at 566. The Court held the resulting Elections Clause challenge was “plainly without substance.” *Id.* at 569. The trial court tried to distinguish *Davis* by asserting that the Supreme Court said Ohio law “conclusively made it clear that . . . the referendum constituted a part of the state Constitution and laws applicable to congressional redistricting.” But this

misreads the opinion. The Court noted only that the Ohio Supreme Court's interpretation of the Ohio Constitution was conclusive. 241 U.S. at 567–68. This Court will likewise determine the meaning of the Missouri Constitution. The Elections Clause does not require a separate statement specifically addressing congressional redistricting.

The trial court acknowledged the relevant provision of the Ohio Constitution applied broadly to “any law, section of any law or an item in any law . . . passed by the General Assembly.” D63:P20 (¶ 96).⁷ That language is functionally identical to the language in Article III, § 49 (adopted roughly 30 years after *Davis* was decided).⁸ If that language was sufficiently clear to validly subject redistricting bills to the referendum power, the language in Article III, § 49 undoubtedly is as well.

B. No Case Has Ever Held that a State Must Specifically Mention Redistricting in its Referendum Provisions

The trial court discussed various instances in which the Supreme Court has “deploy[ed] an array of clear statement rules” to *Congress*. D63:P15-18; A15-18.

⁷ *Smiley*, which reaffirmed *Davis*, again noted the Ohio referendum provision covered “any law enacted by the general assembly.” 285 U.S. at 371.

⁸ Thus, the Framers must be presumed to have been aware of *Davis*'s holding. See, e.g., *State v. Onyejiaka*, 671 S.W.3d 796, 800 n.6 (Mo. banc 2023). They would also have been aware of this Court's decision in *State ex rel. Carroll v. Becker*, 45 S.W.2d 533 (Mo. banc 1932), which approvingly discussed *Davis*'s holding.

But notably absent from that survey—or any of the Secretary or Intervenors’ briefing—is *any* case applying such a rule to the states.

Where the Supreme Court has deployed a clear-statement rule, it has been to prevent *Congress* from intruding on traditional state authority. *See Bond v. United States*, 572 U.S. 844, 858 (2014); *Sackett v. EPA*, 598 U.S. 651, 680 (2023). That is consistent with how federalism works. When the United States Constitution does not give Congress a power (or deny it to the States *specifically*), those powers are “reserved to the States respectively *or to the people*.” U.S. Const. amend. X (emphasis added). The argument that federal law requires a clear statement to deprive the people of their referendum right is inconsistent with that allocation of authority. It is *federal* law that must clearly state any intention to deprive the people of the referendum. No such provision exists.

The trial court’s extensive catalog of federal clear-statement rules—requiring clarity before Congress delegates major questions to agencies, applies statutes extraterritorially, repeals jurisdiction, or abrogates sovereign immunity—does not address state constitutional referendum provisions. Those rules concern statutory construction of congressional enactments; the Missouri Constitution is not a federal statute, and no clear-statement rule governs its interpretation.

The only case the trial court (and the Secretary and Intervenors) cite for the proposition *state* law must contain a clear statement to subject redistricting bills to the referendum power is *United States v. Gradwell*, 243 U.S. 476 (1917).

That case is irrelevant. It had nothing to do with redistricting. And it confirms that electing congressional representatives is a matter left to the states.

Gradwell involved indictments charging conspiracies to defraud the United States by bribing voters during a congressional election. *Id.* Trial courts dismissed the indictments for failure to state a federal crime. *Id.* at 479. The issue was the scope of (i) Congress's power over state elections and (ii) the particular statute in question. The Court explained: "it has been [Congress's] policy to leave such regulations almost entirely to the states, whose representatives Congressmen are." *Id.* at 482. The Court noted that Congress had historically left control over congressional elections to the states, and when it deviated from that policy, it did so clearly and unmistakably. The Court refused to read a revenue law to criminalize election activity:

With it thus clearly established that the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870, it would be a strained and unreasonable construction to apply to such elections this § 37, originally a law for the protection of the revenue

Id. at 485.

Gradwell does not support the notion that drafters of state constitutions must use magic language to subject redistricting bills to the referendum. It stands for the proposition that the U.S. Government must use clear language to prevent

such regulation by the states.⁹ And there has been no argument Congress has done so. *Cf. Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991) (if Congress meant to interfere in Missouri's decision to require its judges to retire at 70, it must do so with "a plain statement that judges are excluded [from the ADEA]"). As the Supreme Court explained in *Davis*, Congress has explicitly recognized the referendum to be part of state legislative power when it comes to redistricting. 241 U.S. at 568. It remains true that "[a] state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to enactment of laws." *Moore*, 600 U.S. at 26. Those include the Governor's veto power and the right to a referendum.

C. The Missouri Constitution Is More Than Clear

Even if there *were* a "clear statement" requirement relevant to how Missourians govern themselves and elect their congressional representatives, Article III satisfies it.

As discussed in Point I, Article III, Section 49 subjects *all* acts of the General Assembly to the referendum, except as otherwise provided in the Constitution. The text is clear: the referendum applies to everything other than

⁹ The two federal district court cases cited, D63:P19 (¶ 91); A19, make this unmistakably clear. *See United States v. Caldwell*, 2026 WL 2186515, at *3 (D.N.J. July 29, 2026) ("In practice, the [Elections] Clause functions as a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices. If it decides to do so, Congress exerts its preemptory authority through positive and clear statutes."); *United States v. Oregon*, 828 F. Supp. 3d 1092, 1095-96 (D. Or. 2026) (similar).

the categories the people excluded. That was emergency legislation and appropriations bills. Mo. Const. art. III, § 52(a). The people knew how to exclude categories of bills from the referendum power. They did not exclude redistricting bills. The judgment cannot be upheld on the basis of a “clear statement” requirement.

III. The Trial Court Erred in Holding the Elections Clause Invalidates Article III, Section 52(b) as Applied to Congressional Redistricting Because the Elections Clause Does Not Prohibit States from Subjecting Redistricting to the Referendum, in that the United States Supreme Court Has Repeatedly Held the Elections Clause Permits Referenda on Congressional Redistricting Bills

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by alleging that the referendum complied with the U.S. Constitution in his Petition, D2:P7-8, and explaining why the Elections Clause does not prohibit applying the referendum power to redistricting bills in his trial brief, D62:P11-15, 19.

* * *

Venturing beyond whether the referendum petition complied with the Missouri Constitution and Chapter 116 (*see* §§ 116.120.1, RSMo, 116.150.1, RSMo), the trial court engaged in constitutional avoidance, claiming that reading Article III, Sections 49 and 52(b) according to their plain language would violate the Elections and Guarantee Clauses. D63:P23-26; A23-26. This was improper. The Secretary did not claim to base his insufficiency determination on the federal constitution. And although he can review for compliance with the Missouri Constitution, the Court of Appeals has held the Secretary cannot deem a

referendum insufficient on federal constitutional grounds. *Missouri Elec. Coops. v. Kander*, 497 S.W.3d 905, 920 (Mo. App. 2016). Finally, where “there is no ambiguity in the challenged provision, this Court cannot ‘avoid’ the constitutional question; rather, the Court must face it head-on.” *State v. League of Women Voters of Missouri*, 730 S.W.3d 591, 603–04 (Mo. banc 2026).

There is no constitutional conflict to avoid. The Elections and Guarantee Clauses do not prevent states from applying the referendum to redistricting bills. The Supreme Court has repeatedly rejected these contentions. Plaintiff addresses the Elections Clause in this Point and the Guarantee Clause in the following.

A. The Elections Clause Allows Referenda on Redistricting Bills

Because the trial court’s conclusion would invalidate one of the most cherished provisions in the Missouri Constitution—used by citizens to keep their representatives in check for more than a century—it is best to start with what the Supreme Court has actually said. The judgment gave limited attention to those cases, which reject Elections Clause challenges to referenda on redistricting bills.

This line of authority began with *Davis*. It involved an Elections Clause challenge to Ohio’s use of the referendum power to reject a redistricting bill. The Supreme Court easily dispensed with that challenge:

To the extent that the contention urges that to include the referendum within state legislative power for the purpose of apportionment is repugnant to § 4 of article 1 of the Constitution and hence void . . . we again think the contention is plainly without substance

241 U.S. at 569.

The Court explained the Ohio constitution made the referendum “part of the legislative power of the state,” and Congress had done nothing to prohibit its use in redistricting. *Id.* at 567-68. Congress had recognized that where state law treats the referendum as part of legislative power, “the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts.” *Id.* at 568. That remains the law. 2 U.S.C. § 2a(c); *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 804-13 (2015).

The Supreme Court has repeatedly confirmed *Davis*’s validity. In *Hawke v. Smith*, 253 U.S. 221 (1920), while explaining why ratification of constitutional amendments was *not* subject to referendum, the Court expressly distinguished *Davis* and confirmed “the referendum provision of [a] state Constitution, when applied to a law redistricting the state with a view to representation in Congress, [i]s not unconstitutional.” *Id.* at 230-31.

In *Smiley v. Holm*, 285 U.S. 355 (1932), the Court rejected an Elections Clause challenge to gubernatorial veto of a redistricting bill, reaffirming *Davis*: “[T]here is nothing in article 1, s 4, which precludes a state from providing that legislative action in districting the state for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power.” *Id.* at 372-73.

Nothing has changed. The Supreme Court exhaustively reviewed this line of authority in *Moore v. Harper*, 600 U.S. at 23-30, and reaffirmed: “The

reasoning we unanimously embraced in *Smiley* commands our continued respect: A state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to the enactment of laws.” *Id.* at 26. This is because “[l]egislatures, the Framers recognized, are the mere creatures of the State Constitution, and cannot be greater than their creators.” *Id.* at 27. The Elections Clause arguments advanced by the Secretary and Intervenors lack any support.

B. Suspension of Laws Is a Basic Feature of the Referendum Power

The Secretary and Intervenors acknowledge that *Davis* and its progeny permit referenda on redistricting bills. They therefore contend that the problem with Article III, Section 52(b) is not that it allows voters to reject a redistricting bill, but that it *suspends* the bill until voters have their say. D60:P40; D61:P20-21. This ignores the plain meaning of “referendum.” Suspension of a referred bill is, and has always been, a fundamental feature of the referendum power.

A referendum is not advisory; it is the people’s right to decide whether the measure becomes law. Referenda apply only to proposals where there is some level of desire by the people to review them. In Missouri, that is the submission of signatures. That submission means the act is “referred to the people” and it “shall take effect when approved by a majority of the votes cast thereon, and not otherwise.” Mo. Const. art. III, § 52(b); *see also Maggard*, 733 S.W.3d at 420 (“If the December 9 referendum petition filing is ultimately determined to be sufficient . . . HB 1 did not take effect on December 11 [2025].”).

The Supreme Court is well aware of this. *Davis* explained this very feature:

By an amendment to the Constitution of Ohio, adopted September 3d, 1912, the legislative power was expressly declared to be vested not only in the senate and house of representatives of the state, constituting the general assembly, but in the people, in whom a right was reserved by way of referendum to approve or disapprove by popular vote any law enacted by the general assembly. And by other constitutional provisions the machinery to carry out the referendum was created. Briefly they were this: Within a certain time after the enactment of a law by the senate and house of representatives, and its approval by the governor, upon petition of 6 per centum of the voters, the question of *whether the law should become operative was to be submitted to a vote of the people, and, if approved, the law should be operative; and, if not approved, it should have no effect whatever.*

241 U.S. at 566 (emphasis added). When the Supreme Court reaffirmed *Davis* in *Moore*, it remained aware of these features. See *John Doe No. 1 v. Reed*, 561 U.S. 186, 219-22 (2010) (Scalia, J., concurring) (discussing the suspension feature of referendum power).

This is how the referendum works: “[Its p]urpose is to suspend or annul a law which has not gone into effect and . . . require [voters’] approval before it become operative as a law.” *Toberman*, 250 S.W.2d at 706. This feature is not unique to Missouri; suspension is inherent in the referendum power. See, e.g., *Assembly of State of Cal. v. Deukmejian*, 639 P.2d 939 (Cal. 1982); *State Nat. Bank v. Bd. of Councilmen of City of Frankfort*, 269 S.W. 726 (Ky.

1925); *Bernstein Bros.*, 661 P.2d 537. A referendum is “the process of referring a state legislative act . . . to the people for final approval.” Black’s Law Dictionary.

No authority supports the Elections Clause argument the Secretary and Intervenor advance; it has been repeatedly rejected. The trial court's judgment does not accurately apply precedent. For example, it cites *Moore* for the proposition that "state law may not be wielded to 'arrogate' the 'power vested in state legislatures to regulate federal elections.'"

But *Moore* actually held: "We hold *only* that state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures." 600 U.S. at 29 (emphasis added). That statement concerned the bounds of judicial review, not the referendum power. Similarly, the judgment cites *Davis* for the proposition that the "Elections Clause forbids any arrangement that would so thoroughly 'annihilate' the General Assembly's redistricting authority"—but that word appears in the Court's description of the losing party's Guarantee Clause argument, which the Court *rejected*. 241 U.S. at 569. The cited passage therefore does not establish the proposition attributed to it.

Stripped of paper-thin legal dressing, the Secretary and Intervenor's contention is simply that they do not like the *consequences* of applying the referendum to redistricting bills, so *it must* be illegal. "Gone here is any pretense of [constitutional] interpretation; all that's left is a suggestion [the Court] should proceed without the law's guidance to do as [it] think[s] best. But that's an invitation no court should ever take up." *Bostock v. Clayton Cnty., Ga.*, 590 U.S.

644, 680 (2020). The referendum petition is sufficient, and Article III, Section 52(b) provides that HB 1 is suspended.

IV. The Trial Court Erred in Holding the Guarantee Clause Invalidates Article III, Section 52(b) as Applied to Congressional Redistricting Because the Guarantee Clause Does Not Preclude Direct Democracy Mechanisms Such as Referenda, in that Congress has not Precluded it or Made a Determination About Missouri's Form of Government

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by alleging that the referendum complied with the U.S. Constitution in his Petition, D2:P7-8, and explaining why the Guarantee Clause does not prohibit applying the referendum power to redistricting bills in his trial brief, D62:P20-21.

* * *

The trial court's alternative conclusion that the Guarantee Clause invalidates Section 52(b) is also unsupported by the governing authorities. D63:P24-26; A24-26. Its reasoning relies on general statements about a "republican form of government" and unsupported assertions—including that "[t]he 'immediate suspension' of HB 1 would leave Missouri with no congressional map whatsoever for the imminent general election." D63:P25 (¶ 121); A25. That assertion is inconsistent with *Maggard*: if the referendum petition is sufficient, HB 1 was suspended on December 9, 2025, and did not take

effect, leaving the 2022 congressional districts in effect. *Maggard*, 733 S.W.3d at 420; see §§ 128.461-128.469, RSMo.

A. Guarantee Clause Arguments Are Non-Justiciable

The Guarantee Clause provides: “The United States shall guarantee to every State in this Union a Republican Form of Government.” U.S. Const. art. IV, § 4. *Davis* is a useful starting point. There, the Supreme Court rejected a Guarantee Clause challenge to subjecting a redistricting bill to the referendum power:

[That contention] must rest upon the assumption that to include the referendum in the scope of the legislative power is to introduce a virus which destroys that power, which in effect annihilates representative government, and causes a state where such condition exists to be not republican in form, in violation of the guaranty of the Constitution. Const. § 4, art. 4. But the proposition and the argument disregard the settled rule that the question of whether that guaranty of the Constitution has been disregarded presents no justiciable controversy, but involves the exercise by Congress of the authority vested in it by the Constitution.

241 U.S. at 569.

The Attorney General states that “[t]here is no mystery about what is a ‘Republican Form of Government.’” D27:P9; A45. As discussed below, the Supreme Court disagrees. Its decisions also recognize that this question is not one state election administrators or this Court can decide. The Supreme Court held over 100 years ago that what constitutes a “republican form of government” is a question left to Congress. *Davis* is one of several cases to so hold. See *Luther*

v. Borden, 48 U.S. 1, 42 (1849); *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 151 (1912); *Baker v. Carr*, 369 U.S. 186, 224 (1962). The Fifth Circuit has characterized Guarantee Clause arguments as “not only incorrect, [but] absurd,” in part because they are nonjusticiable. *Deer Park Indep. Sch. Dist. v. Harris Cnty. Appraisal Dist.*, 132 F.3d 1095, 1099 (5th Cir. 1998).

B. The Secretary’s Decision Remains Subject to Judicial Review

The judgment acknowledges this. D63:P24-25 (¶ 117); A24-25. But it reaches an incorrect conclusion, reasoning that because such issues are nonjusticiable, the Secretary’s decision to reject the referendum on this basis is unreviewable in a court of law. That is wrong.

Under this theory, the Secretary could reject *any* referendum or initiative petition by claiming it would eliminate a republican form of government—and the courts would be powerless to intervene. This is not academic: these Guarantee Clause arguments cannot be logically limited to redistricting. If having citizens refer legislation for approval causes Missouri to stop being a republic, then there can be *no* referenda or initiatives, on anything.

The theory that the Secretary has unreviewable power to deny the people a vote fails for several reasons. First, the Constitution says “the *United States* shall guarantee.” U.S. Const. art. IV, § 4. That means *Congress*—not the Missouri Secretary of State—decides what causes a state to cease being a republic. *Luther*, 48 U.S. at 42. If referendum and initiative powers were incompatible with republican government, Congress would presumably have acted against the 20+

states that have them—particularly given the Supreme Court’s holdings in *Davis* and its progeny.

Second, the Secretary’s role is limited. The Missouri Constitution gives him no role in the referendum process other than receiving petitions and signatures; his role is purely statutory and administrative. *Ketcham v. Blunt*, 847 S.W.2d 824, 830 (Mo. App. 1992). “[I]t is the courts who are charged with the ultimate judicial determination as to whether, under the Constitution and laws, the petition is sufficient or insufficient for the ballot.” *Id.*

Third, the statutes define the scope of the Secretary’s review authority: he examines whether the petition “complies with the Constitution of Missouri and with this chapter.” § 116.120.1, RSMo. This is limited to review for compliance with Missouri’s constitutional requirements—not a judicial-style analysis of whether the measure, if enacted, would violate federal law. *See Missouri Elec. Coops.*, 497 S.W.3d at 920 (“The sufficiency determination the Secretary of State is required to conduct plainly does not include whether an initiative petition complies with the *Federal* Constitution.”).

Regardless, Section 116.200 authorizes any citizen to bring suit challenging the Secretary’s sufficiency determination. At that point, courts conduct *de novo* review to “decide[] [whether] the petition is sufficient.” § 116.200.2, RSMo; *Ketcham*, 847 S.W.2d at 830. This is a matter of “original evidence.” *Id.* The question for this Court is simply whether the referendum petition is sufficient. The Secretary and Intervenors’ Guarantee Clause arguments are nonjusticiable.

C. Even If This Issue Were Justiciable, There Is No Basis to Conclude Subjecting Redistricting Bills—or Any Other Bills—to the Referendum Power Destroys the Republican Form of Government

Neither the Secretary, Intervenor, nor the judgment offers any convincing explanation of how subjecting redistricting bills to the referendum is inconsistent with republican government. The judgment recites that such government’s key feature “is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies.” D63:P23; A23. All of that remains true in Missouri—and has been for the more than 100 years the referendum power has existed. If the referendum is sufficient, Missouri will use the 2022 congressional districts, which were *enacted by the General Assembly*.

The Supreme Court’s precedents do not treat the question of what constitutes a “Republican Form of Government” as self-evident. “No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated.” *Minor v. Happersett*, 88 U.S. 162, 175 (1874). Neither the Secretary nor Intervenor identify a *single* case in which a court has invalidated *anything* under the Guarantee Clause.

Ultimately, their argument is that a “small minority” of voters can suspend a law. That feature was also present in *Davis*, and was approved by the United States Supreme Court. 241 U.S. at 566. Accordingly, it offers no basis to depart from *Davis*’s conclusion. The trial court’s observation that “HB 1 passed

overwhelmingly in both chambers of the General Assembly” does not address whether a majority of Missourians approve of what the General Assembly is attempting. D63:P24; A24. Indeed, voters just rejected two key legislative proposals that also enjoyed broad support in the General Assembly by *overwhelming* margins in every single county.¹⁰ Article III, Section 52(b) is not unconstitutional.

¹⁰ See <https://www.kansascity.com/news/politics-government/election/article316780169.html> (last visited Aug. 20, 2026).

V. The Trial Court Erred in Considering Whether Federal Law Would Require a New Primary Election Because that Issue Exceeds the Scope of this Action, in that This Case is an Action for Judicial Review Under Section 116.200, Which is Limited to Consideration of the Secretary's Sufficiency Determination Under Section 116.150

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this argument by seeking judicial review under Section 116.200, D2:P1, and arguing the Secretary was not permitted to review anything other than the referendum's compliance with the Missouri Constitution and Chapter 116, D62:P17-18.

* * *

Points I-IV of this brief address the reasons the Secretary and Intervenor contend the referendum petition is insufficient. Those contentions are foreclosed by controlling precedent from this Court and the United States Supreme Court. The referendum petition is sufficient. That should be the end of this matter.

But the trial court *also* addressed issues beyond the sufficiency dispute, including underdeveloped theories about the consequences of conducting the general election under the lawful 2022 districts rather than the HB 1 districts used for the primary. That was error.

Consequences of sufficiency are not grounds for a finding of *insufficiency*. “[C]onsequentialists urge that [laws] should be construed to produce sensible, desirable results, since that is surely what the legislature intended. But it is precisely because people will differ over what is sensible and what is desirable that we . . . expect court to observe what has been written.” Antonin Scalia & Bryan A. Garner, *Reading Law*, at 22 (2012). That the Constitution suspends HB 1 upon submission of a sufficient petition may create administrative inconvenience or electoral complications. But that does not make the referendum petition any less sufficient or the consequences flowing from sufficiency any less mandatory. The law does not permit the Secretary to deny the people their constitutional right to suspend a law and vote on a referendum simply because honoring that right proves awkward.

Nor does the statute allow those considerations. The scope of a Section 116.200 action is narrow and concerns sufficiency. The Secretary and Intervenor’s arguments about general-election consequences do not address whether this referendum petition satisfies constitutional and statutory requirements—which it does. Plaintiff did request an injunction ordering the Secretary to cease using HB 1. D2:P8. That injunction is a consequence mandated by Article III, Section 52(b). *Maggard*, 733 S.W.3d at 420. Because the referendum is sufficient, HB 1 did not take effect. *Id.* The Secretary may not use a measure that did not take effect to conduct State business. That is contrary to the rule of law.

Although *Maggard* explained that HB 1 might have been suspended as of December 2025, the Secretary chose not to determine sufficiency and instead instructed election officials to use the HB 1 districts. But Plaintiff raised no claim about the primary elections and did not ask for a ruling prescribing how to conduct the general election. *See generally* D2. Nor did he need one. The general election must be conducted using actual law, not a proposed law that never became effective. That means using districts the General Assembly approved in 2022, not the HB 1 districts. The consequences of the Secretary's decision to use districts that were not in effect for the primary are addressed through established procedures, as explained in Point VII; they are not part of the sufficiency determination and do not justify refusing to order certification.

“The judiciary’s authority to determine pre-election challenges to [] ballot measures is extremely limited. Before the people vote on an initiative, courts may consider only those threshold issues that affect the integrity of the election itself, and that are so clear as to constitute a matter of form.” *Sweeney v. Ashcroft*, 652 S.W.3d 711, 720 (Mo. App. 2022) (cleaned up). The courts’ duty is limited to determining “whether the constitutional requirements and limits of power, as expressed in the provisions relating to the procedure and form of [referenda], have been regarded.” *Id.* (cleaned up).

This holds true in a Section 116.200 action. “It is that the [] petition is *sufficient* or *insufficient* that the secretary of state certifies, and it is that ultimate question that the court adjudicates.” *Ketcham*, 847 S.W.2d at 831. Anything else

“is quite beside the point. If . . . the [petition] is sufficient, [] the people have the right to put the proposition on the ballot.” *Id.* at 831. “The pre-election judicial review authorized by this section must necessarily be tailored, therefore, to the Secretary of State’s sufficiency determination, a subject addressed by section 116.120.1.” *Mo. Elec. Coops.*, 497 S.W.3d at 920.

Even in those limited instances where some level of inquiry into constitutionality is permitted, courts “will not look behind the face of the petition to determine its constitutionality prior to its being voted on by the electorate.” *Id.* at 912 (quoting *Union Elec. Co. v. Kirkpatrick*, 678 S.W.2d 402, 405 (Mo. banc 1984)). Such inquiry may be undertaken only “to the extent necessary to determine whether constitutional and statutory requirements pertaining to the form of the petition have been satisfied.” *Id.* (cleaned up).

The Secretary and Intervenors’ arguments about how a sufficiency determination may affect the general election are not matters of sufficiency, form, or apparent from the “face of the petition.” The inquiry is whether the petition complies with constitutional and statutory requirements—not whether enforcing the people’s constitutional right to vote on a referendum will be administratively convenient. The election consequences are addressed through the procedures discussed in Point VII and provide no basis to deny the petition’s sufficiency.

Furthermore, Chapter 116 is not the proper vehicle for addressing the validity of elections. “In contrast to a *pre-election* challenge under [Chapter 116],

chapter 115 allows registered voters to contest the result of *any* election on *any* question *after* an election has been held.” *Dotson v. Kander*, 464 S.W.3d 190, 194 (Mo. banc 2015) (cleaned up; citing § 115.553.2, RSMo). Such actions deal with “irregularities,” and “ensure that the results of each election are valid.” *Id.* Violation of election laws—which would surely include failure to use the legally operative districts—constitutes an irregularity. *Id.* Appeals in such actions come straight to this Court. *Lucas v. Ashcroft*, 688 S.W.3d 204, 213 (Mo. banc 2024). Under Section 115.557, anyone may bring such action within 30 days of the official announcement of election results. *Id.* at 233 (Gooch, J., concurring in part and dissenting in part).

All of this illustrates that it was error for the trial court to refuse to overturn the Secretary’s *sufficiency* determination based on alleged consequences for the primary elections and nominees for the general election. On that basis, the Court should reverse.

VI. The Trial Court Erred in Concluding that Reversal Would Require a New Primary Election Because No Federal Law Requires Missouri Hold a New Primary Election if House Bill 1 is Suspended in that the Authorities Cited in the Judgment Below Do Not Require a New Primary

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by explaining in his trial brief that if the referendum petition is found sufficient, a new primary election is not necessary. D62:P31-34.

* * *

The trial court's primary-election analysis was unnecessary. Plaintiff never asked for a new primary election or claimed reversal of the Secretary's certification decision would require one. *See generally* D2. Plaintiff sought reversal of the Secretary's insufficiency determination and, under *Maggard*, an order restraining the Secretary from taking further steps to implement HB 1. D2:P6-8. The trial court nonetheless addressed whether federal law would require a new primary to use the 2022 districts—and reached incorrect conclusions.

The judgment erroneously concluded a new primary was necessary because: (1) using the 2022 districts for the general election without running a new primary would violate Article I, Section 2; (2) the Equal Protection Clause

bars of different districts in the general election than in the primary; and (3) UOCAVA would require a new primary. None of these conclusions has any basis in law. D63:P26-30; A26-30.

A. Using the 2022 Districts for the General Election Would Not Violate Article I, Section 2

The trial court cited *United States v. Classic*, 313 U.S. 299, 318 (1941), for the proposition that where state law makes “the primary an integral part of the procedure of choice,” then “the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Article I, § 2.” D63:P27; A27. True. But every Missourian who voted in the August 4 primaries *had their votes counted*. Those votes produced a slate of nominees who—absent disqualification as discussed in Point VII—will compete in November. *Classic* merely held that it was a federal crime for election commissioners to “willfully alter[] and falsely count[] and certif[y]” ballots during a primary. *Id.* at 307. It said nothing about altering districts after a primary.

The trial court nonetheless concluded restraining the Secretary from using the HB 1 districts for the general election would “violate[] the right of Missouri voters to have their ballot counted.” D63:P28 (¶ 139); A28. It reasoned that relief would “ignore” primary votes, “stripping the *nominees* of the mandate their voters conferred.” *Id.*¹¹ This reasoning conflates concern for voters with concern

¹¹ The judgment makes refers to “[m]ore than 1.2 million Missourians” voting in the primaries. D63:P28 (¶ 139); A28. There is no evidence in the record, and the

for candidates—and does not explain how using the lawful 2022 districts would cause ballots to go uncounted. Votes were counted. Nominees were chosen.

The judgment also invokes *Smith v. Allwright*, 321 U.S. 649 (1944). D63:P28; A28. But *Allwright* stands for the unremarkable proposition that states cannot bar voters from casting primary ballots on the basis of race. *Id.* at 661-62. It does not prohibit using different districts at the general election than were used at the primary. In sum, none of the cases cited by the trial court addressed whether different districts can be used for the general election than were used in the primary—let alone held that this would violate Article I, Section 2.

Reading Article I, Section 2 this way would produce absurd results, which courts should not do. *State ex rel. Dep't of Health & Senior Servs. v. Slusher*, 638 S.W.3d 496, 500 (Mo. banc 2022). It would mean courts could not remedy even the most blatant violations of law after a primary has occurred, even where the law provides otherwise. It would reward and incentivize a late certification decision by treating the courts as unable to act. Article I, Section 2 does not mandate such a result.

trial court made no findings, as to how many people who voted in the primaries would cast a vote in a *different* congressional district in the general if the 2022 districts are used.

B. The Equal Protection Clause Does Not Bar Use of Different Districts
in the General Election

The trial court also reasoned that requiring the general election to be conducted under different districts than the primary would violate the Equal Protection Clause. D63:P29-30; A29-30. This conclusion rested entirely on a single case: *Gray v. Sanders*, 372 U.S. 368 (1963). D60:P54-56; D61:P24-25. That conclusion, too, was wrong.

Gray involved Georgia’s “county unit” system for tabulating primary votes for statewide offices. *Id.* at 370. That system—resembling nothing in Missouri law—awarded votes based on the number of representatives to which each county a candidate won was entitled. *Id.* at 371. The plaintiff alleged rural counties impermissibly received massively disproportionate voting power compared to urban counties. *Id.* The Court agreed: “[O]nce the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.” *Id.* at 381. This was a one-person-one-vote case.

The trial court did not explain how using different, lawful, districts in the general election than were used in the primary would violate this principle. Neither the Secretary nor Intervenors claim that either the HB 1 districts or the 2022 districts accord one class of persons more voting power than another. *Gray* demands “equal weight among voters within a designated unit”; it does not speak to whether a designated unit may be lawfully *changed* between elections.

The trial court also reasoned that “hundreds of thousands of Missourians” would be required to vote in a different district than where they cast their primary ballots, and that such voters “would possess materially less voting power” than those who remained. D63:P29 (¶ 145); A29. But the parties did not stipulate to these facts, and the record contains no evidence supporting them. This Court owes no deference to factual assertions included in Intervenor’s proposed judgment without support in the record. *Orthotic & Prosthetic Lab, Inc. v. Pott*, 851 S.W.2d 633, 639 (Mo. App. 1993); see also *Prosecuting Att’y, 21st Jud. Cir., ex rel. Williams v. State*, 696 S.W.3d 853, 862 (Mo. banc 2024). The Secretary and Intervenor offered no evidence about who voted in the primary, how many people would move districts, or whether *any* primary result would have differed.

C. UOCAVA Does Not Require a New Primary Election

Finally, the trial court concluded—without explanation—that UOCAVA would preclude Missouri from holding a new primary election if HB 1 is suspended. That reasoning rests on two incorrect premises: it assumes a new primary would be required (it would not), and it misapprehends what UOCAVA actually does.

UOCAVA’s sole concern is ensuring overseas and military voters receive ballots with enough time to participate. The 45-day deadline requires “state election officials to transmit absentee ballots no fewer than 45 days before any federal election.” 52 U.S.C. § 20302(a)(8)(A); D63:26-27; A26-27. That is all

UOCAVA does—it “establishes a ballot-transmission deadline.” *United States v. Georgia*, 892 F. Supp. 2d 1367, 1373 (N.D. Ga. 2012).

Moreover, Congress anticipated this very scenario. A state may seek a waiver of the 45-day requirement when it faces “undue hardship”—including specifically when “[t]he State has suffered a delay in generating ballot[s] due to a legal contest.” 52 U.S.C. § 20302(g)(2)(B)(ii). UOCAVA is no barrier to enforcing the Missouri Constitution.

Nonetheless, Plaintiff is cognizant of the September 8, 2026 deadline to strike or remove candidates from the ballot. § 115.127, RSMo. Thus, if the Court believes it is necessary or prudent to consider the impact of its decision in this case on the upcoming general election, Plaintiff discusses the correct remedy. As explained in the following section, federal and Missouri law supply a straightforward answer: because the primary elections used districts that were not in effect, the candidates elected are disqualified, leaving party nominating committees to select candidates for the general election.

VII. The Trial Court Erred in Concluding that Reversal Would Require a New Primary Election Because State and Federal Law Provide Alternative Remedies for Candidate Disqualification, in that if Reversal Requires Any Remedy, the August Nominees Would be Disqualified and, pursuant to Chapter 115, Party Committees Would Nominate Replacement Candidates Under Existing Law

Standard of Review. Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. This section addresses arguments raised by the State and intervenors. Plaintiff preserved this issue by asking for a determination of sufficiency. Plaintiff also addressed Missouri's disqualification statutes in his trial brief, D62:P32-33.

* * *

If this Court chooses to address the consequences of its decision in this case on the general election, it should reject the contention that a new primary would be necessary. State and federal law contemplate situations where party nominees elected at the primary are "disqualified" and new nominees must be chosen. That is what federal and Missouri law mandate here.

If the Secretary had promptly followed *Maggard's* holding or the federal district court's advice in *General Assembly v. von Glahn*, this issue would not have arisen. The governing statutes nevertheless provide a remedy.

A. House Bill 1's Districts Were Not "Established by Law"

In States like Missouri that are apportioned more than one congressional representative, those representatives "shall be elected only from Districts" that are "established by law." 2 U.S.C. § 2c. Stated differently, representatives *cannot* be elected from Districts "established" by unilateral action of the Secretary.

In Missouri, congressional districts are established by the General Assembly through the normal legislative process. *See* Mo. Const. art. III, § 45. Every law in Missouri is passed by bill through both chambers of the General Assembly. *See* Mo. Const. art. III, § 21. After the bill is passed and signed by the presiding officers of the respective chambers, it goes to the Governor for his signature or veto, or to the people via referendum. Mo. Const. art. III, § 30; Mo. Const. art. III, § 31. As this Court has explained:

Section 31 clearly provides that constitutional requirements for action by the legislative body have been met when a bill has 'passed both houses' of the general assembly. The bill is then ready for consideration by the executive or the voters on referendum. Section 31 is a complete formula and its provision that a bill shall become a law when its terms are satisfied is positive and mandatory.

Brown v. Morris, 290 S.W.2d 160, 166–67 (Mo. banc 1956).

In 2022, Missouri established congressional districts using this formula. § 128.346.3, RSMo; §§ 128.461-468, RSMo. The legislature proposed different

districts in HB 1, § 128.346.4, RSMo, but that revision has not become effective.¹² See *Maggard*, 733 S.W.3d at 420. The districts in HB 1 were not “established by law.”

Accordingly, for purposes of choosing candidates for Congress, the August primary elections were likely legally ineffective. The districts used in August were not “established by law” and therefore cannot support the election of representatives under the HB 1 districts. If any nominees are elected in November under the HB 1 districts, they will not have been elected from Districts “established by law” and thus will not be eligible representatives.

B. The Remedy: Party Nominating Committees May Select Candidates

The relevant statutory framework is as follows. Generally, a candidate is placed on the official ballot at the general election by “receiving the greatest number of votes at a primary election . . . unless removed or replaced as provided by law.” Mo. Const. art. VIII, § 24. Because the August primary election used districts that were not “established by law,” the ordinary rule does not supply eligible candidates. *See id.*

Under the Secretary’s view, the Court faces a choice between (i) declining to apply *Maggard* and denying the people their referendum right or (ii) denying Missourians their full voice in Congress. Missouri law supplies another option. It

¹² The Revisor of Statutes has acknowledged and alerted anyone who reviews the statutes that the submission of a referendum has, at a minimum, cast the validity of those districts in doubt. Revisor’s Note, § 128.348, RSMo.

allows the Court to honor *Maggard* and the State to ensure that representatives are elected from districts established by law in November, avoiding vacancies in Missouri's congressional delegation.

While a general election candidate must normally win a primary election, Missouri law contemplates situations where there is no party candidate following a primary election. Section 115.363 governs when “[a] party nominating committee may select a party candidate.” Subsection 3 provides that a party nominating committee “may select a party candidate for election to an office on the general election ballot . . . [i]f the person nominated as the party candidate is disqualified at or before 5:00 p.m. on the tenth Tuesday prior to the general election[.]” § 115.363.3(2), RSMo.

Chapter 115 defines “disqualified” as “a determination made by a court of competent jurisdiction, the Missouri ethics commission, an election authority or any other body authorized by law to make such a determination that a candidate is ineligible to hold office or not entitled to be voted on for office.” § 115.013(7), RSMo. Two elements of this definition are satisfied here.

First, this Court is a “court of competent jurisdiction” authorized to make a disqualification determination. Second, the candidates elected using districts that *were not the law* are “not entitled to be voted on for office” because they were nominated from districts that were not “established by law” under 2 U.S.C. § 2c. A candidate is not entitled to be voted on for an office—a congressional seat representing a particular district—when that district does not lawfully exist.

Because HB 1 was suspended as of December 9, the candidates are disqualified under the plain meaning of § 115.013(7), triggering the party nominating committee process under § 115.363.3(2).

The August primary election was legally ineffective for selecting candidates because the districts used in that election were not “established by law.” The candidates were disqualified on the day of that election, an event occurring before the tenth Tuesday before the general election. Because the August primary election did not lawfully select candidates for Missouri’s congressional districts, the candidates certified by the Secretary as the winners of that election must be considered disqualified. In this situation, Section 115.363.3(2) permits party nominating committees to select the party candidate for each district, using the 2022 districts.

The procedure is straightforward: If this Court directs the Secretary to certify the referendum for placement on the ballot in November, the Secretary will know that all candidates for Congress elected in the August primary are disqualified,¹³ and that party nominating committees must replace those candidates. The Secretary and the party nominating committees can proceed in the normal course under Missouri law to timely select new nominees for each

¹³ Given the background that led us here, if this Court engages in the issue of the consequences of its decision on the primary election, the Court may want to make it extremely clear the nominees are disqualified.

party in each district, who will stand for election in November, under the 2022 districts.

Those lawful districts must be used by local election authorities to conduct the November general election. The Secretary's concerns about the Missouri Centralized Voter Registration system ("MCVR") do not change that the 2022 districts are available in MCVR. *See* D21. As explained in the following section, the trial court's contrary "finding" is not supported by competent evidence and warrants no deference.

C. This Court Owes No Deference to the Trial Court's Unsupported Findings on MCVR, which Are also Irrelevant

The trial court declined to enforce the mandate of Article III, Section 52(b) and *Maggard* based, in part, on a "finding" that it is impossible to make changes to MCVR. D63:P36 (¶¶ 170-171); A36. This Court need not rely on that assertion and it is not relevant here.

First, this case was tried on stipulated facts, so this Court owes no deference to the trial court's factual determinations. *Coleman*, 696 S.W.3d at 357. The trial court adopted Intervenor's proposed judgment with minimal changes, entering it within hours of trial. *Compare* A47-85 with D63; A31-37. As a result, the judgment contains references to facts the parties did not stipulate to and that were never put in evidence. D63; A31-37. Reliance on such facts is improper. *See Orthotic & Prosthetic Lab, Inc.*, 851 S.W.2d at 639.

Second, the trial court expressly stated it could not make a finding on the technical feasibility of altering MCVR. *See* Tr. 54:10-55:16. The purported “finding” on MCVR’s limitations was drawn from an affidavit of a former election official. D63:P36; A36; D26. The trial court received no live testimony on this issue and made no credibility determination—indeed, it acknowledged it could not properly resolve the technical question. No deference is warranted where a trial court merely reviews an affidavit this Court can read for itself. *Pitts v. Garner*, 321 S.W.2d 509, 514 (Mo. 1959).

Third, the Secretary’s office maintains and administers MCVR. 15 CSR 30-15.030. Trial was in Cole County, and the Secretary could have offered a witness to explain and be cross-examined about the technical capabilities of MCVR. Instead, he offered an affidavit from a former election official, which does not provide a reliable basis for resolving the issue. Ms. Brown’s assertions are contradicted by the affidavit of Brianna Lennon, the current Boone County Clerk and Election Authority, who confirms the 2022 districts remain active and available for the November 2026 election. D21 ¶¶ 14-18.

Finally, whether MCVR is “locked,” is irrelevant. No one is asking to unlock the HB 1 districts and “redraw” them (a word the judgment uses). The issue is whether to use the 2022 districts (which were used for the 2024 election and are lawfully in place), or the HB 1 districts (which are not the law). This involves switching districts that are already in MCVR, not redrawing districts. If the Court directs, the Secretary can make any necessary changes in MCVR.

D. The Timing of the Secretary's Decision Does Not Bar Relief

While the statutory procedure to nominate new candidates may seem unusual, it is straightforward. Party nominating committees are an imperfect substitute for primary elections. But nothing precludes them from appointing the same candidates who won the invalid primary elections.

And it is the Secretary who heedlessly proceeded with primary elections using districts that, under *Maggard*, were not in effect. 733 S.W.3d at 420. It is the Secretary who intentionally delayed his certification until the statutory deadline. It is the Secretary who ignored a federal court's admonishment to timely "declare the petition unconstitutional himself," which would have allowed this issue to be resolved in time to avoid the use of party nominating committees. D30. These circumstances should not prevent the Court from applying the governing law.

These circumstances should not prevent relief. If the Court directs the Secretary to certify the referendum as sufficient, state law permits party nominating committees to select new candidates to run under the established 2022 districts. The Court need not choose between the law and this State's representation in Congress.

VIII. The Trial Court Erred in Concluding Equitable Considerations

Bar Using the 2022 Districts for the General Election Because

There is No Need to Resort to Equity and Even if There Were the

Equities Favor Enforcing the Referendum Provisions, in that (i)

the Secretary's Merits Arguments Were Baseless, (ii) He

Manufactured the Alleged Problem, (iii) Plaintiff and the Public

Will be Irreparably Harmed, (iv) Plaintiff Did Not Delay, and (v)

Using the 2022 Districts is Feasible

Standard of Review Because this case was tried on stipulated facts, the Court reviews this issue *de novo*. *Coleman*, 696 S.W.3d at 357.

Preservation. Plaintiff preserved this issue by raising the doctrine of unclean hands in his trial brief and otherwise explaining why the Secretary's equitable arguments were meritless. D62:P21-25, 27-29.

* * *

Finally, the trial court stated it would “not enter any changes to the General Assembly’s duly enacted map for the ongoing 2026 election,” invoking the “*Purcell* Principle” and *Hadley v. Junior College District of Metropolitan Kansas City*, 460 S.W.2d 1 (Mo. banc 1970). D63:P31-36; A31-36. To reiterate: the relief sought would not change “the General Assembly’s duly enacted map.” There is only one “duly enacted map”—the one still in the statutes and used to run the 2024 election. Equitable principles cannot displace the Missouri Constitution or this Court’s *Maggard* decision.

And there is no need to resort to equity here. As explained in Point VII, Missouri statutes provide the applicable process: party nominating committees will select candidates, who will run in districts established by law—the 2022 districts. This matter is governed by statutes, not equity. If equitable principles apply, the relevant considerations still favor enforcing the referendum: the “*Purcell* Principle” does not apply; *Hadley* sets no bright-line rule; the Secretary’s unclean hands bar him from invoking equity; and all relevant factors support enforcing citizens’ right to the referendum.

A. A Decision Reversing the Secretary’s Certificate of Insufficiency Will Not “Make Changes” to “the Map”

The trial court appears to have proceeded on the assumption that “judicially ordered changes to the map” (which “map” is unclear) would create problems. D63:P31 (¶ 151); A31. The trial court also referenced “the General Assembly’s duly enacted 2025 Plan.” *Id.* (¶ 149). The General Assembly did not “duly enact” a “Plan.” It passed a “bill,” which, under *Maggard*, did not go into effect. 733 S.W.3d at 420. As discussed elsewhere, redistricting “plans” come from a committee and govern state-level elections. The courts are not “order[ing] changes to the map.” The only map in legal effect for this election cycle is the one enacted in 2022. § 128.346.3, RSMo. The Secretary’s decision to run the primaries on a map *not* in effect cannot change that.

Purcell is often invoked when an in-effect apportionment plan is invalidated close to an election, resulting in there being *no* valid apportionment

plan in existence. *See, e.g., Gonidakis v. LaRose*, 599 F. Supp. 3d 642 (S.D. Ohio 2022). That is also what happened in *Hadley*. 460 S.W.2d at 1-2. In that scenario, the legislature (or some other body) must *create* entirely new districts from scratch. That takes time. But that is *not* what needs to occur here. The 2022 districts exist, were previously used, and are ready to be used now. D43:P3-4. No one needs to create a new district.

B. *Purcell* Does Not Apply Here and, Even If It Did, Would Not Require Disregarding Section 52(b)

The “*Purcell* Principle” governs whether *federal* courts should interfere with state-law processes close to an election. It provides “federal courts ordinarily should not enjoin a state’s election laws in the period close to an election.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Mem.) (Kavanaugh, J., concurring). It has no bearing on “the authority of state courts to apply their own constitutions to election regulations,” but is limited to policing “federal intrusion on state lawmaking processes.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Mem.) (Roberts, C.J., concurring).

“There is a profound difference between compelling a state to depart from its rules close to the election (*Purcell*) and allowing a state to implement its own statutes” or constitution. *Frank v. Walker*, 769 F.3d 494, 497 (7th Cir. 2014); *see also Gonidakis*, 599 F. Supp. 3d at 665 (*Purcell* instructs federal courts to give “the widest berth possible” when “the State, through its legislative or judicial branch, has begun” to address election matters). That is how federalism works.

State courts have recognized *Purcell* does not govern them and does not compel them to ignore violations of state law. *Matter of Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022); *Martin v. Simon*, 6 N.W.3d 443, 451-52 (Minn. 2024); *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020) (Appel, J., concurring).

Notably, the Secretary previously admitted *Purcell* has no relevance here. In his trial brief in *Maggard*, he told the court that *Purcell* “does not override [his] . . . statutory obligations to review PNP’s referendum petition for legal sufficiency and to certify PNP’s petition if it is legally sufficient.” Def. Tr. Br. at 14 n.6, *Maggard v. State*, No. 25AC-CC09120 (Feb. 9, 2026). It is the performance of those very obligations this Court is now reviewing under Section 116.200.

The Secretary has thus waived any reliance on *Purcell*. See *Rose v. Sec’y, State of Georgia*, No. 22-12593, 2022 WL 357823, at *13 (11th Cir. Aug. 12, 2022) (Rosenbaum, J., dissenting) (reasoning party waived *Purcell* by telling trial court he would not rely on it); *Rose v. Raffensperger*, 143 S. Ct. 58, 59 (2022) (Mem.) (reversing Eleventh Circuit’s decision because it “applied a version of the *Purcell* principle that respondent could not fairly have advanced himself in light of his previous representations to the district court”).

Finally, even if *Purcell* was relevant, it “is not a hard-and-fast rule” that would require ignoring Article III, Section 52(b). *Ams. for Citizen Voting Pac v. Wolfe*, No. 26-CV-786, 2026 WL 1329715, at *3 (E.D. Wis. May 12, 2026); see also *Black Voters Matter Fund v. Raffensperger*, 478 F. Supp. 3d 1278, 1323

n.30 (N.D. Ga. 2020). *Purcell* allows federal courts to order late changes to election rules where the underlying merits clearly favor the plaintiff, irreparable harm would occur, the plaintiff has not delayed, and changes are feasible. *Id.* (quoting *Milligan*, 142 S. Ct. at 881). That is all true here.

C. *Hadley* Does Not Support Ignoring Section 52(b)

The Secretary and Intervenors also rely on *Hadley*, 460 S.W.2d 1. The Secretary describes this as “Missouri’s *Hadley-Purcell* principle.” D60:P22. But *Hadley* did not establish a general principle.¹⁴

Hadley arrived at this Court on February 25, 1970, after the United States Supreme Court invalidated Missouri’s statutory process for apportioning trustees for junior college districts. 460 S.W.2d at 1-2. Elections were scheduled for April 7. This Court issued its opinion on March 5 (33 days before such elections). *Id.*

It held that due to imminent elections, “it would be unwise” to try to implement the United States Supreme Court’s mandate “with respect to those elections.” *Id.* at 2. This Court explained that “under certain circumstances . . . equitable considerations *might* justify . . . withholding the granting of immediately effective relief.” *Id.* (quotations omitted; emphasis added). It identified various factors to consider, including the proximity of the election, the

¹⁴ *Hadley* has been cited exactly *once* since it was decided—and only to describe the history of the statutes involved. *State ex rel. Enright v. Connett*, 475 S.W.2d 78 (Mo. banc 1972). It therefore did not establish a general “doctrine.”

mechanics and complexities of state law involved, what making the necessary changes would actually entail, and “general equitable principles.” *Id.*

Because the statutory apportionment scheme had been invalidated, relief would necessarily require crafting a *new* apportionment plan and implementing it—unless the offensive provisions could be severed and candidates could run at large (which the courts would have to take time to sort out). There was not enough time to accomplish that. *Id.* at 2-3. So, this Court allowed the elections to proceed and encouraged the political branches to promptly devise a new plan. *Id.*

Hadley did not announce a bright-line rule that prohibits changes to election rules at any particular time. To the contrary, it stated each case should be decided on its facts and general equitable principles. *Id.* at 2. The facts and circumstances here are very different.

Most notably, in *Hadley* state courts had upheld an *in-effect* apportionment plan and the United States Supreme Court invalidated it at the last minute. *Id.* at 1-2. Here, HB 1 was *never* in effect, and the record is clear the Secretary tactically delayed his certification decision in order to invoke *Purcell*.

And there is no need to develop new districts. Missouri *has* lawful congressional districts. They were enacted, and used, in 2022. See §§ 128.461–128.469, RSMo. They are ready to be used again. Also, after *Hadley* was decided, the General Assembly adopted a statute allowing changes affecting an election to be made up to eight weeks before an election (here, September 8). § 115.125,

RSMo. This Court expedited proceedings so that deadline can be met. *Hadley* does not preclude relief.

D. The Secretary's Unclean Hands Bar Him from Invoking Equity

The Secretary seeks equity, explicitly invoking “general principles of equity” to displace Article III, Section 52(b). But he who seeks equity must do equity. *Milanko v. Austin*, 241 S.W.2d 881, 884 (Mo. 1951) (“For a long time, as a corollary of the auxiliary maxim that he who seeks equity must do equity, courts of equity have granted relief upon such conditions as are just and proper and demanded by the exigencies of the circumstances.”). The exigencies here are the Secretary’s intentional delay in addressing the referendum petition, which produced the timing of this litigation.

One application of this ancient maxim is the doctrine of unclean hands—a “general equitable principle” that must factor into the analysis. The doctrine “closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). “Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim.” *Id.* at 815. “[W]here a suit in equity concerns the public interest . . . this doctrine assumes even wider and more significant proportions,” because “it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public.” *Id.*

This Court deployed the doctrine in *Purcell v. Cape Girardeau County Commission*, 322 S.W.3d 522 (Mo. banc 2010), to reject a claim for violation of the sunshine law asserted by a county commissioner who induced his colleagues to hold a closed meeting he later sued over. *Id.* at 524. “[T]he law strives to prevent opportunistic behavior,” and “[a] party who participates in inequitable activity regarding the very issue for which it seeks relief will be barred by its own misconduct from receiving any relief.” *Id.* (cleaned up).

If ever there was a case to apply the doctrine, this is it. The Secretary used the discretion afforded by the certification schedule in Chapter 116 to wait until the last day and did not address the signature count. He did not raise his constitutional arguments in the many cases filed against him since September. He later acknowledged that “delay work[ed] in [his] favor.” D38:P4. He then invoked *Purcell* based on timing to which the delayed certification contributed. The Court should not allow those circumstances to determine the outcome at the expense of Missouri citizens.

E. All Facts and Circumstances Favor Enforcing Citizens’ Right to Use the Referendum

Apart from the unclean-hands analysis, the equitable factors overwhelmingly favor enforcing the Missouri Constitution, requiring use of the lawful 2022 districts, and allowing Missourians to decide whether HB 1 should take effect. The factors discussed by Justice Kavanaugh in *Milligan* provide a useful framework. 142 S. Ct. at 881 (Kavanaugh, J., concurring).

First, the merits are “entirely clearcut in [Plaintiff’s] favor.” *Id.* The analysis in Points I-V speaks for itself. The Secretary’s arguments are contrary to longstanding precedent. He has not cited a *single* case that supports his positions on sufficiency.

Second, Plaintiff and Missourians will suffer irreparable harm if this Court requires use of the HB 1 districts for the general election. The entire purpose of the referendum is to suspend a law and allow voters to approve it before it is used. *Toberman*, 250 S.W.2d at 706. Like the initiative, it “is a tool for everyday, ordinary citizens to override legislatures held in the thrall of wealthy patrons.” *Brown v. Carnahan*, 370 S.W.3d 637, 673 (Mo. banc 2012) (Fischer, J., concurring) (cleaned up). “The people, from whom all constitutional authority is derived, have reserved” this power to themselves. *MPIP*, 799 S.W.2d at 827.

Ignoring this most cherished of rights and foisting the HB 1 districts on Missourians before they have had their say would be devastating. It would send the message that their reservation of power is meaningless and can be overridden by the whims of a few elected officials. The situation will be even worse if they reject HB 1 while simultaneously being required to elect congressional representatives under it. This would upend Missouri’s constitutional framework.

Third, Plaintiff has not delayed. He repeatedly sued the Secretary seeking relief. As explained in the other case pending before this Court (SC101801), he sued in September 2025 to require the Secretary to process approximately 100,000 signatures the Secretary had not sent to local election authorities.

Despite that immediate suit, the trial court did not resolve the case for eight months. Writ relief was denied. Plaintiff then sued for a fair ballot title. See *People Not Politicians*, 736 S.W.3d 518. He filed an amicus brief in *Maggard*, which held that a determination on suspension of the law would have to await the Secretary's statutory certification decision. Throughout this process, third parties were permitted to intervene, and use procedural devices to slow the process down. Plaintiff therefore acted promptly to protect the referendum right.

Fourth, use of the 2022 districts is feasible. They are the *only* districts in legal effect. They were used in 2022 and remain in MCVR. D43:P3-4. They can be used with limited administrative effort. *Id.* To the extent there are arguable impediments in the MCVR system, the Secretary controls it and should be ordered to address them. See 15 CSR 30-15.030. This is not a case where new districts must be developed. This case will be resolved by the September 8 deadline, such that ballots can be changed.

For all these reasons, every equitable factor supports enforcing the Constitution and ensuring Missourians can meaningfully exercise the power they reserved to themselves. That is what the Court should do.

IX. The Trial Court Erred in Granting Intervention as a Matter of Right Because Intervention as a Matter of Right Requires an Interest in the Subject Matter, a Risk the Litigation Will Impair the Interest, and Inadequate Representation by Existing Parties in that Intervenor's Do Not Have an Interest in the Sufficiency Determination and the Secretary Adequately Represents Intervenor's Interests in Opposing the Referendum's Sufficiency

Standard of Review. This Court reviews a decision granting intervention as of right under the *Murphy v. Carron* standard and will affirm unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Johnson v. State*, 366 S.W.3d 11, 18 (Mo. banc 2012).

Preservation. Plaintiff preserved this issue by opposing intervention as of right. D12:P4-7.

The trial court permitted the Republican National Committee, National Republican Congressional Committee, and Missouri Republican State Committee (the "Republican Committees") to intervene as of right. That was error. Rule 52.12(a)(2) requires a proposed intervenor to establish: (1) an interest in the subject matter; (2) that disposition may impair that interest; and (3) inadequate representation by existing parties. *State ex rel. Nixon v. Am. Tobacco Co.*, 34

S.W.3d 122, 127 (Mo. banc 2000). The Republican Committees do not satisfy these requirements.

A. The Republican Committees Lack a Cognizable Interest

This Court has made clear that the importance of a case is not a license for unlimited intervention. The key is “a direct claim upon the subject matter such that the intervenor will either gain or lose by direct operation of judgment.” *Nixon*, 34 S.W.3d at 128. A sufficient interest requires “a concern, more than mere curiosity, or academic or sentimental desire.” *In re Liquidation of Profl Med. Ins. Co.*, 92 S.W.3d 775, 778 (Mo. banc 2003). The Republican Committees’ asserted interests—safe and secure elections, supporting and electing Republican candidates, and mobilizing Republican voters—are downstream political interests of the kind Missouri courts have held insufficient, especially in this kind of litigation. D17.

In *Committee for Educational Equality*, this Court held that proposed intervenors who “merely reasserted the State’s defenses” and “asserted no claim, defense, or interest unique to themselves” could not intervene—warning that allowing such intervention “would open the floodgates” and “[n]o public policy is served by allowing intervention premised on a taxpayer’s mere interest in the subject matter of a suit.” 294 S.W.3d at 487. The Court of Appeals has applied that same principle to ballot-measure proceedings. *Prentzler v. Carnahan*, 366 S.W.3d 557, 564 (Mo. App. 2012); *Toder v. Hoskins*, 730 S.W.3d 129, 136 (Mo. App. 2026) (holding that an intervenor’s “interest in the proposed amendment

itself, not in the fairness and sufficiency of the Secretary's title summary, which is the issue in th[e] case," was insufficient). Tellingly, the trial court's order granting intervention cites none of these cases.

Consider the trial court's identified interests. First, the court noted the Republican Committees "have an interest in ensuring that Missouri elections are conducted in a safe and secure manner and in accordance with law." D20:P4. But that interest is identical to the Secretary's—and shared by nearly every civil, policy, and political organization in the state. Such a diffuse interest cannot satisfy Rule 52.12.

Second, the court explained the Republican Committees have a legally cognizable interest "in the implementation of" HB 1 because, under HB 1, they have a better "ability to support and elect Republican candidates." D20:P4. But *Toder* and *Prentzler* rejected this type of political interest. In *Prentzler*, proposed intervenors were "signatories and supporters" of an initiative petition who wanted the initiative to qualify for the ballot. 366 S.W.3d at 562. The Court of Appeals held those interests "consequential, remote or conjectural" and intervention improper. *Id.* at 563-64. *Toder* reached the same result. 730 S.W.3d at 136. The Republican Committees' claimed interest is in the underlying measure—not the sufficiency of the referendum—and that is inadequate.

The trial court's reliance on *Johnson* was misplaced. There, individual legislators up for election sought to intervene in litigation that directly concerned "the constitutionality of the proposed legislation itself." *Id.* The *Johnson*

intervenors had “a direct economic interest” in their election. *Id.* By contrast, the Republican Committees’ interests are political and ideological—precisely the type of interests courts have held insufficient. *See La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) (“intervention by right will not be granted for purely ideological, economic, or precedential reasons”).

The sufficiency determination is the subject of this action. *See generally Maggard*, 733 S.W.3d at 419. A sufficiency finding will not, by virtue of the judgment itself, cause direct harm to the Republican Committees. *Nixon*, 34 S.W.3d at 128 (intervenors must “either gain or lose by direct operation of judgment”).

The trial court cited out-of-state cases involving political parties, but each is distinguishable. In those cases, the challenged law directly regulated *how* political parties participated in elections—reporting requirements, poll watcher restrictions, mail-in ballot rules, or voter purge laws. *See La Union del Pueblo Entero*, 29 F.4th at 306; *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 685 (7th Cir. 2023); *Mi Familia Vota v. Hobbs*, 2021 WL 5217875, at *1 (D. Ariz. Oct. 4, 2021). Those intervenors were asserting their own rights that a judgment could vindicate. Here, by contrast, the Republican Committees claim nothing more than a political interest in the outcome of a future election.

Following the trial court’s logic, any organization with an ideological interest in a future election gets a seat at the sufficiency stage of a referendum. That would “open the floodgates” this Court warned of. 294 S.W.3d at 487.

B. The Secretary Adequately Represents the Republican Committees’
Position

Intervention is also improper if an existing party adequately represents the intervenor’s interests. The Secretary and Republican Committees filed nearly identical briefs the day before trial. D60; D61. *Committee for Educational Equality* is dispositive: because the intervenors there “merely reasserted the State’s defenses,” their intervention was improper. 294 S.W.3d at 487. The same is true here.

X. The Trial Court Erred in Granting Permissive Intervention Because Permissible Intervention Requires the Proposed Intervenor to Assert Defenses Other than Those of Defendant in that Intervenors Forwarded the Same Defenses as the Secretary Standard of Review. This court reviews a grant of permissive intervention for abuse of discretion. *Johnson*, 366 S.W.3d at 18.

Preservation. Plaintiff preserved this issue by opposing a grant of permissive intervention. D12:P3-4.

* * *

The same framework controls permissive intervention. Rule 52.12(b) does not permit a proposed intervenor to join merely by reasserting the existing defendant's position. *Johnson*, 366 S.W.3d at 21. And "permissive intervention is appropriate only where the proposed intervenor can show an interest unique to itself." *Toder*, 730 S.W.3d at 135. Comparison of the Secretary and the Republican Committees' trial court briefs immediately demonstrates permissive intervention was inappropriate. D60; D61.

There is reason to think the Republican Committees simply have no cognizable interest in these proceedings. Section 116.190 "does not give private parties who support the Secretary of State's" decision "any role in litigation concerning" that decision. *Toder*, 730 S.W.3d at 136. And courts are loath to recognize a "private civil action [or defense] unless such appears by clear

implication to have been the legislative intent.” *Id.* (quoting *Sullivan v. City of Univ. City*, 677 S.W.3d 844, 850 (Mo. App. 2023) (alteration in original)).

That framework is consistent with the statute. Missouri law places a tight timeline on § 116.200.1 challenges. *E.g.*, *Coleman*, 696 S.W.3d at 353–54, 371–72. The Secretary’s role is simply to prepare a referendum for “consummation,” which “is reached when the measure has been adopted or rejected at the polls.” *State ex rel. Drain v. Becker*, 240 S.W. 229, 232 (Mo. 1922), *overruled on other grounds by Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27 (Mo. banc 2015). Inviting any party with an interest in the underlying referendum would complicate that process.

The Republican Committees’ interests do not fit within Section 116.200 proceedings. Their asserted interests concern the underlying referendum, not the Secretary’s sufficiency determination.¹⁵ This Court should reverse the trial court’s grant of intervention.

¹⁵ The Committees’ arguments were also raised far too late. They could have raised their arguments at any time; they do not turn on some late-stage action by the Secretary. The Secretary did not address signatures, his latest-in-time task. There is no “justification for delaying to the very end of the process claims regarding the form of the petition” or—under the Republican Committees view of § 116.200.1—federal constitutional challenges to the substance of a ballot measure. *Coleman*, 696 S.W.3d at 353–54, 371–72.

CONCLUSION

The Circuit Court's judgment must be reversed and the Court should enter the Judgment that ought to have been entered: order the Secretary to "certify [the Petition] as sufficient and attach a copy of the judgment." § 116.200, RSMo; Rule 84.14; *Coleman*, 696 S.W.3d at 354. The Court should then make clear that, pursuant to *Maggard*, the districts in HB 1 are not the law and may not be used in the upcoming congressional elections. To the extent the Court believes it necessary, it should also declare all nominees selected in the August primary using the Secretary's invalid congressional districts "disqualified" so that the party committees may nominate lawful candidates.

Respectfully submitted

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CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document and the appendix were served on counsel of record through the Court's electronic notice system on August 25, 2026.

This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 22,635. The font is Georgia 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

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