

No. SC101805

**In the
Supreme Court of Missouri**

RICHARD VON GLAHN,

Appellant,

v.

DENNY HOSKINS, in his official capacity as Missouri Secretary of State,

Respondent,

REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE, and MISSOURI REPUBLICAN STATE COMMITTEE,

Intervenors-Respondents.

Appeal from a Bench Trial by the Circuit Court of Cole County
The Honorable Daniel R. Green, No. 26AC-CC00440

BRIEF OF RESPONDENT

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INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Richard von Glahn’s demands are legally wrong and, frankly, crazy. The Circuit Court found that they are “unprecedented” and “impossible to implement.” *See, e.g.,* D63, ¶¶ 167–71. And even von Glahn admits that his demands are “awkward.” Appellant’s Br. 71. That minimization might be “good English”—“but only because there is a figure of speech called understatement.” *MCI Telecommunications Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 228 (1994). Even *Democracy Docket*, a leftwing media entity founded by the Democratic Party’s leading lawyer, Marc Elias,¹ calls von Glahn’s legal challenge “a long shot.” *See* D55, p. 5, Jen Rice & Yunior Rivas, *Missouri blocks anti-gerrymander referendum from November ballot in attempt to silence voters*, DEMOCRACY DOCKET (Aug. 4, 2026).

Indeed, von Glahn demands one of the greatest changes imaginable to an ongoing election. He claims that approximately 3.3% of Missouri voters can temporarily repeal a duly enacted congressional map—even before the People vote on whether to reject the map. Appellant’s Br. 71–72; D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. That is why von Glahn thinks “he is entitled to the immediate suspension” of Missouri’s duly-enacted congressional map—even though the Primary Election already occurred. *See* D2, ¶ 42. Von Glahn accordingly demands that the 2026 General Election proceed under a different map. Appellant’s Br. 75–98. This is unthinkable. Even after being explicitly challenged on this

¹ Elias’s firm, the Elias Law Group, represented plaintiffs in *Healey v. State*, 732 S.W.3d 827 (Mo. banc 2026)—another unsuccessful challenge to HB 1.

point below, von Glahn cites no judicial precedent—in any State or at any time—that has ever awarded such a drastic remedy. Moreover, von Glahn is flatly incorrect to argue that the Missouri Constitution permits referenda on congressional maps like House Bill 1.

The Circuit Court rightly rejected von Glahn’s extreme arguments. This Court should affirm—for at least four reasons. *First*, the U.S. and Missouri Constitutions vest authority over federal redistricting solely with the People’s elected representatives in the General Assembly. U.S. Const. art. I, § 4; *id.* art. IV, § 4. Even assuming the U.S. Constitution allows States to permit referenda against federal election maps, *but see Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 824–50 (2015) (Roberts, C.J., dissenting), longstanding precedent requires a “positive and clear” statement in any law or state constitutional provision purporting to divest a state legislature of its redistricting authority, *see United States v. Gradwell*, 243 U.S. 476, 485 (1917). Von Glahn simply cannot identify any language in the Missouri Constitution showing that Missourians made a conscious choice to depart from the U.S. Constitution’s default rule and subject congressional redistricting to referenda. *See Maggard v. State*, 733 S.W.3d 411, 414 n.7 (Mo. banc 2026) (reserving the question of whether the Missouri Constitution permits referenda on congressional maps).

Rather, Article III, Section 7(h) of the Missouri Constitution explicitly provides that “[n]o redistricting plan shall be subject to the referendum.” That plain text clearly captures this case. Moreover, Missouri law obviously does not envision referenda on congressional maps. If it did, why would local election officials and the Secretary of State have until *the day of the primary election* to make a certification decision? *See* §§ 115.341, 116.150.3,

RSMo. And why would voters be expected to vote on redistricting plans, which are enormously complex, with only a 100-word summary statement and no images of the competing maps? See § 116.334, RSMo. The idea of holding a referendum on a congressional map under such conditions is absurd. This reinforces that Missouri never made a “positive and clear” choice to allow such votes. See *Gradwell*, 243 U.S. at 485.

Second, even if the Missouri Constitution does envision referenda on federal congressional maps, the U.S. Constitution preempts Article III, Section 52(b) of the Missouri Constitution—which would freeze an enacted congressional map *before* the People vote. In von Glahn’s world, a small minority of Missourians—five percent of voters in two-thirds of Missouri’s congressional districts (or about 3.3%)—have the right to force the use of their preferred congressional map for an election cycle. See D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. The U.S. Supreme Court has *never* suggested such an arrangement is consistent with the U.S. Constitution’s Elections Clause. And frankly, von Glahn’s proposed regime would be unworkable. Every time redistricting occurs, the minority political party could easily gather the signatures needed to freeze a congressional map for one election cycle—a small price to pay for one or more congressional seats. And imagine if this maneuver occurred after the decennial Census, when Missouri could gain or lose a seat. A referendum campaign could force Missouri to use an outdated congressional map with the wrong number of seats. Also, if von Glahn can demand a referendum on a congressional map, what’s to stop him—or anyone else—from attempting to enact a congressional map via initiative petition? In that world, voters might need to select from six or seven competing maps based on 100-word summary statements. Von Glahn cannot cite any State

that has ever permitted such an outrageous arrangement for redistricting—even though his counsel expressly argued below that initiatives may proceed on congressional maps if referenda can. Trial Tr., p. 63:19–21. Fortunately, the U.S. Constitution’s Elections Clause prohibits these absurd possibilities—which would annihilate the General Assembly’s authority over redistricting and give small political minorities an uncheckable power over the majority.

Third, even if referendum campaigns can freeze congressional maps by submitting a sufficient number of signatures, von Glahn’s demanded remedy would violate the U.S. Constitution and federal law. At trial, von Glahn proposed forcing the winners of the Primary Election to run in his preferred congressional districts for the General Election. D62, pp. 31–34; Trial Tr., p. 28:22–25. Now, for the first time on appeal, von Glahn proposes disqualifying all the nominees that voters selected under the HB 1 map and requiring political parties to select new nominees to run in the General Election. Appellant’s Br. 81–86. However, von Glahn cannot cite a single judicial decision that has ever awarded either of these remedies. It is no wonder why. Changing Missouri’s congressional map after the Primary Election would violate the right to vote of hundreds of thousands of Missourians. *See* U.S. Const. art. I, § 2. It would also violate the Equal Protection Clause of the Fourteenth Amendment by weighing some votes more heavily than others based on where voters live. *See* U.S. Const. amend. XIV, § 1. To avoid violating the U.S. Constitution, this Court should affirm the Circuit Court’s holding that the 2026 General Election must be conducted under the same map that governed the Primary Election. *See* D63, ¶¶ 133–47.

Finally, it is far too late for this Court to order the use of a new congressional map for the 2026 General Election. Missouri courts and federal courts refuse to change election rules in the middle of an ongoing election cycle. See *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1, 2–3 (Mo. banc 1970); *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (holding that it was too late to change Texas’s congressional map for 2026 elections nearly *ten* months ago). Indeed, this Court already applied this rule and held that it was too late to change election district lines shortly *before* the end candidate filing. *Hadley*, 460 S.W.2d at 2–3. Here, candidate filing *ended five months ago* and the Primary Election is already over. §§ 115.121.2, 115.341, 115.349.1, RSMo. As the Circuit Court expressly found, trying to change congressional maps *now* would be catastrophically disruptive and technically “impossible”—as Missouri’s election administration system will be locked and cannot be altered. See D63, ¶¶ 170–71; D50, ¶¶ 6–19, *Brown Aff.*²

Indeed, litigants challenging the HB 1 map since September 2025 recognized that the window to change the congressional map for Missouri’s 2026 elections closed long ago. Von Glahn and People Not Politicians (“PNP”) characterized prior lawsuits as “time-sensitive election case[s]” because of their “impact” on “the 2026 election” and the need to avoid “chaos in August.” D44, pp. 1–2, Mot. to Expedite, *State ex rel. People Not*

² Election officials have previously confirmed this point. See D54, Letter of Missouri Association of County Clerks and Election Authorities; D51, pp. 11–14, Amicus Br. of Brianna Lennon, *Maggard v. State*, No. SC101581 (Mo., filed April 10, 2026); see also D52, pp. 13–16, Amicus Br. of Kurt Bahr, *Maggard v. State*, No. SC101581 (Mo., filed April 28, 2026); D53, p. 109:1–17, Trial Testimony of Shawn Kieffer, *Healey v. State*, No. 2516-CV31273 (Mo. Cir. Ct., Feb. 19, 2026).

Politicians v. Limbaugh, No. WD88821 (Mo. App. W.D., filed April 1, 2026). In other cases, opponents of HB 1—including opponents represented by von Glahn’s counsel—all stated that they needed judicial resolution of HB 1’s status before the candidate-filing period opened *last February*.³ Many of these plaintiffs acknowledged that equitable principles would eventually require Missouri courts “to favor the status quo in a legal dispute during the lead-up to an election.” *See, e.g.*, D48, p. 16, SIS Mot. for Prelim. Inj., *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026) (quotation omitted). Likewise, Boone County Clerk Brianna Lennon previously argued that any change to Missouri’s congressional map (even “*before* the August primary”) “will result in chaos, confusion, and unnecessary expense.” *Compare* D51, pp. 6–7, 11–14, Amicus Br. of Brianna Lennon, *supra*, with D43, Lennon Aff; Lightfoot & Lennon Amicus Br. (filed Aug. 24, 2026). Now, Missouri completed the August primary weeks ago, § 115.121.2, RSMo, Missouri’s candidate filing period closed many months ago, § 115.349.1, RSMo, and absentee voting in Missouri’s General Election starts in a couple weeks, §§ 115.121.1, 115.284.5, RSMo. Von Glahn cannot now ignore these previous representations.

The Circuit Court correctly rejected von Glahn’s attempt to demand a referendum on a duly-enacted congressional map. *See* D63, p. 36. It also correctly refused to change

³ *See* D46, p. 2, Mot. to Expedite, *Luther v. Hoskins*, No. SC101412 (Mo., filed Dec. 31, 2025); D47, pp. 1–3, Pls.’ Opp’n. to a Continuance, *Wise v. State* and *Healey v. State*, Nos. 2516-CV29597, 2516-CV31273 (Mo. Cir. Ct., filed Dec. 15, 2025); D48, p. 16, SIS Mot. for Prelim. Inj., *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026).

Missouri's congressional map in the middle of an ongoing election—especially when Missourians completed the Primary Election weeks ago. *Id.*, p. 37. Von Glahn has failed to highlight any fault in the Circuit Court's well-reasoned order. This Court should affirm.

STATEMENT OF FACTS

On September 12, 2025, the General Assembly passed House Bill 1, which provided for the boundaries of Missouri's eight congressional districts. HB 1 passed by a margin of 21 to 11 in the Senate and 90 to 65 in the House of Representatives. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025). Governor Kehoe signed HB 1 into law on September 28, 2025.

In response, a group known as People Not Politicians (“PNP”) initiated a referendum campaign to challenge the HB 1 map. Appellant Richard von Glahn is the executive director of PNP and the “proponent of the referendum that is the subject of this action.” D2, ¶ 2; D21, ¶ 2.

The Missouri General Assembly, the Secretary of State, and the Attorney General perceived a problem with von Glahn's undertaking: A referendum on the HB1 congressional map is in tension with the U.S. Constitution's Elections Clause. *See* U.S. Const. art. I, § 4. The Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” *Id.* (emphasis added). Yet a referendum on a congressional map divests the General Assembly of legislative authority and relies instead on a statewide vote.

Over ten months ago, to help clarify this disparity before PNP submitted its referendum petition, the Secretary of State (alongside the General Assembly) sued PNP and von Glahn. Among other things, the Secretary sought a declaratory judgment resolving the validity of von Glahn's referendum petition. *See* D28, p. 22, *Mo. Gen. Assembly v. von Glahn*, No. 4:25-cv-1535 (E.D. Mo., filed Oct. 15, 2026). He argued that the U.S. Constitution's Elections Clause forbids subjecting congressional maps to referenda absent a clear statement in the Missouri Constitution. *Id.* ¶¶ 67–69. The Secretary also noted that the Missouri Constitution includes no such clear statement. *Id.* ¶¶ 72–74. Indeed, Article III, Section 45 contemplates only the General Assembly's legislative authority over redistricting. *Id.*

Despite the Secretary's effort to obtain clarity last fall, the federal district court dismissed his lawsuit as premature. It explained that under Chapter 116, RSMo, the Secretary of State has “both the authority and duty” to assess “the constitutionality of [von Glahn's] final petition” before courts may consider the question. *Mo. Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *4 n.4 (E.D. Mo. Dec. 8, 2025) (citing § 116.120, RSMo). The court also expressly recognized the Secretary's authority to “declare [PNP's] petition unconstitutional.” *Id.* at *4. Moreover, the court noted that von Glahn and his attorneys expressly agreed that Secretary Hoskins has “authority as Secretary of State to reject [von Glahn's] petition as unconstitutional during post-submission review and to defend that decision based on the very same constitutional arguments” that the State “advance[d]” in its lawsuit. *Id.* at *1, *4 n.4 (citing §§ 116.120, 116.200, RSMo).

Von Glahn then submitted his referendum petition on December 9, 2025. This submission triggered the Secretary’s duty to review the referendum petition for timeliness, legality, and sufficiency under Chapter 116. *See Maggard*, 733 S.W.3d at 416 (“Section 116.120.1 provides the secretary ‘shall examine the petition to determine whether it complies with the Constitution of Missouri and with this chapter [116].’” (emphasis added)). Section 116.150.3 required the Secretary to complete this review process by August 4, 2026—the same day as Missouri’s Primary Election. Chapter 116 provided an extensive timeline for reviewing the referendum petition because it vested the Secretary and local election officials with substantial duties. It required Missouri’s 116 local election officials to painstakingly check submitted signatures. *See* §§ 116.120–116.140, RSMo. Chapter 116 also empowers the Secretary to independently check the validity of signatures. § 116.140, RSMo. At the end of the exhaustive signature-review process, Chapter 116 provides that, “if the secretary of state finds it sufficient, the secretary of state shall issue a certificate setting forth that the petition contains a sufficient number of valid signatures to comply with the Constitution of Missouri and with this chapter.” § 116.150.1, RSMo. But “[i]f the secretary of state finds the petition insufficient, the secretary of state shall issue a certificate stating the reason for the insufficiency.” § 116.150.2, RSMo.

While the Secretary and Missouri’s 116 local election authorities were busy reviewing the signatures on PNP’s referendum petition, the Secretary of State and the Attorney General recognized that HB 1 would become effective pending the Secretary’s ultimate certification decision under Chapter 116. Yet in late December 2025, two plaintiffs challenged HB 1’s statewide effectiveness. *Maggard*, 733 S.W.3d at 413. They

sought a declaratory judgment and “an injunction preventing use of HB 1’s congressional map until voters approve the map through the referendum process.” *Id.* However, this Court unanimously rejected their claims, holding that “the December 9 referendum petition filing did not automatically suspend HB 1 under article III, sections 49, 52(a), or 52(b) of the Missouri Constitution.” *Id.* at 421.

After this Court’s ruling, Missouri’s local election officials implemented the HB 1 map in Missouri’s Centralized Voter Registration database. *See, e.g.*, D50, ¶¶ 4, 18. State and local election officials also prepared ballots under the new map and then completed the August Primary Election. *Id.* ¶ 4. Roughly 1.2 million voters participated in the August 4 congressional primaries, and they selected Republican and Democratic nominees in each of Missouri’s eight congressional districts. *See* D63, ¶ 15; *see also* Official Results, State of Missouri – Primary Election, August 04, 2026.⁴

On August 4, 2026, the Secretary of State released his certificate of insufficiency as to PNP’s referendum petition. D27. The Secretary’s certificate identified “[t]he grounds for the insufficiency” as the fact that the Missouri Constitution “does not authorize a referendum on congressional redistricting plans passed by the General Assembly.” *Id.*, p. 3. The Secretary’s certificate attached a letter from the Attorney General, which explained that a referendum on a congressional map would be in tension with the clear statement rule in the U.S. Constitution’s Elections Clause. *Id.*, pp. 4–10. Thus, to divest the General Assembly of its redistricting authority, in contravention of the Elections

⁴ <https://enr.sos.mo.gov/>

Clause's plain text, the Missouri Constitution would need to speak with a clear statement. *Id.*, pp. 4–5. However, the Attorney General explained that the Missouri Constitution includes no such clear statement. *Id.*, pp. 5–7. Rather, “Article III, section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting.” *Id.*, p. 5 (quoting *Luther v. Hoskins*, 730 S.W.3d 567, 571 (Mo. banc 2026)). “And Article III, Section 45 contemplates only that ‘the *general assembly* shall by law divide the state into [congressional] districts.’” *Id.* (alteration original) (quoting Mo. Const. art. III, § 45). The Attorney General's letter also noted that, even if the Missouri Constitution *did* authorize referenda on congressional maps, the HB 1 map could not be displaced absent a majority vote in light of the U.S. Constitution's Elections Clause. *Id.*, pp. 8–9. Moreover, the Attorney General noted that a last-minute alteration to Missouri's congressional map would likely force a violation of UOCAVA or of Article I, Section 2 of the U.S. Constitution. *Id.*, pp. 9–10.

A couple hours after the Secretary's decision, von Glahn filed suit under § 116.200.1, which provides that “[a]fter the secretary of state certifies a petition as sufficient or insufficient, any citizen may apply to the circuit court of Cole County to compel him to reverse his decision.” § 116.200.1, RSMo. Yet von Glahn's challenge was not just limited to the Secretary's decision to certify PNP's referendum petition as insufficient for the ballot in November 2026. He also alleged that “he is entitled to the immediate suspension of the use and implementation of HB 1.” D2, ¶¶ 42–43; *id.* at 8. Elsewhere, he alleged that the Circuit Court should “restrain[] the Secretary from taking further steps to implement or use the congressional districts in HB 1 to ensure that ... the

correct congressional districts are utilized to conduct the 2026 general congressional election.” *Id.* ¶ 45. Von Glahn’s Petition lacked further clarity on precisely what he meant—which was particularly confusing since Missouri completed the Primary Election on August 4, 2026. *See* § 115.121.2, RSMo. The court and the State were left to guess, for example, whether von Glahn envisioned a new Primary Election under “the correct congressional districts,” D2, ¶ 45, or whether von Glahn demanded a General Election that proceeds under a different congressional map than the map used for the Primary, *id.*

Von Glahn waited until the night before trial (after Respondents filed their trial briefs) to apprise the court about what he meant by “immediate suspension of the use and implementation of HB 1.” D2, ¶¶ 42–43; *id.* at 8. He assured the Circuit Court that “[n]o one is asking” Missouri “to run new primaries.” D62, p. 31. Instead, he demanded an order changing Missouri’s congressional map solely for the General Election. *Id.*, pp. 31–34. Von Glahn cited no judicial decision that has ever forced an election under different maps for the primary and the general elections. *See id.* Instead, he claimed that such an order would be permissible in light of exceptional circumstances where voters do not consider the same candidates for the primary and general elections. *See id.*, p. 32 (“Voters die. People turn 18. People are convicted of crimes and lose their right to vote. People move to different districts.”).

Perhaps unsurprisingly, the Circuit Court rejected von Glahn’s claims on every conceivable ground. First, it held that the Missouri Constitution’s referendum provisions do not apply to congressional redistricting. D63, ¶¶ 28–106. The court reached this conclusion solely under the Missouri Constitution. *Id.* ¶¶ 28–70. Then, the court

separately cited the clear statement rule in the U.S. Constitution's Elections Clause as an alternative basis for its holding. *Id.* ¶¶ 71–106.

Second, the court held that *even if* “Missouri’s referendum provisions could somehow be read to encompass congressional redistricting,” the “Elections Clause and the Guarantee Clause forbid the application of Article III, Section 5(2) to a congressional map enacted by the General Assembly.” *Id.* ¶¶ 107–22. The court found that both Clauses forbid temporary suspension of a Missouri congressional map that has satisfied bicameralism and presentment. *Id.* A “small minority of voters” cannot “nullify a congressional map enacted by the People’s elected representatives without any majority vote.” *Id.* ¶ 120.

Third, the court held that the U.S. Constitution also forbids changing Missouri’s congressional map between a completed Primary and General Election. *Id.* ¶¶ 123–48. Such a change would impinge both the right to vote in congressional elections, U.S. Const. art. I, § 2, and the Equal Protection Clause, U.S. Const. amend. XIV, § 1. Indeed, changing the map before the General Election would clearly disadvantage the votes of hundreds of thousands of Missourians forced to vote in different districts between the primary and general elections. D63, ¶¶ 123–48.

Fourth, the court noted that *even if* it were wrong on the first three bases for its judgment, it would still decline to change the HB 1 map before the 2026 election in light of the *Hadley-Purcell* principle. *Id.* ¶¶ 149–71 (citing *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1, 2 (Mo. 1970)). The court noted that, in *Hadley*, “even a *proven* violation of the U.S. Constitution could not justify disrupting an ongoing

election” by redistricting shortly before the end of the candidate filing period. D63, ¶ 163 (emphasis in original). The court also cited several cases in which “courts have rejected attempts to change district boundaries after a primary.” *Id.* ¶¶ 168–69 (agreeing that “[p]rimary elections for offices chosen by the electorate in separate geographical districts obviously make no sense” (quoting *Terrazas v. Slagle*, 821 F. Supp. 1154, 1159 (W.D. Tex. 1992))).

The court also made several factual findings buttressing its refusal to change Missouri’s congressional map. The court found that “changing the maps at this late juncture is not just ‘impractical,’ it is [logistically] impossible”—in light of changes that would need to be made to the Missouri Centralized Voter Registration (“MCVR”) database. *Id.* ¶ 170. The Circuit Court also found that, “Candidate filing closed months ago. Over 1.2 million Missourians voted in the August 4 primary. *Id.* ¶ 15. Nominees have been selected. Campaigns for the general election are underway.” *Id.* ¶ 165. Also, the Circuit Court found that “revert[ing] Missouri to the plan the General Assembly repealed in HB 1 ... would move hundreds of thousands of voters into different districts for the imminent 2026 general election compared to the districts in which they cast their ballots in the August primary elections.” *Id.* ¶ 20. The court further emphasized that “Plaintiff has not demonstrated how State officials could reverse course and implement some entirely new map, how nominees selected by voters in one set of districts would campaign in different ones, or how voters would make sense of a last-minute overhaul of the districts they just voted in.” *Id.* ¶ 165. Absent any explanation from von Glahn, *id.*,

and with a finding that changing the maps is “impossible,” *id.* ¶ 170, the Circuit Court “decline[d] to order an unprecedented remedy that is impossible to implement,” *id.* ¶ 171.

STANDARD OF REVIEW

This is an appeal from a bench trial with both stipulated facts and facts that were disputed below. This Court will affirm the Circuit Court’s judgment “unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.” *Maggard*, 733 S.W.3d at 413–14 (quoting *Luther*, 730 S.W.3d at 570).

The Court reviews legal questions *de novo*. *Maggard*, 733 S.W.3d at 414. That said, a stringent legal standard applies to Appellant’s underlying demand for an injunction against enforcement of the HB 1 map. See D2, ¶¶ 42–43, 45; *id.* at 8. “[T]he General Assembly has the power to do whatever is necessary to perform its functions except as expressly restrained by the Constitution.” *Luther*, 730 S.W.3d at 571 (quoting *Liberty Oil Co. v. Dir. of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991)). And “[c]onstitutional limitations on the legislative power are ‘strictly construed in favor of the power of the General Assembly.’” *Id.* (quoting *Bd. of Educ. of City of St. Louis v. City of St. Louis*, 879 S.W.2d 530, 533 (Mo. banc 1994)). This Court will “not hold HB 1 unconstitutional ‘unless it clearly contravenes a constitutional provision.’” *Id.* (quoting *City of St. Louis v. State*, 682 S.W.3d 387, 396 (Mo. banc 2024)); accord *Healey*, 732 S.W.3d at 837 (“The [HB 1] map will be upheld unless it plainly and palpably affronts fundamental law embodied in the constitution, and doubts will be resolved in favor of the constitutionality of the map.” (cleaned up)).

The Circuit Court’s factual findings are reviewed for clear error. *See Faire v. Burke*, 252 S.W.2d 289, 290 (Mo. Div. 1 1952).

Resisting that standard, Appellants insist that this Court reviews the Circuit Court’s factual findings *de novo* because this case “was tried on stipulated facts and exhibits.” Appellant’s Br. 17. With respect to the stipulated facts, “this Court’s review is *limited to* determining whether the circuit court properly declared and applied the law.” *Maggard*, 733 S.W.3d at 414 (emphasis added). That means this Court cannot second-guess stipulated factual findings. *See id.*; *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024) (noting lack of disputed facts). It does not mean this Court can freely reject them and impose its own factual findings—like von Glahn seemingly thinks. *See* Appellant’s Br. 17.

Regardless, the parties did contest—and did not stipulate to—some factual questions below. The most important factual dispute—on which the Circuit Court received competing written evidence—concerned whether it is technically feasible to apply any map other than the HB1 map for the 2026 General Election. *See* D63, ¶¶ 170–71. The Circuit Court ultimately credited the affidavit of Jackson County election official Tammy Brown and found it would be impossible to implement a new map for the 2026 General Election. *Id.* This Court cannot set aside that factual finding unless it holds “a definite and firm conviction that the [circuit] court made a mistake.” *State v. Carter*, 415 S.W.3d 685, 689 (Mo. banc 2013).

ARGUMENT

This Court should affirm for several, independently-sufficient reasons. First, congressional maps are not subject to the Missouri Constitution’s referendum provision. Second, even if they were, the U.S. Constitution would invalidate Article III, Section 52(b) as-applied to congressional maps. Third, Article I, Section 2 of the U.S. Constitution and the Equal Protection Clause forbid changing Missouri’s congressional map in between a completed Primary Election and an upcoming General Election. Also, von Glahn’s new argument on appeal—that political parties can simply nominate sixteen new candidates for the general election—lacks any foundation in law or precedent. Finally, Missouri’s *Hadley-Purcell* principle subverts von Glahn’s demand for a last-minute alteration to Missouri’s congressional map.

I. Congressional maps are not subject to the Missouri Constitution’s referendum provisions. (Response to Points Relied On I and II)

A. The U.S. Constitution’s Elections Clause requires a clear statement to divest the Missouri General Assembly of its redistricting authority.

The Elections Clause of the U.S. Constitution provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in *each State by the Legislature thereof*.” U.S. Const. art. I, § 4 (emphasis added). The term “Legislature” was “not . . . of uncertain meaning when incorporated into the Constitution”: It referred to “the representative body which made the laws of the people.” *Hawke v. Smith*, 253 U.S. 221, 227 (1920).

The term “Legislature” maintains this same meaning throughout the U.S. Constitution. *See District of Columbia v. Heller*, 554 U.S. 570, 579–81 (2008)

(presumption of consistent usage). Elsewhere, the U.S. Constitution consistently and unequivocally uses the term “Legislature” in reference to State legislative bodies, such as the Missouri General Assembly. *See* U.S. Const. art. I, §§ 2, 3, 8; art. II, § 1; art. IV, §§ 3, 4; art. V; art. VI; amend. XIV, §§ 2, 3; amend. XVII; amend. XVIII, § 3; amend. XX, § 6; amend. XXII, § 2. As just one example, consider Article I, Section 3 of the U.S. Constitution, which provides that “[t]he Senate of the United States shall be composed of two Senators from *each State*, chosen *by the Legislature thereof*.” U.S. Const. art. I, § 3 (emphasis added). This phrasing is starkly similar to the Elections Clause. *Compare id.*, with U.S. Const. art. I, § 4 (...shall be prescribed in each State by the Legislature thereof.”). And throughout American history, virtually everyone understood Article I, Section 3 to require selection of Senators by state legislatures instead of statewide elections. *See, e.g., U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804 n.16 (1995). Indeed, that is why the Seventeenth Amendment was necessary to change this regime. The new Amendment explicitly provided that “[t]he Senate of the United States shall be composed of two Senators from each State, *elected by the people thereof*.” U.S. Const. amend. XVII (emphasis added). This change would have been unnecessary if the “the people” and “the Legislature” were fungible terms. Likewise, when the Elections Clause uses the term “Legislature” “in each State,” the Clause expressly vests the Missouri General Assembly with authority over redistricting. U.S. Const. art. I, § 4.

Here, as in several other contexts where the U.S. Constitution bestows a specific authority on a designated body, that power cannot be taken away absent a clear statement. *See, e.g., Edmond v. United States*, 520 U.S. 651, 658 (1997) (rule guarding President’s

authority over appointments); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000) (major questions); *Felker v. Turpin*, 518 U.S. 651, 660–61 (1996) (jurisdiction stripping statutes); *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (in the federalism context, “[i]f Congress intends to alter the usual constitutional balance ..., it must make its intention to do so unmistakably clear ...” (internal quotation omitted)); *Sossamon v. Texas*, 563 U.S. 277, 285 (2011) (abrogation of sovereign immunity must be “unmistakably clear”). For example, courts require clear statements before finding that Congress gave away its powers, *see West Virginia v. EPA*, 597 U.S. 697, 723 (2022), before finding that Congress infringed the President’s authority to remove federal officials, *see Collins v. Yellen*, 594 U.S. 220, 250 (2021), or before concluding that the courts were stripped of jurisdiction, *see Felker*, 518 U.S. at 660–61.

Constitutional clear statement rules are also ubiquitous amongst textualist jurists and scholars. That is because of the common sense notion that “extraordinary” rearrangements of constitutional structures are usually “explicitly decreed rather than offhandedly implied.” ANTONIN SCALIA, A MATTER OF INTERPRETATION 29 (1997) (In these circumstances, “a ‘clear statement’ rule is merely normal interpretation”); *West Virginia*, 597 U.S. at 736 (Gorsuch, J., concurring) (“[C]lear-statement rules help courts ‘act as faithful agents of the Constitution.’” (quoting Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 169 (2010))).

In the same way, in reading the Missouri Constitution’s referendum provisions, Mo. Const. art. III, §§ 49, 52(a), 52(b), courts cannot presume a major reordering of the delicate balances struck by the framers of the Elections Clause, U.S. Const. art. I, § 4. Just as all

other parts of American government are protected by clear statement rules before courts find their power stripped, state legislatures are treated no differently under the Elections Clause. *See, e.g., United States v. Gradwell*, 243 U.S. 476, 485 (1917) (Congress may abrogate a state legislature’s Elections Clause authority only “by positive and clear statutes”); *United States v. Oregon*, 828 F. Supp. 3d 1092, 1095–96 (D. Or. 2026) (same, citing *Gradwell*, 243 U.S. at 485); *United States v. Caldwell*, No. CV 26-2025 (ZNQ) (JTQ), 2026 WL 2186515, at *3 (D.N.J. July 29, 2026) (same, citing *Gradwell*, 243 U.S. at 485); *see also Carson v. Simon*, 978 F.3d 1051, 1059–60 (8th Cir. 2020) (“By its plain terms, the Electors Clause vests the power to determine the manner of selecting electors exclusively in the ‘Legislature’ of each state,” and this power is not divested “by means of a general statute in the [state] election code.”).

United States v. Gradwell, 243 U.S. 476, is instructive. That case involved federal prosecutions of defendants in Rhode Island and West Virginia for election fraud. *Id.* at 477–78. In Rhode Island, fourteen defendants had bribed voters during the congressional election in 1914. *Id.* at 478. In West Virginia, twenty defendants participated in an extensive conspiracy to influence a U.S. Senate election in 1916. *Id.* The defendants incited and facilitated voting by “a large number of persons who had not resided in the state a sufficient length of time to entitle them to vote under the state law.” *Id.* The defendants also procured 400 of these individuals “to vote more than once.” *Id.*

The United States indicted these thirty-four defendants under the U.S. Criminal Code, citing statutes with general language that were facially broad enough prohibit the plainly unlawful acts of the defendants. *Id.* at 478–79. Specifically, the Rhode Island

defendants were indicted on “the charge that the defendants conspired ‘to defraud the United States,’ in violation of § 37 of the [federal] Criminal Code.” *Id.* at 479. Section 37 contained broad language prohibiting conspiracy “to defraud the United States in *any* manner for *any* purpose.” *Id.* (emphasis added) (quoting U.S. Criminal Code § 37). The West Virginia defendants were likewise indicted on “the charge that three candidates for the nomination for Senator of the United States were ‘injured and oppressed,’ within the meaning of § 19 of the [U.S.] Criminal Code, by a conspiracy on the part of the defendants to compass their defeat by causing illegal voting for an opposing party candidate at the primary election.” *Id.* Section 19 prohibited conspiracy “to injure, oppress, threaten, or intimidate *any* citizen in the free exercise of enjoyment of *any* right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.” *Id.* at 479–80 (emphasis added) (quoting U.S. Criminal Code § 19).

Despite the broad language of Sections 37 and 19, federal district courts in Rhode Island and West Virginia both dismissed the indictments. *Id.* at 479. The courts held that the indictments “fail[ed] to set forth any offense under the laws of the United States.” *Id.*

On appeal, the U.S. Supreme Court affirmed in an opinion applying the Elections Clause’s clear statement rule. *See id.* at 480–89. In interpreting Sections 37 and 19, the Supreme Court’s opinion begins with the premise that the Elections Clause presumptively vests regulatory authority over elections “in each state by the *legislature* thereof.” *Id.* at 482 (emphasis added) (quoting U.S. Const. art. I, § 4). The Supreme Court then surveyed the history of the Elections Clause since the founding, noting Congress’s extremely limited intrusions on the authority presumptively vested in state legislatures. *Id.* at 482–85; *see*

also id. at 484 (quoting James Madison’s prediction that the authority of “state legislatures” to regulate elections “will probably never” be impinged). The Supreme Court also emphasized that whenever Congress has displaced state legislative authority, “it has done so by *positive and clear statutes*”—such as election laws in effect from 1870 until 1894. *See id.* at 483–85 (emphasis added). Comparatively, Section 37’s broad language—prohibiting “defraud[ing] the United States in any manner for any purpose,” *id.* at 479—was still not a “positive and clear” statement because its text did not explicitly reference election fraud, *id.* at 485.

The Supreme Court also adopted a strict reading of Section 19, finding no application to fraud and repeat voting in West Virginia’s primary election. *Id.* at 486–89. The Supreme Court explained that Congress, through Section 19, “has shown no disposition to assume control of such primaries or to participate in them in any way, and that it is not for the courts, in the absence of such legislation, to attempt to supply it by stretching old statutes to new uses, to which they are not adapted and for which they were not intended.” *Id.* at 488–89. The Supreme Court then affirmed dismissal of all the indictments. *Id.* at 489.

In light of *Gradwell*, multiple courts—even just this year—have invoked the Elections Clause’s clear statement rule. *See, e.g., United States v. Oregon*, 828 F. Supp. 3d at 1095–96; *United States v. Caldwell*, 2026 WL 2186515, at *3. This case is even easier than *Gradwell*. *Gradwell* dealt with Congress’s authority—expressly vested by the Elections Clause—to “at any time by Law make or alter such [Election] Regulations” “prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4. If Congress—

the body with textual authority to override state legislatures under the Elections Clause—must act with clear statements, then so too must other actors.

This is observed in other cases involving state-level alterations to the Elections Clause’s assignment of powers. For example, in *Ohio ex rel. Davis v. Hildebrandt*, a “conclusive” decision by the State supreme court made it “clear that ... the referendum constituted a part of the state Constitution”—and the U.S. Supreme Court “pass[ed] ... consideration” on whether the Ohio Supreme Court’s determination was correct. 241 U.S. 565, 568 (1916); compare *Maggard*, 733 S.W.3d at 414 n.7 (emphasizing that whether a congressional map is subject to the Missouri Constitution’s referendum provisions is an open question). Likewise, in *Arizona State Legislature v. Arizona Independent Redistricting Commission* (“AIRC”), Arizonians had specifically “amended the Arizona Constitution to remove congressional redistricting authority from the State Legislature.” 576 U.S. 787, 796–97 (2015).

In his brief, von Glahn criticizes the Circuit Court’s decision in light of *Hildebrandt*. Appellant’s Br. 51–52. But *Hildebrandt* is beside the point. The question here is whether the Missouri Constitution *has* authorized referenda on congressional maps—not whether it *can* authorize such referenda. The point is that Missouri Constitution *would* speak through a “positive and clear” statement if it upset the careful balance set by the framers of the Elections Clause. *Gradwell*, 243 U.S. at 485. The U.S. Supreme Court has repeatedly imposed constitutional clear statement rules *even when* the avoided interpretation would not itself violate the Constitution. For example, the Elections Clause explicitly grants Congress authority to override state election laws, *see* U.S. Const. art. I, § 4, but Congress

must still speak through a “positive and clear” statement to achieve that result, *Gradwell*, 243 U.S. at 485. Likewise, even though federal and state legislatures *can* enact civil statutes that apply retroactively, the U.S. Supreme Court cites the Ex Post Facto Clause to establish a broad presumption against retroactivity for both criminal *and* civil laws. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994). And even though the U.S. Supreme Court has not enforced the non-delegation doctrine in nearly a century, *see A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), courts do “not assume” major delegations of power “to an agency without a clear statement to that effect,” *Biden v. Nebraska*, 600 U.S. 477, 506 (2023). The examples could go on. *See Amy Coney Barrett, Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. at 171–72 (collecting examples).

It also does not matter that von Glahn thinks there is “No Clear Statement Requirement in Missouri.” Appellant’s Br. 42–44. The Elections Clause’s clear statement rule is imposed by the U.S. Constitution, which protects the General Assembly from being stripped of its power. *See* U.S. Const. art. I, § 4. And this Court is bound by the U.S. Constitution’s requirements both as a matter of federal and state constitutional law.⁵ *See*

⁵ Later in his brief, von Glahn makes a passing argument that “the Secretary cannot deem a referendum insufficient on federal constitutional grounds.” Appellant’s Br. 57–58, 67. However, this argument is not raised in any Point Relied On. “Errors raised for the first time in the argument portion of the brief and that are not raised in the point relied on need not be considered ...” *Vallejo-Davila v. Osco Drug, Inc.*, 872 S.W.2d 511, 515 (Mo. App. W.D. 1994) (citing *Berger v. Huser*, 498 S.W.2d 536, 539 (Mo. Div. 2 1973)).

In any event, to obtain the ripeness dismissal of the State’s federal lawsuit last fall, von Glahn explicitly conceded in federal district court that “Denny Hoskins has the

U.S. Const. art. VI; Mo. Const. art. I, § 4 (“Missouri is a free and independent state, subject only to the Constitution of the United States.”). At any rate, clear statement rules are familiar to this Court, and von Glahn is wrong to suggest otherwise. See *Tuttle v. Dobbs Tire & Auto Ctrs., Inc.*, 590 S.W.3d 307, 311 (Mo. banc 2019) (requiring “express text” for a Missouri statute to apply extraterritorially); *Ramirez v. Mo. Prosecuting Att’ys*, 694 S.W.3d 432, 436 (Mo. banc 2024) (requiring an “express statutory exception” for a new abrogation of sovereign immunity); see also *Luther*, 730 S.W.3d at 571 (“[T]he General Assembly has the power to do whatever is necessary to perform its functions except as expressly restrained by the Constitution.” (emphasis added) (quoting *Liberty Oil*, 813 S.W.2d at 297)).

Thus, even assuming that the Elections Clause “does not preclude” a State from delegating redistricting authority to a referendum, changes to Elections Clause authority must at least be specific to “safeguard limits imposed by the Federal Constitution.” *Moore v. Harper*, 600 U.S. 1, 25, 35 (2023). The U.S. Constitution’s framers made “a deliberate

authority as Secretary of State to reject [von Glahn’s] petition as unconstitutional during post-submission review and to defend that decision based on” the Elections Clause. *Missouri Gen. Assembly v. Von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *1 (E.D. Mo. Dec. 8, 2025). Also, the federal court “expressly found that [von Glahn] affirmatively waived these points, precluding any argument to the contrary in future litigation (to say nothing of the ethical ramifications of counsel breaching their duty of candor to this tribunal).” *Id.* at *4 n.4. Thus, von Glahn is estopped from “from playing fast and loose with the judicial process.” *Vacca v. Missouri Dep’t of Lab. & Indus. Rels.*, 575 S.W.3d 223, 225 (Mo. banc 2019). The federal district court also expressly distinguished *Missouri Electric Cooperatives v. Kander*—the only case that von Glahn cites to support his argument. *Missouri Gen. Assembly v. Von Glahn*, No. 4:25-CV-1535-ZMB, 2026 WL 1290477, at *4 (E.D. Mo. May 11, 2026) (distinguishing *Kander*, 497 S.W.3d 905 (Mo. App. W.D. 2016)).

choice” to vest redistricting power in state legislatures, and this Court cannot permit the vagaries of broad language in state law to transfer that power in ways that the framers of state law did not intend. *Id.* at 34; *Gradwell*, 243 U.S. at 485, 488–89. The Elections Clause requires “positive and clear” statements to displace state legislative authority, and it forbids “stretching old [enactments] to new uses, to which they are not adapted and for which they were not intended.” *Gradwell*, 243 U.S. at 485, 488–89.

B. The Missouri Constitution contains no clear statement divesting the General Assembly of redistricting authority.

Although the Elections Clause requires a “positive and clear” statement to divest the General Assembly of its redistricting authority, *Gradwell*, 243 U.S. at 485, no such clear statement exists in the Missouri Constitution or Missouri law. “Article III, section 45 is the only provision of the Missouri Constitution directly addressing congressional redistricting.” *Luther*, 730 S.W.3d at 571. And Article III, Section 45 contemplates only that “the *general assembly* shall by law divide the state into [congressional] districts.” Mo. Const. art. III, § 45 (emphasis added). Also, this Court has never held that referenda on congressional maps are permissible. *See Maggard*, 733 S.W.3d at 414 n.7 (reserving that question). Instead, the Court has repeatedly affirmed the General Assembly’s “plenary legislative power” to redistrict under Article III, Section 10 and Article III, Section 45. *Luther*, 730 S.W.3d at 571–74. Moreover, none of the Missouri Constitution’s referendum provisions mentions election laws or congressional redistricting. *See* Mo. Const. art. III, §§ 49, 52(a), 52(b).

To be sure, the language of Article III, Section 49 is broad, “reserv[ing] power to approve or reject by referendum any act of the general assembly.” Mo. Const. art. III, § 49. But broad language—including the word “any”—is insufficient to overcome a clear statement rule. *See Gradwell*, 243 U.S. at 479–90; *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 220 n.4 (2008) (noting that clear statement rules “may counteract the effect of expansive modifiers,” such as terms like “any” and “all civil actions”) (collecting cases); *see also State v. Liberty*, 370 S.W.3d 537, 548 (Mo. banc 2012) (adopting a narrow reading of “any” because the term was “ambiguous”).

In *Gradwell*, for example, Section 37 of the U.S. Criminal Code prohibited conspiracy “to defraud the United States in *any* manner for *any* purpose.” 243 U.S. at 479 (emphasis added) (quoting U.S. Criminal Code § 37). Yet despite the broad language in Section 37, the U.S. Supreme Court applied the Elections Clause’s clear statement rule, and held that “it would be a strained and unreasonable construction to apply” Section 37 to election fraud because that would undermine state legislative authority. *Id.* at 485; *see also id.* at 489–90 (“[I]t is not for the courts, in the absence of such legislation, to attempt to supply [election regulations] by stretching old statutes to new uses, to which they are not adapted and for which they were not intended.”). Likewise, Article III, Section 49’s use of the word “any” cannot serve as a “positive and clear” statement sufficient to rip redistricting authority away from the General Assembly. *Gradwell*, 243 U.S. at 485.

Unsurprisingly, since the Missouri Constitution was ratified in 1945, no court has endorsed a referendum challenging a congressional map. One group sought a referendum on a congressional map in 1952, but its referendum petition was discarded because the

group's petition lacked sufficient signatures in any event. *See State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 702 (Mo. banc 1952). Then, most recently in *Maggard*, this Court underscored that its opinion should not be understood to endorse referenda against congressional maps. *See* 733 S.W.3d at 414 n.7 (“[T]his opinion presupposes without deciding HB 1 is subject to the right of referendum.”).⁶

It is also obvious that the General Assembly has never contemplated a referendum on a congressional map at least since the enactment of Chapter 116, RSMo. Chapter 116 was enacted in 1980, and it is the General Assembly's “framework for exercising the right of referendum” in Missouri. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 487 (Mo. banc 2022); *Maggard*, 733 S.W.3d at 415–16 (“The General Assembly enacted the statutory initiative and referendum certification process in chapter 116 in 1980 ... after then secretary of state, James Kirkpatrick, proposed a statutory certification process.”). Chapter 116 establishes detailed procedures for referenda and ballot initiatives. But those procedures are obviously incompatible with referenda on congressional maps.

For example, Chapter 116 limits a referendum's summary statement to just 100 words. § 116.334.1, RSMo. Chapter 116 also contains no provision for photographs to accompany a summary statement. *See* § 116.334, RSMo. Redistricting is an enormously

⁶ Appellant cites unreasoned dicta from *Preisler v. Hearn*, 362 S.W.2d 552, 557 (Mo. banc 1962). Appellant's Br. 17. But “an unexplained aside” in an opinion is entitled to little weight. *See Kisor v. Wilkie*, 588 U.S. 558, 597–98 (2019) (Gorsuch, J., concurring). And *Maggard* vitiated any persuasive value that *Preisler* holds by expressly noting that the availability of referenda on congressional maps is an open question. *See Maggard*, 733 S.W.3d at 414 n.7.

complicated endeavor—where legislators consider legal issues like compactness, geography, population, communities of interest, and countless other factors. *See Healey*, 732 S.W.3d at 839–52. Because redistricting takes expertise, the line-drawing power in other States is consistently vested in state legislatures or plainly transferred to expert commissions. *See AIRC*, 576 U.S. at 798. If the General Assembly had the slightest inkling that Chapter 116 would facilitate referenda and initiatives on congressional maps, it would not force average people to consider competing maps with virtually no information. In von Glahn’s world, many voters would select a competing congressional map without viewing either of the maps at issue. They could not possibly know—to give just one obvious example—where counties would be placed under the competing maps. Voters would not even know which districts *they* would be placed in under the competing maps. That is absurd.

As another example, Chapter 116 sets the presumptive deadline for the Secretary’s certification decision on the same day as the August Primary Election. *Compare* § 116.150.3, RSMo, *with* § 115.121.1–2, RSMo. Sometimes, Chapter 116 imposes a deadline even *after* the August Primary if local election authorities return their signature verifications to the Secretary less than two weeks before the Primary. *See* § 116.150.3, RSMo.⁷ The General Assembly would have never imposed this timeframe if it believed

⁷ “The secretary of state shall issue a certificate pursuant to this section not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election *or* two weeks after the date the election authority certifies the results of a petition verification pursuant to subsection 2 of section 116.130, *whichever is later.*” § 116.150.3, RSMo (emphasis added).

that referenda on congressional maps are possible. Von Glahn criticizes the Secretary for rendering a certification decision according to Chapter 116's deadline. But the Secretary followed the law perfectly. *See* § 116.150.3, RSMo. The problem is with von Glahn's project, not with Chapter 116.

Von Glahn has no response to these glaring problems. In fact, von Glahn's counsel all-but admitted at trial that Chapter 116 makes no sense in the context of referenda and initiatives on redistricting. Trial Tr., pp. 23:23–24:11, 62:21–63:18. His only response? “[W]e don’t care what the General Assembly thinks the Constitution means.” *Id.*, p. 24:2–3. He later added that “to assume our Legislature would make a logical choice is a major fallacy.” *Id.*, p. 63:15–17. His brief takes the same view of the General Assembly. *See* Appellant’s Br. 45. But courts cannot so easily dismiss the understanding of “a coordinate branch of our government.” *Preisler v. Doherty*, 284 S.W.2d 427, 431–32 (Mo. banc 1955). Chapter 116 is also especially probative of the Constitution’s meaning because its architect was former “secretary of state, James Kirkpatrick”—the longest-serving Secretary of State in Missouri history. *Maggard*, 733 S.W.3d at 415–16 (citing Off. Manual of the State of Mo. 14 (James C. Kirkpatrick & Kenneth M. Johnson eds., 1982)). Thus, Chapter 116 was enacted with heavy input from the executive branch and the legislative branch. And Chapter 116 simply illustrates the obvious: The Missouri Constitution lacks any “positive and clear” statement authorizing referenda on congressional maps. *Gradwell*, 243 U.S. at 485.

The potential harm does not end with referenda. The Missouri Constitution provides for initiative measures in the same provision where it provides for referenda. *See* Mo.

Const. art. III, § 49. So if a referendum were permitted, virtually any group could use the initiative process to propose congressional maps. In von Glahn’s brave new world, map-drawing would be left not to deliberative and democratically accountable legislators or given to expert independent commissions. Instead, various special interests groups from around the country could easily force their maps before voters through the State’s initiative process. Voters would be “educated” on the competing maps via dark-money-funded advertising and 100-word summary statements about each proposal. And if the General Assembly tries its hand at redistricting, dark-money-funded groups could easily gather signatures for a referendum, thus freezing implementation of a new map until the next election. That, in turn, will predictably lead to apportionment paralysis and invite one-person, one-vote or Voting Rights Act violations if the State is forced to use an old map in the interim. *See Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). The potential for chaos is endless—which goes to the lack of a clear statement in the Missouri Constitution and Missouri law.

Von Glahn has no response to the initiative problem in his brief. Indeed, at trial, von Glahn’s counsel openly acknowledged that his reading necessarily means Missourians “can” redistrict via “initiatives as well.” Trial Tr., p. 63:19–21. Counsel argued only that the Circuit Court should not consider the implications of von Glahn’s theory because an initiative is “not what we’re doing here.” *Id.*, p. 63:21–24. That is cold comfort. If the framers and the General Assembly had even considered the possibility that referenda and ballot initiatives could apply to congressional redistricting, they would have devised a different (and more sensible) system.

Von Glahn tries to dismiss any consideration of these practical realities as consequentialist reasoning at odds with textualism. *See* Appellant’s Br. 71 (citing Antonin Scalia & Bryan A. Garner, *Reading Law*, at 22 (2012)). But even Justice Scalia said that he was “a textualist, not a nut.” *See* Nina Totenberg, *Justice Scalia, the Great Dissenter, Opens Up*, NPR (April 28, 2008);⁸ *Heidbrink v. Swope*, 170 S.W.3d 13, 17 (Mo. App. E.D. 2005) (“Missouri’s Constitution, like the federal constitution, is not a suicide pact.”). That is partly why “extraordinary” rearrangements of constitutional structures must be “explicitly decreed rather than offhandedly implied.” ANTONIN SCALIA, A MATTER OF INTERPRETATION 29 (1997).

Without any clear statement, Von Glahn also cites one example of a 1922 referendum on a congressional map. *See* Appellant’s Br. 44. This referendum was held over two decades before the 1945 Constitution, and nearly six decades before the General Assembly enacted Chapter 116—the modern “framework for exercising the right of referendum” in Missouri. *No Bans*, 638 S.W.3d at 487; *Maggard*, 733 S.W.3d at 415–16. The 1922 referendum was never the subject of litigation, and no Missouri court has ever endorsed it. Moreover, in 1922, Missouri statutory law (unlike Chapter 116 today) forbade the Secretary of State from analyzing the substantive constitutionality of referenda. *Compare State ex rel. Kemper v. Carter*, 165 S.W. 773, 780 (Mo. banc 1914), with *Maggard*, 733 S.W.3d at 418 (“chapter 116 went into effect in January 1981” and is “a

⁸ <https://archive.is/OVAP0>

statutory process that did not exist when *Kemper* was decided”).⁹ Thus, in 1922 (unlike today), the Secretary of State had no occasion to weigh the constitutionality of a referendum on a congressional map. The 1922 referendum thus lacks even an implicit endorsement from any Missouri official—legislative, executive, or judicial. At best, the 1922 referendum shows the practice of one group of private citizens over a century ago.

Moreover, the Missouri Constitution has changed in the last century. Unlike the 1875 Missouri Constitution, the 1945 Constitution specifically addresses congressional redistricting. Article III, Section 45 of the 1945 Constitution contemplates only that “the *general assembly shall* by law divide the state into [congressional] districts.” Mo. Const. art. III, § 45 (emphasis added). Also, Article III, Section 7(h) provides that “[n]o redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 7(h). There was no comparable language in the 1875 Constitution, which governed in 1922.

Unsurprisingly, no congressional plan has been subjected to a referendum vote since 1922—a fact that should surprise the Court if von Glahn’s legal theory is right, given the strong incentives of the minority party to challenge redistricting plans adopted by the majority party. Also, no one has *ever* attempted to do redistricting by initiative petition. Thus, the 1922 example is hardly a line of established, unbroken practice about the meaning of the Missouri Constitution’s referendum provisions. Moreover, *even if* such

⁹ *Accord von Glahn*, 2025 WL 3514277, at *1, 4 n.4 (recognizing the Chapter 116 “authority” of the “Secretary of State to reject [PNP’s] petition as unconstitutional during post-submission review”); *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2026 WL 1290477, at *4 (E.D. Mo. May 11, 2026) (same).

practice existed, it would not be sufficient to overcome the Elections Clause’s clear statement rule. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015) (even “long-established practice” cannot overcome a clear statement rule); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *5 (E.D. Mo. Nov. 10, 2025) (same).

Von Glahn has thus failed to provide a “positive and clear” statement in the Missouri Constitution authorizing referenda on congressional maps. *Gradwell*, 243 U.S. at 485.¹⁰ This Court should affirm.

C. The Missouri Constitution forbids referenda on redistricting plans, including congressional maps.

Even if the Elections Clause did not impose a clear statement rule (it does), the Missouri Constitution’s plain text forbids referenda on “redistricting plan[s],” which

¹⁰ One final point merits brief attention: An amicus brief advances a new argument not raised in the Circuit Court or in any of von Glahn’s Points Relied On. The amici claim that federal law somehow “require[s] this Court” to hold that the Missouri Constitution permits referenda on congressional maps. *See* Amicus Br. of Campaign Legal Center et al. at 16–18 (emphasis in original) (filed Aug. 25, 2026). However, this Court can summarily reject this argument because an amicus cannot raise arguments that were never preserved in the Circuit Court or in any Point Relied On. *See Brainchild Holdings, LLC v. Cameron*, 534 S.W.3d 243, 246 n.7 (Mo. banc 2017).

In any event, neither of the federal statutes cited by amici, 2 U.S.C. §§ 2a(c) and 2c, purport to alter the Elections Clause’s clear statement rule. Section 2c has nothing to do with referenda on congressional districts. It simply bans the use of at-large congressional districts in certain circumstances. *See* 2 U.S.C. § 2c. Also, Section 2a(c)’s language simply says that redistricting should occur “in the manner provided by the law thereof.” 2 U.S.C. § 2a(c). Section 2a(c) never creates an affirmative obligation for State courts to artificially find a right to referendum in state law. Rather, the Elections Clause’s requirement for a “positive and clear” statement still governs, and nothing in federal law purports to alter that constitutional rule. *Gradwell*, 243 U.S. at 485.

includes congressional maps. Article III, Section 7(h) explicitly provides *in full*: “No redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 7(h). This “plain and unambiguous” language is easily broad enough to encompass any redistricting plan. *Luther*, 730 S.W.3d at 570–71. And even von Glahn acknowledges that “when the plain language ... is clear, this Court will *not* look beyond it.” Appellant’s Br. 36 (emphasis and alteration in original) (quoting *Smith v. St. Louis Cnty. Police*, 659 S.W.3d 895, 900–01 (Mo. banc 2023)).

Von Glahn argues that the Court should ignore plain text because Subsection 7(h) is located in a Section that also discusses redistricting for state senate districts. *See* Appellant’s Br. 40–42, 47–49. Von Glahn insists that if the framers intended to exempt congressional redistricting, “[t]hey could have written: ‘No redistricting plan, whether state or congressional, shall be subject to the referendum.’” *Id.* But this alternative only serves to prove the State’s point. The term “redistricting plan” is broad enough to encompass congressional maps. And the mere fact that this broad language is found in Subsection 7(h) does not undermine the applicability of that provision to all forms of “redistricting plan[s].” Mo. Const. art. III, § 7(h).

In any event, history explains *why* this broad ban on redistricting referenda is located in Subsection 7(h). The framers of the 1945 Constitution adopted Subsection 7(h) to overrule the only Missouri Supreme Court decision that had ever endorsed a referendum on a redistricting plan of any kind. In *State ex rel. Gordon v. Becker*, 49 S.W.2d 146 (Mo. banc 1932), this Court—in a fractured decision—held that referenda could be used to challenge a redistricting plan for the Missouri Senate. The delegates at the Missouri

Constitutional Convention specifically referenced this decision as warranting adoption of Article III, Section 7’s ban on referenda of redistricting plans. *See* Debates of the 1943–1944 Constitutional Convention of Missouri 7016 (2008). But that fact—which simply explains the placement of Subsection 7(h)—does not justify ignoring the “plain language” of the provision. Again, “when the plain language ... is clear, this Court will *not* look beyond it.” Appellant’s Br. 36 (emphasis and alteration in original) (quoting *Smith*, 659 S.W.3d at 900–01). Subsection 7(h) simply removes doubt and clarifies that “[n]o redistricting plan shall be subject to the referendum.” Mo. Const. art. III, § 7(h).

Additionally, the referendum provision itself can be read to exempt congressional maps from its coverage. *See Maggard*, 733 S.W.3d at 414 n.7 (flagging this language). Article III, Section 52(a) specifically excepts from the referendum “laws necessary for the immediate *preservation of the public peace, health or safety*, and laws making appropriations for the current expenses of the state government, *for the maintenance of state institutions* and for the support of public schools.” Mo. Const. art. III, § 52(a) (emphasis added). At least two of these exceptions apply here.

First, congressional maps are excepted from referenda because they are necessary “for the maintenance of state institutions.” Mo. Const. art. III, § 52(a). The term “institution” can refer to “a custom or practice that has existed for a long time and is accepted as an important part of a society,” such as “the institution of marriage.”

Institution, CAMBRIDGE DICTIONARY;¹¹ *see also Institution*, MERRIAM WEBSTER DICTIONARY (similar).¹² Laws necessary “for the maintenance of state institutions,” Mo. Const. art. III, § 52(a), can thus refer to laws necessary to preserve the most basic norms and practices of Missouri. That principle applies here because suffrage is certainly a fundamental Missouri institution. *See* Mo. Const. art. I, § 25; *Priorities USA v. State*, 591 S.W.3d 448, 452 (Mo. banc 2020). “The right to vote freely for the candidate of one’s choice is of the essence of a democratic society.” *St. Louis Cnty. Bd. of Election Commissioners v. McShane*, 492 S.W.3d 177, 180 (Mo. App. E.D. 2016) (internal quotation omitted). The U.S. Constitution also guards the fundamental right of Missourians to select their representatives in Congress. U.S. Const. art. I, § 2.

Perhaps no institution could be more fundamental to a free society than elections. To maintain that state institution, the Missouri Constitution specifically obligates the General Assembly to redistrict (at least) after each Census. Mo. Const. art. III, § 45. The General Assembly also holds plenary legislative authority to redistrict even more often if necessary. *See Luther*, 730 S.W.3d at 571–74. Post-Census redistricting is also functionally required by virtue of the U.S. Constitution’s “one person, one vote” rule. *See Wesberry*, 376 U.S. at 18. “Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly

¹¹<https://dictionary.cambridge.org/dictionary/english/institution?q=Institution>

¹² <https://www.merriam-webster.com/dictionary/institution>

representative of the people ...” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Fulfilling these requirements would be impossible without redistricting. See Mo. Const. art. III, § 45. Thus, redistricting legislation is squarely excepted from referenda because it is necessary “for the maintenance” of suffrage—which is a fundamental “state institution[.]” *Id.* art. III, § 52(a).

Von Glahn has only one response to this point: He reads “laws ... for the maintenance of state institutions” as applying only to *appropriations* laws in light of the prior exception for “laws making appropriations for the current expenses of the state government.” Appellant’s Br. 39; Mo. Const. art. III, § 52(a). However, the last-antecedent canon counsels against extending the modifier “making appropriations” beyond the immediately subsequent phrase “for the current expenses of the state government.” See *Rothschild v. State Tax Comm’n of Mo.*, 762 S.W.2d 35, 37 (Mo. banc 1988). Also, von Glahn’s reading makes no sense of Section 52(a)’s exceptions. Courts “must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage.” *Pestka v. State*, 493 S.W.3d 405, 409 (Mo. banc 2016) (internal quotation omitted). Yet von Glahn’s interpretation violates this presumption by limiting Section 52(a)’s exception to *appropriations* laws “for the maintenance of state institutions.” Mo. Const. art. III, § 52(a). Section 52(a) already excepts “laws making appropriations for the current expenses of the state government.” *Id.* This is already sufficiently broad to cover *appropriations* laws for the maintenance of state institutions. Thus, Section 52(a)’s *additional* exception as to “laws ... for the maintenance of state institutions” only makes sense in the context of all such laws, not just laws providing for an appropriation. *Id.*

Next, redistricting legislation is excepted from the referendum for another reason: Such legislation is “necessary” for “preservation of the public peace, health or safety.” Mo. Const. art. III, § 52(a). Again, facilitating elections is impossible without redistricting legislation. And “the political franchise of voting” is “preservative of all rights.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). That is why the Missouri Constitution speaks “‘with unmistakable clarity’ that Missouri citizens have a fundamental right to vote.” *Priorities USA*, 591 S.W.3d at 452 (citation omitted); Mo. Const. art. I, § 25 (“[A]ll elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”). Regular and fair elections are a fundamental component of a free society. Article III, Section 52(a) thus exempts election laws, such as the HB 1 map, from referendum challenges. Miniscule fractions of Missouri’s population (3.3% of voters) cannot demand referenda on—and potentially block—legislation that is so essential to the “preservation of the public peace.” Mo. Const. art. III, § 52(a).

Von Glahn’s lone response to this point is that HB 1 does not contain an emergency clause. Appellant’s Br. 39. But nothing in Section 52(a) provides that legislation must contain an emergency clause in order for the “public peace” exception to apply. Mo. Const. art. III, § 52(a). This is in stark contrast to Article III, Section 29, which provides that the legislature “must” include an emergency clause to alter the effective date of legislation. Mo. Const. art. III, § 29. There is no similar requirement in Article III, Section 52(a). These contrasting provisions suggest a difference in meaning. *See Am. Civ. Liberties Union of Mo. v. Ashcroft*, 577 S.W.3d 881, 892 (Mo. App. W.D. 2019) (holding that

“different terms” suggest “different meaning and effect” (internal quotation omitted)). Further, “[w]hether or not the act is one necessary for the immediate preservation of the public peace, health or safety is a judicial question.” *Inter-City Fire Prot. Dist. of Jackson Cnty. v. Gambrell*, 231 S.W.2d 193, 200 (Mo. banc 1950). This Court is not bound by the fact that the General Assembly did not include an emergency clause any more than it would be bound if the General Assembly had included such a clause. *See id.* And it is the “province and duty” of this Court to apply Article III, Section 52(a)’s exceptions where they plainly apply. *Mo. Coal. for Env’t v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (Mo. banc 1997) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803)).

The Court should therefore conclude that the Missouri Constitution does not authorize referenda against congressional maps and enter judgment for the Secretary.

II. The U.S. Constitution renders Article III, Section 52(b) of Missouri Constitution invalid as applied to HB 1. (Response to Points Relied On III and IV)

In the alternative, *even if* the Court believes that the Missouri Constitution permits referenda on congressional maps, the U.S. Constitution would invalidate Article III, Section 52(b)—which freezes referred laws pending a statewide vote—as applied to HB 1. The Circuit Court correctly recognized that applying Article III, Section 52(b) to a congressional map—especially *during* an ongoing election—would “invert[] the constitutional design” and violate the Elections Clause. D63, ¶ 112.

The Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4. This Clause is rooted in a republican theory

of government. At the founding, everyone agreed that the majority's will must control the time, place, and manner of federal elections. The only question was whether the majority will was best expressed through Congress or state legislatures. *See* Debate in New York Ratifying Convention, in 2 *The Founders' Constitution*, at 268, 269 (statement of John Jay) ("The will of the people certainly ought to be the law, but the only question was ... whether the will of the people, with respect to the time, place, and manner of holding elections, ought to be expressed by the general government, or by the state legislatures."); *Federal Farmer No. 12* (Richard Henry Lee) ("[S]o far as regulations as to elections cannot be fixed by the constitution, they ought to be left to the state legislatures, they coming far nearest to the people themselves; at most, congress ought to have power to regulate elections only where a state shall neglect to make them."). No one, however, could have imagined that any State would allow approximately 3.3% of a State's voting population to unilaterally override the State's congressional map for an entire election cycle. *See* Mo. Const. art. III, §§ 52(a), 52(b). Of course, it would be laughable to think that just 3.3% of the electorate could represent "the will of the people," as founders like John Jay and Richard Henry Lee envisioned.

Through the Elections Clause, the founders ultimately settled on vesting regulatory authority over elections in state legislatures—as "the *representative* body which ma[kes] the laws of *the people*." *Smiley v. Holm*, 285 U.S. 355, 365 (1932) (emphasis added) (internal quotation omitted). Yet according to von Glahn, Article III, Section 52(b) of the Missouri Constitution mandates that HB 1 cannot take effect (and is thus temporarily repealed) *until* voters weigh in. *See* D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. That would mean that

about 3.3% of registered voters can block a law enacted by the People's elected representatives. To the extent that the U.S. Constitution's Elections Clause means *anything*, it certainly prohibits that profoundly antidemocratic arrangement.

Of course, 110 years ago in *Hildebrandt*, 241 U.S. 565, the U.S. Supreme Court held that the U.S. Constitution's Elections Clause did not prevent Ohio from subjecting congressional maps to a referendum. Likewise, in *State ex rel. Carroll v. Becker*, this Court held that Missouri's Governor may veto redistricting legislation without running afoul of the Elections Clause. *See* 45 S.W.2d 533 (Mo. banc 1932), *aff'd*, 285 U.S. 380. But that has nothing to do with the questions at issue here. HB 1 *has* been approved by the Governor's signature. Yet von Glahn still thinks that "he is entitled to the immediate suspension of the use and implementation of HB 1" even *before* the People vote. D2, ¶ 42. That is unprecedented. Neither *Hildebrandt* nor *Carroll* suggest that just 3.3% of a State's voters can displace a lawfully-enacted congressional map for an entire election cycle.

Von Glahn nonetheless insists *Hildebrandt* endorsed this regime because all referendum petitions supposedly suspend enforcement of duly-enacted laws before they go into effect. Appellant's Br. 60–63. But that is not the law in Missouri. *See Maggard*, 733 S.W.3d at 421 ("[T]he December 9 referendum petition filing did not automatically suspend HB 1."). Also, that is not the law in many other States. *See State v. Allen*, 625 P.2d 844, 846 (Alaska 1981) ("[T]he filing of a referendum petition does not suspend the effect or operation of the act referred." (quoting *Walters v. Cease*, 388 P.2d 263, 268 (Alaska 1964))); *Thomson v. Wyo. In-Stream Flow Comm.*, 651 P.2d 778, 785–86 (Wyo. 1982); *Barnes v. State ex rel. Pinkney*, 204 A.2d 787, 793 (Md. 1964); *State v. Howard*,

248 P. 44, 45–46 (Nev. 1926). Despite von Glahn’s hyperbolic claim, *see* Appellant’s Br. 60–63, Missouri can have referenda without referred laws being automatically frozen.

Moreover, von Glahn’s cherry-picked quotation from *Hildebrandt* obscures what actually happened in that case. *See* Appellant’s Br. 61 (quoting *Hildebrandt*, 241 U.S. at 566). *Hildebrandt* never held that the Elections Clause permitted a small fraction of Ohioans to suspend the State’s congressional map for an entire election cycle. Rather, the 1915 referendum at issue in *Hildebrandt* arose in a non-election year. *See* 241 U.S. at 566. Also, the referendum “vote was taken and the law was disapproved” before the congressional elections in November 1916. *See id.* Thus, the U.S. Supreme Court never considered whether a small percentage of voters could suspend a congressional map for an entire election cycle. *See id.* Also, von Glahn brushes aside that *Hildebrandt* merely recognized the ability to veto redistricting legislation via a referendum vote. *AIRC*, 576 U.S. at 840 (Roberts, C.J., dissenting) (discussing *Hildebrandt*). “The result of the decision was to send the *Ohio Legislature* back to the drawing board to do the redistricting.” *Id.* (emphasis in original). *Hildebrandt* never suggested that just 3.3% of registered voters could force a State to use their preferred map for an entire election cycle. The State challenges von Glahn to explain what—if anything—would be left of the Elections Clause if *that* result is permissible.¹³

This Court should affirm.

¹³ The Guarantee Clause also provides a sufficient basis to affirm because it “necessarily implies a duty on the part of the States themselves to provide” a republican form of government. *Minor v. Happersett*, 88 U.S. 162, 175 (1874); *accord Opinion to the*

III. The U.S. Constitution and federal law forbid changing Missouri's congressional map during the 2026 congressional election. (Response to Points Relied On V, VI, and VII)

Even if von Glahn is correct that 3.3% of Missouri voters can freeze duly enacted congressional maps, von Glahn's proposed remedy—an injunction against enforcement of HB 1—would necessarily violate the U.S. Constitution and federal law.

Throughout this case, von Glahn has been unclear about precisely what remedy he envisions. At first, von Glahn's Petition vaguely demanded an injunction against “the use and implementation of HB 1,” D2, ¶¶ 42–43, 45; *id.* at 8. Meanwhile, his counsel told the media that, if von Glahn prevails, Missouri courts might “order a new primary” or “leave the nominees in place and run them in the old districts.” See Jason Hancock, *Referendum campaign asks court to block new Missouri map from November election*, MISSOURI INDEPENDENT (Aug. 5, 2026).¹⁴ Then, the night before trial, von Glahn filed a brief proposing simply retaining the same nominees and “requir[ing] voters to consider different

Governor, 185 A.2d 111, 114 (R.I. 1962). Many state supreme courts have treated Guarantee Clause questions as justiciable. See *Opinion to the Governor*, 185 A.2d at 114; *VanSickle v. Shanahan*, 511 P.2d 223, 231–35 (Kan. 1973); *Heimerl v. Ozaukee Cnty.*, 40 N.W.2d 564, 567 (Wis. 1949). Also, von Glahn's proposed remedy—nullification of HB 1 without a majority vote—palpably affronts the Guarantee Clause. As George Washington said, “[I]f the Laws are to be so trampled upon—with impunity—and a minority (a small one too) is to dictate to the majority,” then “there is an end put, at one stroke, to republican government.” See Letter from George Washington to Charles Mynn Thruston (Aug. 10, 1794). Allowing 3.3% of registered voters to override the People's elected representatives is so outlandish and anti-democratic that it violates the Guarantee Clause. D63, ¶¶ 115–22.

¹⁴ <https://archive.is/Sb26p>

candidates at the general than they considered at the primary.” See D62, pp. 31–34. Von Glahn repeated this proposal at trial. Trial Tr., p. 28:22–25.

Now, on appeal, von Glahn has changed his strategy again. Citing *Maggard*, von Glahn criticizes the Secretary for even deigning to ask what an injunction against HB 1 would entail. Appellant’s Br. 71–72, 75. Von Glahn says that this action is “[l]imited” to the Secretary’s sufficiency determination under Section 116.150, RSMo, and that any consequences of a sufficiency determination would naturally flow from *Maggard*. Appellant’s Br. 70, 75.¹⁵ Also, for the first time on appeal, von Glahn suggests that if the HB 1 map is invalidated, the primary votes of 1.2 million Missourians should be discarded, all the August nominees should be disqualified, and party committees should nominate replacement candidates under § 115.363, RSMo. Appellant’s Br. 81–86.

Von Glahn’s continual search for a viable remedy illustrates that he has no idea how an injunction against HB 1 would work. And any potential remedy would violate federal law and the U.S. Constitution. Hosting another primary would be impossible in light of deadlines prescribed by UOCAVA, 52 U.S.C. § 20302. And holding a General Election under a *different* congressional map would violate the U.S. Constitution’s Article I, Section 2 and its Equal Protection Clause. Also, because the U.S. Constitution and federal law forbid all of von Glahn’s proposed remedies, von Glahn cannot gesture at *Maggard*’s holding as if *Maggard* somehow resolved every remedial question in this case (in reality,

¹⁵ Von Glahn’s Point Relied On V reads like a waiver of his request for an injunction against enforcement of HB 1. Von Glahn explicitly states: “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.” Appellant’s Br. 70.

of course, *Maggard* addressed none of these questions). Thus, the Court must reject von Glahn's demand for an injunction.

A. Absent almost *any* explanation from von Glahn about his proposed remedy, the Circuit Court can hardly be faulted for noting that a new Primary Election would be improper under UOCAVA.

Von Glahn criticizes the Circuit Court for noting the legal impossibility of a new Primary Election in light of UOCAVA, 52 U.S.C. § 20302. Von Glahn thinks that such considerations are outside the scope of judicial review under Section 116.200, RSMo. Appellant's Br. 70–74. He also says that he “never asked for a new primary election or claimed reversal of the Secretary's certification decision would require one.” Appellant's Br. 75.

However, the Circuit Court can hardly be faulted for noting this point in its judgment. Von Glahn's Petition included virtually nothing about what he meant when he demanded an injunction against HB 1. D2, ¶¶ 6–7, 42–43, 45; *id.* at 8. Also, von Glahn's counsel told the press that Missouri courts might “order a new primary” if he prevailed in this litigation. *See* Jason Hancock, *Referendum campaign asks court to block new Missouri map from November election*, MISSOURI INDEPENDENT (Aug. 5, 2026).¹⁶ Moreover, if von Glahn “never asked for a new primary election,” Appellant's Br. 75, one wonders why von Glahn devotes two points relied on to contesting the Circuit Court's holding that running a new Primary Election would be impossible, *see* Appellant's Br. 70, 75. Von Glahn cannot

¹⁶ <https://archive.is/Sb26p>

suffer any conceivable prejudice from the denial of a remedy that he supposedly never asked for.

At any rate, the Circuit Court was correct that it would be impossible to run a new Primary and a General Election by November 3, 2026. UOCAVA requires local election authorities to transmit ballots “not later than 45 days before the election” to military and overseas voters, 52 U.S.C. § 20302(a)(8), § 115.914, RSMo, and Missouri statutes implementing UOCAVA prevent the certification of election results for three days after an election, *see* §§ 115.920.1, 115.508, RSMo. Mathematically, that requires *at least* 93 days to run a primary and general election by the federally-imposed deadline on November 3, 2026. *See Foster v. Love*, 522 U.S. 67, 73–74 (1997) (holding that State may not run federal election in conflict with federal timing of 2 U.S.C. § 7). Yet, on the day of oral argument in this case, Missouri will be 62 days away from the November General Election. Thus, as a matter of federal law, it is already too late to order Missouri to re-run its Primary Election.

B. An order requiring a General Election under a different map would violate the U.S. Constitution.

In the Circuit Court, von Glahn floated another proposal: having the winners of the Primary Election simply run in different congressional districts in the General Election. *See* D62, pp. 31–34; Trial Tr., p. 28:22–25. In other words, hundreds of thousands of voters would vote for candidates in the General Election that they had no role in choosing in the Primary Election. Cole County voters, for example, chose Rick Brattin and Emanuel Cleaver as the candidates for Congressional District 5, but von Glahn apparently thinks

Cole County voters should be forced to choose between Bob Onder and Bethany Mann—who were chosen by entirely different voters in Congressional District 3.

The Circuit Court correctly held that this proposal violates the U.S. Constitution. Specifically, Article I, Section 2 protects the right to vote and prohibits States from nullifying votes cast in federal congressional elections. *See* U.S. Const. art. I, §2; *United States v. Mosley*, 238 U.S. 383, 386 (1915) (recognizing that the constitutional right to vote includes “right to have one’s vote counted”). But that is exactly what von Glahn proposed to the Circuit Court—a plan that would render hundreds of thousands of votes in the Primary Election effectively null and void. D62, pp. 31–34; Trial Tr., p. 28:22–25.

Nor does the fact that von Glahn proposes to nullify a primary election—as opposed to a general election—change anything. U.S. Supreme Court precedent establishes that “[w]here the state law has made the primary an integral part of the procedure of choice . . . the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by” the Constitution’s right to vote. *United States v. Classic*, 313 U.S. 299, 318 (1941). Said another way, the primary and general elections are “fus[ed]” into a “single instrumentality” such that they possess a “unitary character.” *Smith v. Allwright*, 321 U.S. 649, 660–61 (1944).

This is certainly true in Missouri. Relying on *Classic* and *Allwright*, this Court has already held that Missouri’s congressional primaries are “an integral part of the electoral process” in this State. *Pollard v. Bd. of Police Comm’rs*, 665 S.W.2d 333, 340 (Mo. banc 1984) (citing *Classic*, 313 U.S. 299; *Allwright*, 321 U.S. 649). This Court has also emphasized that “[n]ominating or primary elections have constitutional stature in

Missouri” and serve an “integral part of [the State’s] election machinery.” *State ex rel. McClellan v. Kirkpatrick*, 504 S.W.2d 83, 86 (Mo. banc 1974) (citing Mo. Const. art. VIII, § 3). Missouri law also provides that “all candidates for elective office shall be nominated at a primary election,” §§ 115.339, 115.343, RSMo. Thus, the primary “exclud[es] from the ballot on the general election the names of candidates rejected at the primary” such that it “impose[s] restrictions upon the choice of candidates by the voters save by voting at the primary election.” *Classic*, 313 U.S. at 313. This makes the primary “integral” “as a matter of law.” *Id.* at 314; *McClellan*, 504 S.W.2d at 86. Von Glahn fails to provide any persuasive argument otherwise, and his attempt to distinguish *Classic* and *Allwright* is wholly unpersuasive in light of this Court’s own reliance on those cases. *See Pollard*, 665 S.W.2d at 340.

The Circuit Court also correctly held that forcing Missouri’s Primary nominees to run in new districts would violate the U.S. Constitution’s Equal Protection Clause. *See* D63, ¶¶ 142–47. Once again, von Glahn told the trial court that he wanted many Missourians to consider a slate of candidates that they never considered in the Primary Election. D62, pp. 31–34; Trial Tr., p. 28:22–25. These voters would obviously possess less voting power than those who participated in a Primary and General Election in the same congressional district. That disparity in voting power would violate the Equal Protection Clause.

The Equal Protection Clause forbids weighting the votes of some Missourians “more heavily” than others. *Gray v. Sanders*, 372 U.S. 368, 379 (1963). “Once the geographical unit for which a representative is to be chosen is designated, all who

participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and *wherever their home may be* in that geographical unit.” *Id.* (emphasis added). “This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.” *Id.* at 379–80.

For obvious reasons, the Circuit Court found that remedy that von Glahn suggested—changing the congressional map in the middle of an election—would flagrantly violate this standard. D63, ¶¶ 142–47. Indeed, von Glahn’s remedy would diminish the voice of many Missourians (including every voter in Cole County) who would be forced to vote for different slates of candidates in the Primary and General Elections. This would be particularly problematic in districts where primaries are more competitive than the general election. In those districts, the primary election is *the* contest where voters effectively select their representative.

Von Glahn’s brief lacks any persuasive critique of the Circuit Court’s holding. Von Glahn mainly tries to confine *Gray*’s equal protection ruling to the facts of that case. Appellant’s Br. 78. But his argument ignores that it is “a judicial decision’s reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.” *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020). *Gray* broadly establishes that the Equal Protection Clause requires States to provide their citizens equal votes regardless of geographical differences. 372 U.S. at 379. The Circuit Court found that “[i]f the congressional map changes between the primary and general elections, it would force

hundreds of thousands of Missourians to vote in a district different from the one in which they cast their primary ballots.” D63, ¶ 145. Also, the court found that “[t]hose voters would possess materially less voting power than voters whose district remained the same because the former group would have to select from candidates they never had the opportunity to evaluate, support, or oppose in the primary.” *Id.* ¶ 146. Thus, hundreds of thousands of Missourians would be denied equal protection because their votes would be disadvantaged relative to the votes other Missourians. It is that simple.

C. Von Glahn’s newly demanded remedy is waived, it lacks any foundation in Missouri law, and it would flagrantly violate Article I, Section 2 of the U.S. Constitution.

The Court should also reject von Glahn’s newfound demand in Point Relied On VII for disqualification of all sixteen nominees selected by voters in the August Primary. *See* Appellant’s Br. 81–86. This argument is waived, it lacks any foundation in Missouri law, and it would flagrantly violate Article I, Section 2 of the U.S. Constitution. Unsurprisingly, the State is not aware of—and von Glahn does not cite—any judicial precedent awarding such a remedy.

Below, von Glahn never demanded an order disqualifying Missouri’s congressional nominees and requiring party committees to nominate replacement candidates. No such demand is contained in his Petition. D2. Von Glahn claims that he “addressed Missouri’s disqualification statutes in his trial brief.” Appellant’s Br. 81. But that is barely true. Von Glahn made a passing reference to Missouri’s disqualification statutes on page 32 of his trial brief, but that was only for purposes of addressing the implications of the State’s argument under Article I, Section 2 of the U.S. Constitution. D62, p. 32. He never raised

the disqualification statutes for purposes of proposing a remedy. And, lest there be any doubt, von Glahn’s counsel *explicitly disclaimed* at trial that he was requesting an order disqualifying nominees and requiring parties to select replacements:

We are not asking you to set aside that primary. If it turns out that someone challenges and that was running improperly, it may be that there are vacancies somehow in the nominees, in which case Missouri law provides that the democrat and republican parties will make their nominations. *We don’t have to decide any of that right now.*

Trial Tr., p. 29:1–7 (emphasis added). Thus, von Glahn’s argument in Point Relied On VII was affirmatively waived. Or, at the very least, Point Relied On VII is not preserved. “[I]t simply is not the role of ... this Court to grant relief on arguments that were not presented to or decided by the trial court.” *Barkley v. McKeever Enters., Inc.*, 456 S.W.3d 829, 839 (Mo. banc 2015). Thus, this Court should dismiss Point Relied On VII.

In any event, Missouri’s disqualification statute, § 115.363, RSMo, is wholly inapplicable to the scenario that the Court confronts in this case. Nothing in Missouri law allows this Court to throw out 1.2 million votes cast in the *completed* Primary Election. Rather, Missouri law makes primaries central to Missourians “choos[ing]” their representatives. *Classic*, 313 U.S. at 318; *accord* U.S. Const. art. I, § 2. Chapter 115, RSMo, makes clear that “[p]olitical parties and groups of voters may nominate candidates in the manner provided by this subchapter and *in no other manner.*” § 115.307, RSMo (emphasis added). Section 115.339 then provides that “[e]xcept as otherwise provided in this subchapter, *all candidates* for elective office shall be nominated *at a primary election* in accordance with the provisions of sections 115.339 through 115.405 of this subchapter.” (emphasis added). Section 115.341 then specifies, “For the nomination of candidates to be

electd at the next general election, a primary election shall be held on the first Tuesday after the first Monday in August of even-numbered years.”

Furthermore, the voters’ selection at the August 4 Primary Election is sacrosanct. Section 115.343 provides:

The person receiving the greatest number of votes at a primary election as a party candidate for an office *shall* be the *only* candidate of that party for the office at the general election. The name of such candidate *shall* be placed on the official ballot at the general election unless he is removed or replaced as provided by law.

§ 115.343, RSMo (emphasis added).

The law provides for removal or replacement of the nominated candidate for only three reasons: The nominee (1) “die[s],” (2) “is disqualified,” or (3) voluntarily “withdraw[s]” “at or before 5:00 p.m. on the tenth Tuesday prior to the general election.”

§ 115.363.3(1)–(3), .4, RSMo. In those three circumstances (which must occur no later than 10 weeks before the general election), “the party nominating committee for any established political party may select a party candidate.” *Id.* Otherwise, “all candidates for elective office shall be nominated at a primary election”—which must take place on August 4. *See* §§ 115.339, 115.341, RSMo.

Thus, the idea that a court could simply throw away the votes of 1.2 million Missourians is nonsense. Missouri is already less than 10 weeks before the general election on November 3, 2026. Also, if the HB 1 map is invalidated, none of the nominees that voters selected would have died, become disqualified, or withdrawn. 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 (emphasis added).

Here, the nominees originally selected would remain qualified to compete in the general election—even if the HB 1 map were somehow deemed unconstitutional. In fact, they would likely compete for the nomination against the very same candidates that they just defeated per the votes of 1.2 million Missourians. *See* D63, ¶ 15. Thus, absent any death, disqualification, or withdrawal, political parties would lack the authority to nominate new candidates even if HB 1 were deemed unconstitutional. Rather, “[t]he person receiving the greatest number of votes at a primary election as a party candidate for an office *shall be the only* candidate of that party for the office at the general election.” § 115.343, RSMo (emphasis added).

* * *

In seeking an injunction against HB 1 before the General Election, von Glahn appears naïve about the blast radius of his demand. Regardless of how the Court reads the Missouri Constitution, it cannot order the State to violate the U.S. Constitution and federal law by using a different congressional map than the one used in the 2026 Primary Election. This Court should affirm.

IV. The Circuit Court found that changing the congressional map at this hour is impossible. Thus, the *Hadley-Purcell* principle forbids von Glahn’s impossible demand. (Response to Point Relied On VIII)

Finally, as the Circuit Court found, changing the congressional map is “impossible” after the 2026 Primary Election. D63, ¶ 170 (finding that “changing the maps at this late juncture is not just ‘impractical,’ it is impossible”); D50, ¶ 6, Brown Aff. Thus, the Circuit

Court correctly held that basic principles of equity mandate rejection of von Glahn's claims. D63, ¶¶ 149–71.

It is far, *far* too late to change the map governing the 2026 elections. Candidate filing ended in late March. § 115.349.1, RSMo. Missouri finished its Primary Election—in which 1.2 million people voted—over three weeks ago. D63, ¶ 15; §§ 115.121.2, 115.341, RSMo. On the date of oral argument, absentee voting in the General Election will begin in a couple weeks. *See* § 115.284.5, RSMo. At this point, changing the HB 1 map is unthinkable—even if von Glahn proves a constitutional violation.

This Court's decision in *Hadley* is dispositive. *See Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1 (Mo. banc 1970). There, this Court confronted a remand after the U.S. Supreme Court found that districts for electing school officials were unconstitutionally apportioned. 460 S.W.2d at 2. On the date that this Court rendered its decision, the candidate filing period was scheduled to end in a few days. *Id.* at 2. The Court noted that “[f]ive candidates have filed for the office, and the election machinery already is in operation.” *Id.* at 3. Furthermore, “[a]bsentee ballots for that election are now being printed and other preparations, including necessary adjustments of voting machines, are in progress. Substantial expense has been incurred and substantial additional expense would be involved if the election of trustees is postponed and such election is held at a later date.” *Id.* This Court thus concluded that “it would be wholly inequitable and impracticable to attempt at this late date to” order an adjustment to the unconstitutionally apportioned districts. *Id.* In reaching this conclusion, the Court noted the U.S. Supreme Court's own precedent that “a court is entitled to *and should* consider the proximity of a

forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Id.* at 2 (emphasis added) (quoting *Reynolds*, 377 U.S. at 585).

Today, the U.S. Supreme Court still applies this equitable principle—known as the *Purcell* principle in federal court. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). In fact, the U.S. Supreme Court applied the *Purcell* principle to foreclose challenges to Texas’s congressional map for the 2026 elections *ten* months ago—*during* Texas’s candidate filing period. *See Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (per curiam). If this case were in federal court, von Glahn’s request for an injunction would be deemed frivolous.

Undeterred, von Glahn soldiers on—demanding a change to Missouri’s congressional map over four weeks *after* the August Primary (accounting for the September 2 oral argument). The State is not aware of any court—ever—that has awarded such a drastic remedy. And *Hadley* certainly requires rejection of von Glahn’s claims here. As the Circuit Court found, “Candidate filing closed months ago. Over 1.2 million Missourians voted in the August 4 primary. Nominees have been selected. Campaigns for the general election are underway.” D63, ¶ 165. Also, the Circuit Court found that von Glahn had “not demonstrated how State officials could reverse course and implement some entirely new map, how nominees selected by voters in one set of districts would campaign in different ones, or how voters would make sense of a last-minute overhaul of the districts they just voted in.” *Id.*; accord *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring) (“Late judicial tinkering with election laws can lead to

disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.”).

The Circuit Court also found that “changing the maps at this late juncture ... is impossible” in light of changes that (at least) some counties would need to make to the Missouri Centralized Voter Registration (“MCVR”) database. D63, ¶¶ 170–71. This finding was supported by voluminous record evidence, most notably the written testimony of Tammy Brown. D50, ¶¶ 6, 19, Brown Aff. (testifying that changing the map in Jackson County before the 2026 General Election is “literally impossible”). Brown has twenty-five years of experience as a Jackson County election official. *Id.* ¶ 1. She has facilitated over a hundred elections in Jackson County, and she helped manage Jackson County’s efforts to implement redrawn congressional maps in 2012, 2022, and 2026. *Id.* ¶¶ 2, 3. Brown has never heard of Missouri—or any other State—ever changing their congressional map between a primary election and a general election. *Id.* ¶ 5.

As Brown explained in her affidavit, to implement a new congressional map, local election officials must transfer voters in the MCVR database. This is a slow, meticulous process that involves manually moving individual voters from one congressional district to another. *Id.* ¶ 7. It involves careful analysis of printed maps, and several rounds of proofreading. *Id.* This arduous process usually takes 2–2 ½ weeks, and requires *at least*

7–10 days if election officials worked overtime and weekends in order to quickly implement a new map. *Id.*¹⁷

Critically, the MCVR system locks shortly before absentee ballots are distributed and remains locked until an election is certified two weeks after election day. *Id.* ¶ 8.¹⁸ This year, the MCVR system will remain locked until (at least) mid-November because of a Jackson County special election in September 2026. *Id.* ¶ 9. Thus, changing the map in the MCVR system is “literally impossible” until after the General Election. *Id.* ¶¶ 6, 19; *see also* D63, ¶¶ 170–71 (factual findings crediting all these points).

Further, to comply with UOCAVA, Missouri local election officials must send ballots to military and overseas voters no later than September 19, 2026. *See* 52 U.S.C.

¹⁷ *Accord* D54, Letter of Missouri Association of County Clerks and Election Authorities; D51, pp. 11–14, Amicus Br. of Brianna Lennon, *supra*; D52, pp. 13–16, Amicus Br. of Kurt Bahr, *supra*; D53, p. 109:1–17, Trial Testimony of Shawn Kieffer, *supra*.

¹⁸ In fact, in light of MCVR’s locking function, the Missouri Association of County Clerks and Election Authorities feared that there would not be any window available after January 2026 to change Missouri’s congressional map. *See* D54, Letter of Missouri Association of County Clerks and Election Authorities (“Redistricting complicates this process because MCVR ‘locks’ current district boundaries during any active election so that new districts cannot be created, and voters subsequently cannot be assigned to new districts.”); *see also* D51, pp. 11–14, Amicus Br. of Brianna Lennon, *supra* (“Typically, the last possible time for a local election official to establish new districts for an election is the ninth Tuesday before an election.”); D52, pp. 13–16, Amicus Br. of Kurt Bahr, *supra* (“[L]ocal election authorities cannot access MCVR to enter new district lines at just any time of year. For lengthy stretches of time, MCVR is necessarily ‘locked’ to protect against structural districting changes. This lockout lasts for a period before and after each election while ballots are printed and mailed, poll lists are compiled, voting occurs, votes are canvassed, and returns are certified.”).

§ 20302(a)(8). This requires printing ballots no later than eight weeks before the election (September 8, 2026). D50, ¶ 14, Brown Aff. Election officials also need at least two weeks before printing (August 25, 2026) to design and test ballots. *Id.*¹⁹ And all of this can occur only after Missouri election officials implement the congressional map in the MCVR database. *Id.*²⁰ But again, changing the congressional map in MCVR is impossible while an election is ongoing. *Id.* ¶ 8.²¹ And Missouri currently has several ongoing elections—between the August Primary Election and the September Special Election in Jackson County. *Id.* ¶ 9. The Circuit Court credited all of this evidence, which is why it “decline[d] to order an unprecedented remedy that is impossible to implement.” D63, ¶¶ 170–71. The Circuit Court’s finding must stand absent clear error. *See Faire*, 252 S.W.2d at 290.

Von Glahn knows that his demand is impossible. That is why, many months ago, People Not Politicians and von Glahn repeatedly characterized their lawsuits as “time-sensitive election case[s]” because of their “impact” on “the 2026 election” and the need to avoid “chaos in August.” D44, Mot. to Expedite at 1–2, *State ex rel. People Not Politicians v. Limbaugh*, No. WD88821 (Mo. App. W.D., filed April 1, 2026); *see also*

¹⁹ *Accord* D53, pp. 105:25–108:21, Trial Testimony of Shawn Kieffer.

²⁰ *Accord* D54, Letter of Missouri Association of County Clerks and Election Authorities (“The lack of decided boundary lines [implemented in MCVR] effectively prohibits election authorities from preparing ballot types that accurately represent the correct political subdivisions for each residential address, which means ballots will not be ready for voters.”).

²¹ *Accord* D54, Letter of Missouri Association of County Clerks and Election Authorities; D51, pp. 11–14, Amicus Br. of Brianna Lennon, *supra*; D52, pp. 13–16, Amicus Br. of Kurt Bahr, *supra*.

D45, SIS Pet. for Writ of Prohibition at 5–6, *Limbaugh*, No. WD88821. That is also why opponents of HB 1—including opponents represented by von Glahn’s counsel—repeatedly stated that they needed judicial resolution of HB 1’s status before the candidate-filing period opened last February.²² Many of these plaintiffs acknowledged that equitable principles would eventually require Missouri courts “to favor the status quo in a legal dispute during the lead-up to an election.” See, e.g., D48, p. 16, SIS Mot. for Prelim. Inj. at 16, *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026) (quotation omitted). The State *never* contested that point; in fact, it started asserting the *Hadley-Purcell* principle in February 2026. See D49, p. 54, Respondent’s Br. at 54, *Luther v. Hoskins*, No. SC101412 (Mo., filed Feb. 9, 2026). And even *Democracy Docket*, the Democratic Party’s election publication—admitted in March 2026 that it was already too late to change Missouri’s congressional map this year. See D56, Jen Rice, *GOP derails bid to stop Missouri gerrymander for 2026*, *Democracy Docket* (Mar. 27, 2026).

Other cases also corroborate why Missouri must conduct its general election under the HB 1 map. As far as the State is aware, every time a redistricting plan has been invalidated after a primary election, courts have stayed their remedy as to the upcoming general election. See, e.g., *Covington v. North Carolina*, 316 F.R.D. 117, 176–77 (M.D.N.C. 2016) (allowing general election “to proceed as scheduled under the challenged

²² See D46, p. 2, Mot. to Expedite, *Luther v. Hoskins*, No. SC101412 (Mo., filed Dec. 31, 2025); D47, pp. 1–3, Pls.’ Opp’n. to a Continuance, *Wise v. State* and *Healey v. State*, Nos. 2516-CV29597, 2516-CV31273 (Mo. Cir. Ct., filed Dec. 15, 2025); D48, p. 16, SIS Mot. for Prelim. Inj., *Maggard v. State*, No. 25AC-CC09120 (Mo. Cir. Ct., filed Jan. 14, 2026).

plans” despite being determined unconstitutional after the primary); *Page v. Va. State Bd. of Elections*, 58 F. Supp. 3d 533, 554 (E.D. Va. 2014) (“[G]eneral principles of equity dictate that Virginia’s 2014 elections should proceed as scheduled under the challenged districting plans” after plan found invalid one month before general election.), *vacated on other grounds sub nom.*, *Cantor v. Personhuballah*, 135 S. Ct. 1699 (2015); *Vera v. Richards*, 861 F. Supp. 1304, 1351 (S.D. Tex. 1994) (ordering election held on unconstitutional map after primary had already been held), *aff’d sub nom.*, *Bush v. Vera*, 517 U.S. 952 (1996); *see also Terrazas v. Slagle*, 821 F. Supp. 1154, 1159 (W.D. Tex. 1992) (“Primary elections for offices chosen by the electorate in separate geographical districts obviously make no sense unless the districts are the same for the ensuing general election as for the primary.”).

In light of this mountain of evidence and precedent, the Circuit Court’s judgment was undoubtedly correct. Von Glahn offer several responses, but his arguments fail on both the facts and the law.

First, von Glahn argues that *Maggard* and Article III, Section 52(b) requires this Court to ignore the *Hadley-Purcell* principle. Appellant’s Br. 89–95. He claims that “[e]quitable principles cannot displace the Missouri Constitution or this Court’s *Maggard* decision.” *Id.* at 89. However, in making this argument, von Glahn ignores the distinction between *substantive* constitutionality and a court’s ability to award *a remedy*. *Hadley* demonstrates that the two are not always connected. Indeed, in *Hadley*, the redistricting legislation at issue was unconstitutional under the Fourteenth Amendment. *See Hadley*, 460 S.W.2d at 2. Even so, this Court declined to issue an injunction against enforcement

of the map as to the upcoming election because “it would be wholly inequitable and impracticable to attempt at this late date to” enjoin enforcement of the map. *Id.* at 3. *Hadley* also instructed that, “[i]n awarding or withholding immediate relief, a court is entitled to **and should** consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Id.* at 2. It also makes no difference that, under *Maggard*, HB 1 was never valid law if von Glahn’s referendum petition is sufficient. *Contra* Appellant’s Br. 90. The same could be said of any unconstitutional law. *See, e.g., Marbury*, 5 U.S. (1 Cranch) at 177 (“[A]n act of the legislature, repugnant to the constitution, is *void*.” (emphasis added)). Yet Missouri courts apply the *Hadley-Purcell* principle anyways.

Second, von Glahn argues that the State somehow waived its *Hadley-Purcell* argument seven months ago through its trial brief in *Maggard*. Appellant’s Br. 92. But the State’s brief did nothing of the sort. The brief said that “the *Purcell* principle governs whether *courts* may alter election laws in the lead-up to an election. The *Purcell* principle does not override the Secretary’s and local election authorities’ statutory obligations to review PNP’s referendum petition for legal sufficiency and to certify PNP’s petition if it is legally sufficient.” State’s Trial Br. at 14 n.6, *Maggard v. State*, No. 25AC-CC09120 (Feb. 9, 2026) (emphasis in original) (citing §§ 116.120–116.150, RSMo). This language merely reiterates the exact point that Missouri makes above: The *Hadley-Purcell* principle does not change substantive law or constitutional provisions, it merely controls the availability of a judicial *remedy*. The State’s trial brief in *Maggard* hardly “waived” the State’s *Hadley-Purcell* arguments. Indeed, the State has invoked the *Hadley-Purcell* principle in

every HB 1 case that this Court has heard, including *Maggard* itself. *See* D49, p. 54, Respondent's Br. at 54, *Luther v. Hoskins*, No. SC101412 (Mo., filed Feb. 9, 2026); Respondents' Br. at 80, *Maggard v. State*, No. SC101581 (Mo., filed Apr. 28, 2026); Respondents' Br. at 57, *Healey v. State*, No. SC101570 (Mo., filed May 6, 2026); Respondents' Br. at 79, *Wise v. State*, No. SC101572 (Mo., filed May 6, 2026); Respondents' Br. at 41, *NAACP v. Kehoe*, No. SC101541 (Mo., May 11, 2026). Von Glahn disingenuously twists the State's prior statements.

Third, despite the express text of the Circuit Court's judgment, von Glahn claims that the Circuit Court disagreed with its own factual findings about the impossibility of changing Missouri's congressional map. *See* D63, ¶¶ 170–71. For support, von Glahn relies on a statement that the Circuit Court made during trial about Tammy Brown's and Brianna Lennon's competing affidavits on the feasibility of changing the congressional map in the MCVR database. Appellant's Br. 26, 87 (citing Trial Tr., pp. 54:13–55:16). The court suggested at trial that it would not find one affidavit credible to the exclusion of the other. *See* Trial Tr., pp. 54:13–55:16. However, the court never stated that it would “not make a finding on the technical feasibility of altering MCVR.” *Contra* Appellant's Br. 87. Rather, the court's judgment explicitly finds that changing the map is “impossible” in light of the practical impossibility of changing the MCVR system during an ongoing election. D63, ¶¶ 170–71. And, even without considering one affidavit as more credible than another, the Court could have credited Tammy Brown's sworn testimony that “Ms. Lennon's representation is wrong as to Jackson County,” where officials “exclusively implemented the HB 1 congressional map in the MCVR database for the 2026

congressional election.” D50, ¶ 18, Brown Aff. Of course, Ms. Lennon only oversees elections in Boone County, not Jackson County. D43, ¶ 1. Thus, the Circuit Court did not need to resolve conflicting testimony *even if* it believed both Lennon’s and Brown’s claims. At any rate, even absent an explicit factual finding about MCVR, this Court’s rules provide that “[a]ll fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.” Mo. Sup. Ct. R. 73.01(c). That should be the end of this factual dispute.²³

Finally, von Glahn argues that applying the *Hadley* principle would be inequitable because the Secretary has “unclean hands.” Appellant’s Br. 95–96. However, von Glahn provides *zero* evidence to support this audacious claim. Although he laundered the same claim to the Circuit Court, D62, p.21, he presented no evidence and the Circuit Court refused to credit this claim. For all his bluster, von Glahn’s only support for his claim of unclean hands is that “[t]he Secretary used the discretion afforded by the certification schedule in Chapter 116 to wait until the last day” to issue his certificate of insufficiency.

²³ In weighing any factual dispute, the Court should also keep in mind that Brianna Lennon has never responded directly to Tammy Brown’s affidavit. Lennon even submitted an amicus brief in this appeal, but still failed to respond to Brown’s testimony. *See* Lennon Amicus Br. (filed Aug. 24, 2026).

Lennon has also switched positions on MCVR according to the exigencies of the moment. In *Maggard*, she told this Court that a ruling in favor of the State would result in “chaos, confusion, and unnecessary expense” because changing congressional maps in August would be extremely difficult in light of MCVR. *See* D51, pp. 6–7, 11–14. But now, Lennon’s amicus brief in this case takes the exact opposite position. *See* Lennon Amicus Br. (filed Aug. 24, 2026). The Circuit Court did not credit Lennon’s testimony, and this Court should not either.

Appellant's Br. 96. But von Glahn *never* claims the Secretary violated any Missouri law. Nor could he. The Secretary simply abided by Section 116.150's explicit statutory deadline. It would be bizarre to hold that government officials have unclean hands when they use discretion explicitly granted to them in the law. *See* § 116.150.3, RSMo.

* * *

Von Glahn utterly fails to find error in the Circuit Court's finding that it is "impossible" to change Missouri's congressional map. D63, ¶¶ 170–71. Von Glahn also fails to cite a single decision that has *ever* changed a congressional map between a Primary and General Election. Von Glahn's proposed remedy is not just "awkward," Appellant's Br. 71—it is one of the most disruptive changes imaginable to an ongoing election. The Circuit Court's judgment is perfectly reasonable considering these facts, this Court's *Hadley* opinion, Missouri law, federal law, and the U.S. Constitution.

CONCLUSION

This Court should affirm.

Dated: August 27, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 20,138 words, excluding tables, the cover, the signature, and certificates; complies with Missouri Supreme Court Rule 84.06(b); includes the information required by Rule 55.03; and includes information on how the brief was served on the opposing party. The State has submitted an unopposed motion for a small extension of the word count.

/s/ Louis J. Capozzi III

CERTIFICATE OF SERVICE

I hereby certify that, on August 27, 2026, a true and correct copy of the above was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case.

/s/ Louis J. Capozzi III