

SC101805

**In the
Supreme Court of Missouri**

RICHARD VON GLAHN,
Appellant,

v.

MISSOURI SECRETARY OF STATE DENNY HOSKINS,
Respondent.

Appeal from the Circuit Court of Cole County
The Honorable Daniel R. Green

RESPONSE TO ORDER TO SHOW CAUSE

CATHERINE L. HANAWAY
ATTORNEY GENERAL

207 W. High Street
P.O. Box 899

Jefferson City, MO 65101
(314) 751-8785

(573) 751-0774 (Facsimile)

Louis.Capozzi@ago.mo.gov

William.Seidleck@ago.mo.gov

Graham.Miller@ago.mo.gov

Ryan.Dugan@ago.mo.gov

Louis J. Capozzi III #77756
Solicitor General

William James Seidleck #77794
Principal Deputy Solicitor General

Graham D. Miller #77656
Deputy Solicitor General

Ryan Dugan #77805
Assistant Solicitor General

Counsel for Respondent

INTRODUCTION

Counsel for Appellants has taken the extraordinary step of requesting that this Court sanction the Secretary of State for saying that he will comply with a federal court order. Tellingly, the motion cites *zero* authority for the proposition that a state court can sanction a state official for complying with a federal court order enforcing federal legal rights. And federal law clearly prohibits any such order. *See United States v. Mich.*, 712 F.2d 242, 242 (6th Cir. 1983); *Badgley v. Santacroce*, 800 F.2d 33, 38 (2d Cir. 1986). Hence, this Court must deny the motion.

In the aftermath of this Court's decision in *von Glahn*, four plaintiffs—two candidates and two voters affected by the changed map—filed a complaint and a request for a temporary restraining order in the United States District Court for the Eastern District of Missouri. *See generally* Ex. A. None of the plaintiffs were parties to this Court's *von Glahn* litigation. *See id.* ¶¶ 1–10.

Plaintiffs asserted claims rooted exclusively in the U.S. Constitution. Specifically, they asserted that using anything but the HB 1 map used in the Primary Election would violate the Elections Clause (U.S. Const. art. I, § 4, cl. 1), the clause dictating selection of the House of Representatives (*id.* art. I, § 2), and the Equal Protection Clause (*id.* amend. XIV, § 1). Ex. A ¶¶ 50–109. Plaintiffs moved for the temporary restraining order against the Secretary. *Id.* at 26 (prayer for relief).

On September 8, the District Court issued a temporary restraining order against the Secretary. It found that plaintiffs were likely to succeed on their claims that conducting a Missouri election according to a map other than that of HB 1 “would disenfranchise voters of their votes in the primary election, in clear violation of Article I, Section 2.” Ex. B at 9. It likewise concluded that “[s]witching maps now would deprive many Missourians of their equal vote in the primaries and ‘impair the voters’ ability to express their political preferences’ by foisting new candidates on them on the eve of the election,” so as to violate the Equal Protection Clause. *Id.* at 10–11.

The District Court further determined that plaintiffs carried their burden for equitable relief. It found that both voters and candidates faced irreparable harm from the Secretary’s complying with this Court’s injunction: “Using a map other than HB 1’s would disenfranchise primary-election voters and undermine the nominations of candidates chosen in the primaries, leading to ‘certain’ and ‘great’ harm” *Id.* at 5. Meanwhile, the District Court saw the balance of equities satisfied because it would preserve status quo by “using the same map for the general election that Missouri used for its primaries—the HB 1 map.” *Id.* Finally, the District Court concluded that the public interest was satisfied. *See id.* at 12 (“Using a different map for the general election would wreak havoc on the fairness and orderliness of Missouri’s congressional elections, calling into question the candidacy of those nominated

in the primaries and the votes of those who voted in the primaries. Widespread voter confusion would inevitably follow.”).

ARGUMENT

The Court must not take the radical step of holding the Secretary of State in contempt for following a federal court order. In response to this Court’s show-cause order, Respondent states as follows.

First, the District Court’s order could not have been clearer. It specifically “enjoins, on federal law grounds, Secretary of State Hoskins—as well as his officers, agents, employees, and attorneys—from implementing, using, publishing, distributing, or mandating the use of any congressional district map other than the HB 1 map for the November 3, 2026 general election.” Ex. B at 13. All of this followed a federal legal holding that the State would violate the U.S. Constitution by not using the same map for the General Election as it used for the Primary Election. Ex. B at 13 at 8-11. The Secretary’s email on September 8, 2026 reflected the District Court’s order. The motion’s saying (at PDF p.3) that “nothing in the actual text of the federal order is ‘requiring the use of the CD25 Missouri First Map [aka HB1]’” is patently absurd. The District Court’s order could not have been more direct and the Secretary’s email simply sought to follow it.

Second, this Court’s order can no longer compel the Secretary. Per the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2, the

Secretary must follow the federal-law injunction issued by the federal court. So long as the District Court's order stands, the Secretary must obey it. *See, e.g., Mapp v. Bd. of Educ. of Chattanooga, Tenn.*, 341 F. Supp. 193, 198–99 (E.D. Tenn. 1972) (recognizing the nullity of a state-court order interfering with a federal-court desegregation order). The U.S. Supreme Court could not have been clearer: “No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.” *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Axiomatically, any state executive claiming authority (at any behest) “to nullify a federal court order is similarly restrained.” *Id.* at 19; *accord Mapp*, 341 F. Supp. at 199.

Nor does this Court possess any authority to countermand the District Court's decision on a question of federal law. As with any other matter, the Supremacy Clause demands that any state-court decree “must give way” to the operation of federal law. *Ridgway v. Ridgway*, 454 U.S. 46, 55 (1981); *see also Ex parte Virginia*, 100 U.S. 339, 346 (1879) (holding that state actions must yield to the Fourteenth Amendment “whether that action be executive, legislative, or *judicial*” (emphasis added)). “Faced with conflicting orders—one issued by a federal court to implement the Constitution, and the other issued by a state court as a matter of state practice—” the state official must follow “the priority prescribed by the Constitution.” *Madej v. Briley*, 370 F.3d 665,

667 (7th Cir. 2004) (per curiam); *accord Mapp*, 341 F. Supp. at 199 (enjoining parties from complying with a state-court order frustrating desegregation).

Moreover, the denial of the State's application for emergency relief before the U.S. Supreme Court has no bearing on the District Court's authority to issue its order or the Secretary's obligation to follow that order. As when this Court considers a party's request for transfer, the U.S. Supreme Court hears the vast majority of its cases (including emergency applications) in a *discretionary* posture. *Compare* Mo. Ct. R. 83.04 ("Transfer by this Court is an extraordinary remedy that is not part of the standard review process . . ."), *with* Sup. Ct. R. 10 ("Review on a writ of certiorari is not a matter of right, but of judicial discretion."). Receiving an emergency stay from the U.S. Supreme Court requires an applicant to demonstrate, *inter alia*, "a reasonable probability' that this Court will grant certiorari." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). The U.S. Supreme Court's denying discretionary review (as occurred here) imparts no suggestion of that court's view of a case's merits. *See Teague v. Lane*, 489 U.S. 288, 298 (1989) ("As we have often stated, the 'denial of a writ of certiorari imports no expression of opinion upon the merits of the case.'").

As such, Respondent is aware of *zero* authority suggesting that an unreasoned disposal of a petition for discretionary relief before the Supreme Court bars a federal district court from considering similar federal

constitutional claims. Indeed, as the U.S. Supreme Court has recognized, “The possibility of appellate review by [the Supreme Court] of a state court determination may not be substituted, against a party’s wishes, for his right to litigate his federal claims fully in the federal courts. . . . ‘[A] party has the right to return to the District Court, after obtaining the authoritative state court construction for which the court abstained, for a final determination of his claim.’” *England v. La. State Bd. of Med. Examiners*, 375 U.S. 411, 465–66 (1964) (citation omitted). Hence, the *Onder* plaintiffs had the right to maintain their action in the District Court and the District Court likewise did not transgress any boundaries in ruling for the plaintiffs. *See Teague*, 489 U.S. at 298. The Secretary therefore remains bound by the federal court’s judgment. *See Cooper*, 358 U.S. at 18; *Mapp*, 341 F. Supp. at 199.

Third, the *Rooker-Feldman* doctrine clearly does not apply here. The “doctrine provides that, with the exception of habeas corpus petitions, lower federal courts lack subject matter jurisdiction over challenges to state court judgments.” *Ballinger v. Culotta*, 322 F.3d 546, 548 (8th Cir. 2003) (internal quotation marks omitted). But it does not control here for at least two reasons.

First, the *Onder* plaintiffs were not parties to the proceedings before this Court. *See Lance v. Dennis*, 546 U.S. 459, 466 (2006). *Rooker-Feldman* is “not simply preclusion by another name.” *Id.* It is straightforward why the *Rooker-Feldman* doctrine does not apply here. It would make no sense to say that

individuals lose their right to assert federal-constitutional rights in federal court because separate individuals lost state-law arguments in a state court. And under materially identical circumstances to the present case, the U.S. Supreme Court so held. *See id.*

In *Lance*, after the Colorado legislature had performed a mid-decade redistricting, the state attorney general sued the secretary of state seeking to require the use of the previous redistricting map. *Id.* at 460. The Colorado Supreme Court construed the Colorado Constitution “to limit congressional redistricting to ‘once per decade’” and “ordered the secretary of state to use the [previous plan].” *Id.* at 460–61 (quoting *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1231 (2003) (en banc)). Following the *Salazar* decision, four Coloradans, “unhappy with [the decision,] filed an action in the District Court seeking to require the secretary of state to use the legislature’s [new redistricting] plan.” *Id.* at 461. Those plaintiffs “argued that [the Colorado Constitution], as interpreted by the Colorado Supreme Court, violated the Elections Clause of Article I, § 4, of the U.S. Constitution.” *Id.* The Supreme Court held that the citizen-plaintiffs “were plainly not parties to the underlying state-court proceeding” and were “not in a ‘position to ask this Court to review the state court’s judgment.’” *Id.* at 465 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994)). Thus, *Rooker-Feldman* did not bar that federal action. *Id.* at 466. And this was true even though the secretary of state

was the defendant in both the original state suit and the federal suit. *See id.* at 460–61 & n.1.

A contrary position would rob many voters and candidates of their right to bring federal claims in federal court after the State lost a case in state court. And such a holding would violate the Due Process Clause, which generally prohibits judgments from extinguishing absent third parties’ claims. *See Taylor v. Sturgell*, 553 U.S. 880, 884–85 (2008).

Second, even if Appellant could establish some privity between the *Onder* plaintiffs and the Secretary, no party asked the District Court to reconsider any holding of this Court—in violation of *Rooker-Feldman* or 28 U.S.C. § 1257. *See* Ex. A at ¶¶ 50–109. This Court decided *state-law* questions. Even though Secretary made federal-constitutional arguments, this Court declined to rule on them. For example, Secretary Hoskins argued that an order to switch Missouri’s congressional map between the Primary and General Elections would violate the U.S. Constitution. *See* Brief for Sec’y Hoskins at 53–63, *von Glahn v. Hoskins*, No. SC101805 (Mo. Aug. 27, 2026). This Court left the argument unaddressed, holding it lacked *jurisdiction* to address them. *See* No. SC101805, slip op. at 5 n.5 (“In raising hypothetical scenarios and arguments wholly unrelated to whether the Missouri Constitution authorizes a referendum as to congressional redistricting passed by the General Assembly, the secretary also requests an advisory opinion, which this Court

lacks the authority issue.”). But the District Court saw those federal arguments as grounds for relief to redress the injuries of the candidate and voter plaintiffs in *Onder*. See Ex. B. at 8–9.

Contrary to the record, the motion here assumes that the District Court effectively engaged in an appeal of this Court’s decision. Not so. Off the bat, the motion concedes (at PDF p.2) that the District Court’s “order does not purport to overrule this [C]ourt’s injunction.” Quite right—nowhere does the District Court purport to review this Court’s decision. It instead analyzes whether the Secretary can lawfully undertake the election using a map other than HB 1 in compliance with the U.S. Constitution (and concludes that he can’t). Ex. B at 8–11.

Indeed, the *Onder* litigation in the District Court hardly looks like an appeal of this Court’s decision. Again, the plaintiffs were two candidates and two individual voters who were *never* parties to the *von Glahn* litigation in this Court. Ex. A ¶¶ 1–10. The defendants were the State of Missouri and the Secretary. *Id.* ¶¶ 11–12. Plaintiffs sought emergency order from the District Court enjoining the Secretary (again, a defendant) from using a map other than HB 1 per several provisions of the U.S. Constitution. *Id.* at 26 (prayer for relief). In issuing its decision, the District Court relied *solely* on the U.S. Constitution in finding the plaintiffs were entitled to temporary injunctive relief against the Secretary. Ex. B at 8–11.

All told, the motion is wrong to insinuate that *Onder* re-litigated matters decided by this Court. Frankly, there is no meaningful overlap. This Court issued the following holdings: (1) a state-law holding that the Missouri Constitution authorizes referenda against congressional maps; and (2) a state-law holding that Missouri may not use the same congressional map it used during the Primary Election *because of state law*. See No. SC101805, slip op. at 11, 13. By contrast, the *Onder* Plaintiffs asked the District Court to decide only *federal* questions: (1) whether the Elections Clause prohibits displacing the HB 1 congressional map, Ex. A ¶¶ 50–73, and (2) whether Missouri would violate the U.S. Constitution if it uses a different congressional map for the General Election than it used during the Primary Election, *id.* ¶¶ 74–109. Sure enough, the latter claims were the basis for the District Court’s temporary injunction. See Ex. B. at 6–11. Hence, the *Rooker-Feldman* doctrine does not apply.

Nor does the Anti-Injunction Act prevent the District Court’s action here. That act generally bars federal courts from enjoining state-court proceedings. See 28 U.S.C. § 2283. But that is simply not what happened here. The District Court did not enjoin this Court from issuing any state-law decisions; it merely relied on federal law to address federal constitutional claims.

Finally, even if the doctrine did apply or some other basis for error in the District Court’s order exists, the order is nonetheless binding on the Secretary

for the time being. Unless and until the District Court or a higher court issues a stay, the Secretary cannot disregard that order. *See Cooper*, 358 U.S. at 18; *Madej*, 370 F.3d at 667. Otherwise, he would be exposed to contempt proceedings in federal court.

* * *

The Secretary is in no position to do anything but obey the clear order of the United States District Court for the Eastern District of Missouri. Because this Court cannot countermand the District Court's order, any sanction imposed upon him for following that order would be profoundly unlawful and unjust.

CONCLUSION

This Court must deny the request to hold the Secretary of State in contempt.

Respectfully submitted,

CATHERINE L. HANAWAY
Attorney General

/s/ Louis J. Capozzi III

Louis J. Capozzi III #77756

Solicitor General

William James Seidleck #77794

Principal Deputy Solicitor General

Graham D. Miller #77656

Deputy Solicitor General

Ryan Dugan #77805

Assistant Solicitor General

207 W. High Street

P.O. Box 899

Jefferson City, MO 65102

(573) 751-8785

(573) 751-0774 (Facsimile)

Louis.Capozzi@ago.mo.gov

William.Seidleck@ago.mo.gov

Graham.Miller@ago.mo.gov

Ryan.Dugan@ago.mo.gov

Counsel for Respondent

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed and served electronically via Missouri CaseNet on September 9, 2026 to all counsel of record.

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 2,819 words.

/s/ Louis J. Capozzi III

Solicitor General