

IN THE
Supreme Court of the United States

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN,

Applicants,

v.

CONGRESSMAN ROBERT “BOB” ONDER; RICHARD “RICK” BRATTIN; PATRICIA “PAT”
THOMAS; AND DEBRA HAVENS,

Respondents,

and

STATE OF MISSOURI AND DENNY HOSKINS, *in his official capacity as Missouri*
Secretary of State,

Respondents.

**EMERGENCY APPLICATION FOR STAY AND
ADMINISTRATIVE STAY PENDING APPEAL**

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Applicants People Not Politicians and Richard von Glahn were the Intervenor in the United States District Court for the Eastern District of Missouri and Appellant Intervenor in the United States Court of Appeals for the Eighth Circuit.

Congressman Robert “Bob” Onder, Richard “Rick” Brattin, Patricia “Pat” Thomas, and Debra Havens were Plaintiffs in the United States District Court for the Eastern District of Missouri and Appellees in the United States Court of Appeals for the Eighth Circuit.

The State of Missouri and Denny Hoskins were Defendants in the United States District Court for the Eastern District of Missouri and Defendants in the United States Court of Appeals for the Eighth Circuit.

RELATED PROCEEDINGS

United States District Court for the Eastern District of Missouri:

Congressman Robert “Bob” Onder et al., v. State of Missouri and Denny Hoskins, No. 4:26-cv-01424-SRC (Sep. 8, 2026) (memorandum and order granting motion for temporary restraining order)

United States Court of Appeals for the Eighth Circuit:

Congressman Robert “Bob” Onder et al., v. State of Missouri and Denny Hoskins, No. 26-2797 (8th Cir. Sep. 8, 2026)

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RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants represent that People Not Politicians does not have any parent entities and does not have any publicly controlled corporation that owns 10% or more of its stock.

/s/ Abha Khanna
Abha Khanna

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TO THE HONORABLE BRETT KAVANAUGH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT.

INTRODUCTION

Minutes after Justice Kavanaugh denied a request to stay the Missouri Supreme Court's decision in this redistricting case, a district court chose to deliver the relief this Court withheld based on the exact same manufactured emergency.

The temporary restraining order ("TRO") issued by the district court is in direct conflict with the order and injunction from the Missouri Supreme Court on the same question—which congressional map can and should go into effect for the November general elections. In creating this conflict, the district court gets the equities precisely backwards and turns this Court's *Purcell* principle on its head, charging forward with federal court interference into a state election process that has already been decided by the state's highest court under state law—a ruling this Court declined to overturn.

In the process, the district court creates a *new and clear* conflict with federal law, directing Missouri to hold an election under a map that its own Supreme Court concluded "***is not the law and never has been the law***" under the Missouri Constitution, App. 2a (quoting *von Glahn v. Hoskins*, No. SC 101805, 2026 WL 2628846, at *6 n.8 (Mo. Sep. 3, 2026) (en banc) (emphasis added), in violation of the federal statutory requirement that congressional elections proceed from districts established "in the manner provided by the law" of the State, 2 U.S.C. § 2a(c). The district court imposes this sweeping upheaval despite the fact that it *lacks jurisdiction* to issue injunctive relief in the first place. Meanwhile, its merits

determination is based on zero authority and runs counter to decades of this Court's precedent. That conflict is mounting in real time; yesterday, the Missouri Supreme Court issued an order to show cause why the Secretary is not in contempt of its order, and hours ago, the Secretary asked the federal court that issued the TRO to enjoin the contempt proceedings, all the while pledging that he will enforce HB 1.

Applicants sought a stay in both the district court and the Eighth Circuit.¹ Just minutes ago, the Eighth Circuit panel denied the stay motion. App. 73a. Waiting for a further decision from the district court would risk irreparable harm that would render later relief from this Court futile. *See id.* (creating limited exemption for requirement that stay first be sought and decided below). The Secretary has made clear that every hour the TRO remains in force, election officials will continue to implement a congressional map that Missouri's highest court has held is not and never has been law. Applicants therefore respectfully request an immediate stay and administrative stay.

A federal district court cannot transform an unlawfully administered primary into a federal constitutional command that the State continue violating its own law through the general election. And the district court's legally baseless TRO must not be permitted to detonate in the middle of Missouri's congressional elections to blow up the clear and careful ruling of the Missouri Supreme Court and the fundamental rights of Missouri voters. The stay should be granted.

¹ Notably, had the district court requested a three-judge court pursuant to 28 U.S.C. § 2284 as the law requires, an appeal from the district court's injunction would have come *directly* to this Court. *See* 28 U.S.C. § 1253.

BACKGROUND

I. The Missouri Supreme Court enjoins use of HB 1, and this Court denies the Secretary's application to stay that ruling.

On September 12, 2025, the Missouri General Assembly passed House Bill 1 (“HB 1”), replacing Missouri’s prior congressional district map enacted in 2022 (the “2022 Map”). People Not Politicians and its executive director, Richard von Glahn, circulated a referendum petition seeking to suspend HB 1 until it passed a statewide vote. After more the petition and more than 300,000 signatures in support of it were submitted on December 9, the Secretary waited approximately nine months to issue his statutorily mandated decision on its sufficiency, waiting until the statutory deadline of August 4—when the primary was already underway—to issue a certification denying the resting on a one-sentence rationale the State had already been advancing for months. App. 599a.

While the Secretary delayed his decision on the referendum, a federal court and the Missouri Supreme Court cautioned that if valid, the referendum would suspend the operation of HB 1, and that its effect could not be confirmed until the certification process—including judicial review—was complete. *See Mo. Gen. Assembly v. von Glahn & People Not Politicians*, No. 4:25-cv-1535-ZMB, 2025 WL 3514277 (E.D. Mo. Dec. 8, 2025); *NAACP Mo. State Conf. v. Kehoe*, 734 S.W.3d 338, 341 n.4 (Mo. banc 2026); *Maggard v. State*, 733 S.W.3d 411, 420 (Mo. banc 2026). The Secretary chose to conduct the primary under HB 1 anyway. The Attorney General publicly acknowledged the strategic benefit of delay: “As long as the status quo is the new maps, delay works in our favor.” App. 739a.

On September 3, 2026, the Missouri Supreme Court issued its opinion in *von Glahn*, 2026 WL 2628846 (en banc), holding that the Missouri Constitution authorizes referenda on the General Assembly’s adoption of congressional district maps. As the Missouri Supreme Court made clear, under Missouri law, HB 1 “is not the law and has never been the law.” *Id.* at *6 n.8. The Court accordingly ordered the Secretary to “issue a certificate of sufficiency as to the referendum petition” and “take any and all additional steps necessary to place the referendum petition” on the November 2026 general election ballot “before September 8, 2026.” *Id.* at *7.² The Court further “restrained and enjoined” the Secretary of State “and all of those acting in concert with him” from using the HB 1 map for the November general election. *Id.*

The Secretary appealed to this Court, and on September 4, 2026, filed an Emergency Application for Stay with this Court. Emergency Appl. for Stay, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 4, 2026). Joined by Republican Party intervenors, the Secretary raised claims under the Elections Clause, Article I, Section 2, and the Equal Protection Clause. *Id.* at 17–31. After responsive and reply briefing, this Court denied that application on September 8, 2026. *See Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 8, 2026).

² Missouri statute provides that September 8, 2026, is the deadline by which late notification of an election may be given to a local election authority, subject to certain exceptions, *see* Mo. Rev. Stat. § 115.125(2), such as “[w]henver it appears that an error has occurred in any publication . . . or in the printing of any ballot,” *id.* § 115.247. The statute further provides that “[n]o court shall have the authority to order an individual or issue be placed on the ballot less than eight weeks before the date of the election.” *Id.* § 115.125(2). *But see Weinschenk v. State*, 203 S.W.3d 201, 210 (Mo. 2006) (“Nonetheless, if a statute conflicts with a constitutional provision or provisions, this Court must hold the statute invalid.”).

II. Republican Congressmen file a federal district court action at the same time the Secretary seeks relief from this Court raising the same claims.

Also on September 4, the same day the Secretary sought emergency relief from the Missouri Supreme Court's order in this Court, Plaintiffs Congressman Robert "Bob" Onder, Richard "Rick" Brattin, Patricia "Pat" Thomas, and Debra Havens filed a complaint and motion for temporary restraining order ("TRO") in federal district court raising the exact same federal claims. Compl., D. Ct. Doc. 1; Mot. for TRO, D. Ct. Doc. 2. The next day, the Secretary consented to the TRO, Statement in Support Pls.' Request for TRO and PI, D. Ct. Doc. 11. Applicants filed a motion to intervene and motion to dismiss on September 6. Mot. to Intervene, D. Ct. Doc. 12; Proposed Mot. to Dismiss, D. Ct. Doc. 12-4. The district court granted Applicants' intervention motion on September 8. Order, D. Ct. Doc. 32.

On September 8, twenty-five minutes after this Court entered its ruling denying the Secretary's application to stay the Missouri Supreme Court order, the Plaintiffs notified the district court of the stay denial. Notice of Denial of Stay, D. Ct. Doc. 34. Less than 15 minutes later, the district court granted Plaintiffs' motion for a TRO, enjoining the Secretary—"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." App. 13a.

The TRO was remarkable for several reasons. First, on the merits, the district court *rejected* Plaintiffs' Elections Clause claim, App. 7a ("Plaintiffs are not likely to succeed on the merits of their Elections-Clause claim because the referendum is a

licit part of the legislative power in Missouri.”). Instead, the district court found that the Plaintiffs are likely to succeed on the merits of their claims under the Equal Protection Clause and Article I, Section 2, App. 9a, 10a–11a. Not only are these claims identical to those urged by the Secretary when he unsuccessfully sought a stay of the Missouri Supreme Court decision from this Court, the district court cited *no* authority (from this Court or any other) granting a similar claim on either of these grounds.

Second, the district court “[a]dmitted[]” that “courts normally invoke the *Purcell* principle to caution against federal-court intervention in the election decisions of state legislatures,” but nevertheless found that the “public interest concerns that the *Purcell* principle invokes” “support issuing a TRO.” App. 12a. The district court also found that Plaintiffs faced irreparable harm because “[u]sing a map other than HB 1’s would disenfranchise primary-election voters and undermine the nominations of candidates chosen in the primaries.” App. 5a. It further found that the balance of harms favored “[p]reserving the status quo” by “using the same map for the general election that Missouri used for its primaries—the HB 1 map.” *Id.* Again, each of these were arguments unsuccessfully made by the Secretary in his stay motion to this Court.

At no point in its discussion of either the merits or the equities did the district court mention—let alone explain its conflict with—the Missouri Supreme Court’s September 3 ruling and injunction. Nor did the district court attempt to reconcile its decision with this Court’s denial of a stay application making identical arguments *minutes* before the TRO was issued.

III. The Secretary sends conflicting messages to local election officials.

On September 8, after this Court's denial of the stay application, the Secretary's office emailed local election officials across the State, directing them to implement the Missouri Supreme Court's order and finalize ballots using the 2022 map. App. 30a. The email stated: "The U.S. Supreme Court specifically addressed whether to STAY the Missouri Supreme Court ruling. Just now, the Motion to Stay was denied." *Id.*

Promptly after the TRO was issued, however, the Secretary alerted election officials to the "new development." App 34a. Reversing the instructions he had given them hours before, the email stated that the TRO "require[es] the use of the CD25 Missouri First Map," a reference to HB 1, and advised: "Information provided by the litigation team is that the federal court's ruling, based on federal law, takes precedence over the Missouri Supreme Court's order, which is based on state law. This is in accordance with the U.S. Constitution's Supremacy Clause." *Id.*

The Missouri Attorney General likewise released a statement that "Missouri is prepared to follow and comply with Chief Judge Clark's order that binds the state to using the Missouri First map for the November General Election. We appreciate Judge Clark's support of the rights of Missouri voters, and intend to comply with this federal ruling." App. 36a. Missouri Governor Mike Kehoe posted on X that he is "grateful" for the "much-needed clarity" provided by the TRO, asserting that, "[w]ith today marking the deadline for changes to the November ballot, the Missouri First Map will be used in the general election." App. 38a.

IV. The Missouri Supreme Court issues an order to show cause regarding the Secretary’s violation of its injunction precluding use of HB 1.

After the Secretary’s about-face announcement indicating his intent to implement HB 1—a law that the Missouri Supreme Court expressly held *is not and has never been the law in Missouri*—Richard von Glahn, the plaintiff in the Missouri state court case, filed an emergency application for an order holding the Secretary in contempt in the Missouri Supreme Court, App. 39a–42a, on the grounds that “[t]he Secretary’s direction to local election authorities to use HB 1 is a direct violation of this court’s injunction,” App. 42a.

Several hours later, the Missouri Supreme Court issued an Order directing the Secretary to “show cause, if any, why he should not be held in contempt for violating this Court’s injunction dated September 3, 2026.” App. 43a. The Court ordered the Secretary to specifically address (1) why his email “instructing use of the HB 1 map is not an affirmative violation of this Court’s injunction,” (2) why that injunction does not remain “in full force and effect” in light of the U.S. Supreme Court’s denial of the stay application, and (3) that, “if [the Secretary] is not willing to comply” with the Court’s injunction, “he should take no action in all things related to the congressional district map until guidance is received from a higher court with jurisdiction to review this Court’s judgment and injunction and the United States district court’s injunction.” *Id.*

Shortly thereafter, the Secretary posted a message on X insisting that “[t]he Show Me State will not be run into the ground like the communists running NYC on

my watch” and asserting: “I will continue to abide by Judge Clark’s federal temporary restraining order on a federal congressional election.” App. 44a.

The Secretary did not respond to the show cause order by the deadline. Instead, he filed a motion in the district court to enjoin the Missouri Supreme Court contempt proceedings, App. 45a; the district court has since ordered Applicants to respond by 5:00 p.m. Central, App. 72a. The Secretary subsequently filed a response in the Missouri Supreme Court asserting that he “is in no position to do anything but obey the clear order of” the federal district court. App. 69a. A few minutes ago, the Court of Appeals for the Eighth Circuit denied Applicants’ emergency motion to stay. App. 73a.

ARGUMENT

When a federal court enjoins state election laws in the period leading up to an election, a stay is appropriate unless “the underlying merits are entirely clearcut in favor of the plaintiff.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays). Here, the opposite is true: the district court’s merits theories have *no* basis in this Court’s precedents—and, in any event, the district court lacked the authority to decide them. Applicants are therefore “likely to succeed” in showing that the order below cannot stand. *Nken v. Holder*, 556 U.S. 418, 427 (2009).

The remaining stay factors also favor relief. Irreparable harm is certain absent a stay. The district court’s order requires Missouri to conduct its congressional election using a map that, under the authoritative decision of Missouri’s highest

court, “is not the law and has never been the law.” *von Glahn*, 2026 WL 2628846, at *6 n.8. And a stay will harm neither Plaintiffs nor the public. To the contrary, leaving the district court’s order in force will cause the very confusion and disruption that *Purcell* forbids by subjecting election officials to irreconcilable judicial commands on the eve of an election, with a federal court inserting itself to wreak havoc on the State’s elections.

I. *Purcell* requires a stay, and the equities demand it.

The district court recognized its order turns *Purcell* on its head: the district court itself referred to its rationale as “*Purcell* in reverse.” App. 12a (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006)). But *Purcell* runs in the direction it does for a reason. As Justice Kavanaugh has explained, “[i]t is one thing for a State on its own to toy with its election laws close to a State’s elections. But it is quite another thing for a federal court to swoop in and re-do a State’s election laws in the period close to an election.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays).

The district court’s reverse-*Purcell* maneuver purports to save Missouri from a decision of Missouri’s highest court interpreting Missouri’s Constitution and laws. As this Court has made clear, “federal courts should not impose changes close to an election,” but “States are free to decide for themselves whether last-minute changes to an election are in their best interests.” *Allen v. Milligan*, 608 U.S. 511, 514 (2026) (per curiam) (citation omitted). The district court thus relies on *Purcell* to do precisely

what *Purcell* forbids: exercise federal judicial power to displace a State’s own resolution of its election laws on the eve of an election.³

The district court’s intrusion on Missouri election administration here is extraordinary. Its TRO subjects state election officials to facially irreconcilable commands: the Missouri Supreme Court prohibits them from using HB 1 (and this Court denied a stay of that decision), while the district court prohibits them from using any map *other than* HB 1. Compare App. 13a, with *von Glahn*, 2026 WL 2628846, at *7. The district court acknowledged that the Missouri Supreme Court had “deem[ed] under state law that HB 1 ‘is not the law and has never been the law.’” App. 2a (quoting *von Glahn*, 2026 WL 2628846, at *6 n.8). Nonetheless, the Secretary relies on the TRO to compel Missouri to administer its congressional election under a map that, as a matter of controlling state law, never took effect.

The district court’s merits analysis confirms the problem. Its injunction rests on purported constitutional defects in the *consequences* of the Missouri Supreme Court’s decision, not on any defect in Missouri’s referendum process itself. See App. 8a–11a. Indeed, the district court *rejected* Plaintiffs’ Elections Clause claim—the only claim asserting that Missouri lacked constitutional authority to subject HB 1 to

³ The district court treats this Court’s stay in *Malliotakis v. Williams*, 146 S. Ct. 809 (2026), as a *carte blanche* to apply “*Purcell* in reverse,” but it says the opposite. Justice Alito’s concurrence confirms that *Purcell* prohibits the district court’s action here. Justice Alito explained that *Purcell*’s bar on “[l]ate judicial tinkering” by federal courts did not prevent intervention in *March 2026*, but that waiting to issue a stay would put *Purcell* in play, making it “too late for [the Court] to review the ultimate decision” even if it appeared to be based “on a seriously mistaken understanding of the Constitution.” *Malliotakis*, 146 S. Ct. at 811 (first alteration in original).

referendum in the first place. App. 6a–7a; *see also Reply Br. of Applicant* at 10–11, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 8, 2026) (conceding that only the Elections Clause claim could displace the Missouri Supreme Court’s substantive ruling as to whether HB 1 went into effect). The district court thus left undisturbed the Missouri Supreme Court’s determination that HB 1 *never* took effect under state law while fashioning a federal remedy that gives HB 1 the operative effect that state law denies it.

That mismatch also creates a separate federal law problem. Congress requires that Representatives be elected from districts established “*in the manner provided by the law*” of the State. 2 U.S.C. § 2a(c) (emphasis added). Yet the district court has ordered Missouri to conduct its congressional election under a map that, under the Missouri Supreme Court’s controlling decision, “*is not*” and “*has never been the law.*” App. 2a (quoting *von Glahn*, 2026 WL 2628846, at *6 n.8) (emphasis added).

The TRO thus does not merely override a state-law rule that conflicts with federal law; it affirmatively requires the State to enforce a state law that, under its own state constitution, has no legal effect—forcing election officials to choose between being in contempt of one court’s order or the other and making the election vulnerable to challenge. The extraordinary uncertainty that results is deeply adverse to the public interest and weighs heavily in favor of a stay. *See Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026) (“Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires.” (quoting *Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (Scalia, J.,

concurring in grant of stay)). A stay would restore a single, authoritative rule while appellate review proceeds.

The federal court order has been in place for mere hours, but the chaos it guarantees has already taken root. After this Court denied the Secretary a stay of the Missouri Supreme Court's order, the Secretary certified the 2022 congressional map to local election officials and directed the clerks to implement it. App. 30a–32a. When the TRO was issued minutes later, the Secretary abruptly reversed course, announcing that he would use HB 1 after all. App. 34a. And later that same evening, the Missouri Supreme Court issued an order to show cause why the Secretary is not in contempt of its ruling. App. 43a. In response, the Secretary took to X to spout pejoratives about “communists running NYC” and announced: “I will continue to abide by Judge Clark’s federal temporary restraining order on a federal congressional election.” App. 44a. The Secretary then asked the federal district court to enjoin the contempt proceedings. App. 45a.

Absent a stay, that chaos will deepen—and the harm will become irreversible. The TRO purports to nullify the Missouri Supreme Court’s judgment and deprives Missouri voters of the referendum right that judgment protects by compelling use of HB 1 in the very election for which the referendum suspended it. A federal injunction “barring [a] State from conducting this year’s elections pursuant to’ a valid provision in its constitution” causes “serious[] and irreparabl[e] harm.” *Eggers v. Evnen*, 48 F.4th 561, 566–67 (8th Cir. 2022) (second and third alteration in original) (quoting

Abbott v. Perez, 585 U.S. 579, 602 (2018)). Once ballots are finalized and the election proceeds under HB 1, that injury cannot meaningfully be undone.

On the other hand, if a stay is granted, both the public and election officials can proceed under a map that is not marred by legal uncertainty. Officials have confirmed that this outcome is feasible. After the Missouri Supreme Court’s order was issued, the current directors of the Jackson County Election Board—which oversees the locus of the map’s most substantial changes—publicly stated that they are prepared to implement the 2022 map in November.⁴ “We are equipped to make the necessary changes,” they explained. “It will take some work on our end, but we will be ready.” *Id.* The Secretary himself instructed elections administrators to implement the 2022 map in accordance with the Missouri Supreme Court’s ruling.⁵ A stay that preserves the state’s authority over its own laws can cure the disruption the TRO injects as the election approaches.

II. Plaintiffs have no likelihood of success on the merits of their claim.

A. The district court lacked jurisdiction to issue the TRO.

Federal law provides that “[a] district court of three judges shall be convened” when “an action is filed challenging the constitutionality of the apportionment of congressional districts.” 28 U.S.C. § 2284(a). This is such an action; the Complaint

⁴ Kacen Bayless, *‘We Will Be Ready.’ Jackson County Says It Will Comply with Supreme Court Map Ruling*, The Kan. City Star (Sep. 4, 2026), <https://perma.cc/9CN3-3KP4>.

⁵ And although the Secretary changed his mind after issuance of the TRO, his recent public messaging suggests that decision was motivated by political concerns rather than practical concerns about feasibility or the law. *See* App. 44a.

asks the court to declare the use of Missouri’s only lawful congressional districts unconstitutional and to mandate use of HB 1—relief that falls squarely within § 2284(a). “It follows that the district judge was *required* to refer the case to a three-judge court.” *Shapiro v. McManus*, 577 U.S. 39, 43 (2015). A single judge may enter a temporary restraining order, but it may only remain in place “until the hearing and determination by the district court of three judges of an application for a preliminary injunction.” 28 U.S.C. § 2284(b)(3).

The district judge ignored those requirements. There has been no referral to a three-judge court despite the rule requiring one—and despite Applicants’ explicit request for a three-judge court in their motion to dismiss, *see* D. Ct. Doc. 12-4, at 15. Instead, the court issued a 14-day TRO and confirmed it intends to conduct preliminary injunction proceedings itself. App. 13a (“The Court will set a preliminary injunction hearing by separate order.”).

The district court cannot flout its jurisdictional limitations by titling its order a TRO. To start, because the district court did not convene a three-judge panel as required, it had no authority to take action on any pending motion. *Simon v. DeWine*, 98 F.4th 661, 666 (6th Cir. 2024) (holding that “the district court lacked jurisdiction as a single judge to adjudicate any other pending motion,” including a TRO, “because it was required to convene a three-judge court under 28 U.S.C. § 2284”).

Even if the district court could have ruled on a TRO in theory, the TRO it issued functions as a preliminary injunction. The judge used his narrow statutory authority to order that a congressional election be conducted under a concededly illegal state

map, while reaching sweeping novel holdings under the Equal Protection Clause and Article I, Section 2. Moreover, the TRO “remains in effect for 14 days from the date of issuance”—through September 22. App. 13a. But the Secretary told this Court that a final court order on adjudication of the district lines must come no later than September 14 in order to comply with the State’s September 19 federal deadline for sending UOCAVA ballots. Emergency Appl. for Stay at 6, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 4, 2026); *see also supra* note 2 (explaining state law deadline for finalizing ballots). Absent a stay, the district court’s “temporary” order will remain in effect beyond that date and effectively decides which map governs the November elections. That crosses the line between the genuinely temporary preservation order § 2284(b)(3) permits and a practical adjudication of the apportionment controversy.

That function is what matters: this Court looks to the substance of the court’s actions rather than the form, and the district court’s order goes well beyond the sort of interim relief authorized by § 2284(b)(3). *See Stratton v. St. Louis Sw. Ry. Co.*, 282 U.S. 10, 17 (1930) (“The requirement of the statute has regard to substance and not to form.”); *see also Page v. Bartels*, 248 F.3d 175 (3d Cir. 2001) (vacating district court’s decision in a redistricting case because it was functionally a preliminary injunction). The district court’s decision must be vacated, and in the immediate term, it must be stayed.

B. Federal courts may not collaterally attack ongoing state proceedings.

Federal precedent anticipates the chaos that federal courts might inject where they try to interfere in ongoing state court proceedings. To avoid such intrusions and

the confusion they might bring, *Younger* abstention prohibits federal courts from interfering in ongoing state court proceedings. See *Younger v. Harris*, 401 U.S. 37, 43 (1971). That prohibition includes federal-court intrusion into “the processes by which the State compels compliance with the judgments of its courts.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13–14 (1987).

The contempt proceedings ordered by the Missouri Supreme Court on September 9 confirm that the Court’s enforcement of its September 3 judgment remains ongoing at the same time the district court’s conflicting injunction is in effect. Missouri law expressly treats contempt as part of the underlying case: a contempt action “[is] not a separate suit but, rather, [is] the court’s enforcement of [its] judgment.” *Wood v. Wood*, 391 S.W.3d 41, 52 (Mo. App. W.D. 2012) (citing *Grissom v. Grissom*, 886 S.W.2d 47, 55 (Mo. Ct. App. W.D. 1994)). The district court’s TRO unquestionably disrupts the Missouri Supreme Court’s enforcement of its order. That is transparently its goal.

The district court’s dubious constitutional findings cannot justify the intrusion *Younger* prohibits; nothing prevents the Secretary from bringing those constitutional objections to the Missouri Supreme Court during contempt proceedings. In these circumstances, “[p]roper respect for the ability of state courts to resolve federal questions presented in state-court litigation mandates that the federal court stay its hand.” *Pennzoil Co.*, 481 U.S. at 14.

C. Plaintiffs are unlikely to succeed on the merits of their federal claims, which are identical to the claims addressed in the Secretary’s appeal of the Missouri Supreme Court injunction.

This Court declined to grant emergency relief on the exact same federal claims Plaintiffs raise here. But while the district court correctly determined that Plaintiffs were not likely to succeed on the merits of their Elections Clause claim, it found otherwise on the claims brought under the Equal Protection Clause and Article I, Section 2. This Court’s precedents have long made clear that neither of these provisions grants voters an entitlement to vote for the same candidates within the same constituency at successive stages of an election. Nor do they grant candidates the right to campaign in the same districts in primary and regular elections, even where other candidates have that opportunity. And, indeed, the district court cited nothing that supports its contrary conclusion. The district court therefore erred in determining that Plaintiffs established a likelihood of success on either claim.

1. Missouri’s use of the 2022 map in the November election does not create an equal protection violation.

The district court’s conclusion that Missouri’s use of any district map other than HB1 would violate voters’ and candidates’ right to equal protection was based on a false premise: that voters who do not “stay in their HB 1 congressional districts” and candidates who do not “retain the same electorate” for November’s election “are divested of their fundamental electoral rights.” App. 10a. This Court’s precedents, however, make clear that the Equal Protection Clause does not guarantee voters an absolute constitutional entitlement to vote for the same nominee in November for whom they voted in the primary, and it does not entitle candidates to the same

electorate for primary and regular elections. None of the cases cited by the district court hold otherwise.

The district court's reliance on *Gray v. Sanders*, which invalidated an electoral system that weighted votes in rural counties more heavily than votes in urban centers, is inapposite. 372 U.S. 368, 379 (1963). Nothing comparable is alleged here. Here Plaintiffs claim that use of the 2022 map would require some Missourians to vote in a district different from the one in which they cast their primary ballots, but neither Plaintiffs nor the district court identified any authority holding that equal protection guarantees every voter the same electoral consequence from a primary ballot.

And this Court's precedent confirms that equal protection does not create this guarantee. Voters are not entitled to an uninterrupted opportunity to determine who ultimately represents them, let alone who is *nominated* to represent them. In *Rodriguez v. Popular Democratic Party*, this Court considered a statute permitting a political party to fill a legislative vacancy by appointment rather than by election. 457 U.S. 1, 10–12 (1982). The challengers argued that the scheme discriminated between voters whose elected representatives completed their terms and voters in districts with vacancies, because only the latter were “denied the opportunity to be represented by an elected legislator.” *Id.* at 10 n.10. The Court found “nothing invidious or arbitrary” about this distinction that would rise to the level of an equal protection violation. *Id.* at 11. The appointment procedure did “not restrict access to the electoral process or afford unequal treatment to different classes of voters or

political parties.” *Id.* at 10. As the Court observed, “[a]ll qualified voters have an equal opportunity to select a district representative in the general election,” and any changes in representation due to the interim appointment provision “applies uniformly to all legislative vacancies.” *Id.*

Applying *Rodriguez*, federal courts have likewise rejected equal protection challenges to the temporary representational discontinuities that can accompany redistricting transitions. In *Donatelli v. Mitchell*, reapportionment placed voters in a newly created state-senate district, represented for the remainder of the pending term by a senator whom those voters had not elected. 2 F.3d 508, 514–15 (3d Cir. 1993). Citing *Rodriguez*, the Third Circuit found no equal protection violation and upheld the arrangement under rational basis review. *Id.* at 514–18; *see also id.* at 516 (finding “no constitutional basis” for claim that voters’ “right to vote for a state senator” was “infringed because they [were] ‘assigned’ a senator who was not elected by their district, or any significant portion of it”). In *Republican Party of Oregon v. Keisling*, the Ninth Circuit rejected a challenge arising from the combined consequences of reapportionment and staggered senate terms, which caused some voters to wait six years between opportunities to vote for a state senator. 959 F.2d 144, 144–46 (9th Cir. 1992) (*per curiam*) (“Appellants’ challenge to the methods chosen by appellee for regulating elections, in this case after reapportionment, has been roundly rejected by the Supreme Court.”).

Plaintiffs’ purported injuries are substantially less severe. All qualified Missouri voters had an equal opportunity to participate in the August 4 primary, and

“[a]ll qualified voters [will] have an equal opportunity to select a district representative in the general election,” *Rodriguez*, 457 U.S. at 10. If HB 1 is not implemented in November, no voter will lose the right to vote or be deprived of the opportunity to vote for their representative in the general election; some voters will have simply participated in a primary under different district lines. If, as *Rodriguez* holds, equal protection permits some voters to be represented by a legislator they had no opportunity to elect *at all*, it cannot be read to forbid the far narrower injury alleged here.

Rodriguez and the cases applying it thus expose the flaw in the district court’s premise. Equal protection guarantees voters equal access to the electoral process and equal weight for their votes. It does not guarantee that every voter will have had a chance to participate in every electoral event that produced the candidates or officeholders later presented to that voter. As one three-judge court observed, “[i]t is impossible, where Senate district boundaries are changed, to avoid having some voters represented by a Senator for whom they had no opportunity to support or oppose.” *Ferrell v. Okla. ex rel. Hall*, 339 F. Supp. 73, 82 (W.D. Okla. 1972), *aff’d sub nom. Ferrell v. Hall*, 406 U.S. 939 (1972).

Indeed, the district court’s theory would bar the ordinary consequences of redistricting, vacancies, and candidate substitution that federal courts, including this Court, have consistently treated as permissible features of election administration. For example, Missouri law permits a party nominee to be replaced if the nominee “dies, is disqualified or voluntarily withdraws.” Mo. Rev. Stat. § 115.363(3)(1)–(3). A

voter's primary ballot therefore does not carry an absolute constitutional entitlement to vote for that same nominee in November, even if other voters in the state will not see any change in the candidates available to them.

Similarly, *Lubin v. Panish* fails entirely to support the district court's conclusion that candidates have a constitutional right to the "same electorate" in primary and general elections. *See* App. 10a (citing 415 U.S. 709, 716 (1974)). The Court in *Lubin* held that a state could not deny an indigent candidate a place on the ballot due to his inability to afford the candidate filing fee. *See* 415 U.S. at 718. The decision in *Lubin* was about a state policy that blocked a candidate from accessing the ballot entirely; it said nothing about guaranteeing candidates the same district lines in regular and primary elections. Use of the 2022 map in Missouri would not deprive any candidate's "continued availability of political opportunity" or their "place on the ballot." *Id.* at 716. All of the nominees selected during the primary election are slated to appear on the general election ballot. The Court thus erred in concluding that the harm Plaintiffs allege poses a constitutional problem.

2. Article I, Section 2 does not guarantee Plaintiffs the right to the same constituency in primary and general elections.

The district court's conclusion that Plaintiffs are likely to succeed on the merits of their Article I, Section 2 claim is even less principled than its faulty equal protection analysis. Article I, Section 2 protects the right of qualified voters to choose their representatives in Congress. *See* U.S. Const. art. I, § 2. And where a state "has made the primary an integral part" of the election process, Article I, Section 2 protects the voter's right to cast a primary ballot and "to have his ballot counted." *United*

States v. Classic, 313 U.S. 299, 318 (1941). Those principles were not violated here. All qualified voters had the opportunity to vote in the primary, and the primary votes were counted and used to select nominees, all of whom are currently slated to appear on the general election ballot. Conducting the general election under different district lines would not “disenfranchise voters of their votes in the primary election.” App. 9a.

The district court’s TRO both invented and granted Plaintiffs a *different* right: an entitlement to vote *in the same constituency* at both the primary and general election. But no authority the court cited recognizes such a rule. Nor does *Classic* convert the right to participate in a primary into a constitutional guarantee that every downstream circumstance of that primary remain fixed until Election Day. And because *Morse v. Republican Party of Virginia*, 517 U.S. 186, 207 (1996) (plurality opinion), *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 211, 226–27 (1986), and *Klein v. United States*, 176 F.2d 184, 187 (8th Cir. 1949), merely repeat *Classic*’s proposition that a primary is an integral part of the election process, they offer no support for the district court’s conclusion either. As discussed, this Court has rejected the premise that the Constitution guarantees every voter an opportunity to participate personally in every electoral step that ultimately determines who represents that voter. *See Rodriguez*, 457 U.S. at 8–12.

The U.S. Constitution’s protections for political participation do not freeze every consequence of the primary through the general election. Indeed, rather than alleviate any imagined federal law violation, the district court’s TRO only introduces new conflicts with federal law. As the district court itself recognized (but inexplicably

failed to grapple with), the TRO would facilitate an election under a map that the Missouri Supreme Court concluded “is not the law and never has been the law” under the Missouri Constitution, App. 2a (quoting *von Glahn*, 2026 WL 2628846, at *6 n.8), contrary to the federal statutory requirement that congressional elections proceed from districts established “in the manner provided by the law” of the State, 2 U.S.C. § 2a(c).

3. The district court properly concluded that Plaintiffs are not likely to succeed on their Elections Clause claim.

The district court correctly concluded that Plaintiffs failed to establish a likelihood of success on their claim that the Missouri Constitution’s referendum provision, article III, section 49, violates the Elections Clause, recognizing that more than a century of this Court’s decisions have concluded that “states may permit their voters to challenge redistricting maps by referendum without running afoul of the Elections Clause.” App. 7a (citing *State ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916)).

In *Hildebrant*, this Court considered an Elections Clause challenge to Ohio’s Constitution, which—like Missouri’s—reserved to the people “the power to adopt or reject any law . . . passed by the General Assembly” by referendum, absent certain exceptions. *State ex rel. Davis v. Hildebrant*, 114 N.E. 55, 56 (Ohio 1916) (quoting Ohio Const. art. II, § 1c (1912)), *aff’d*, 241 U.S. 565 (1916). This Court unanimously upheld the referendum against an Elections Clause challenge, holding that the Elections Clause does not prohibit states from “treating the referendum as a part of the legislative power for the purpose of apportionment, where so ordained by the state

constitutions and laws.” *Hildebrant*, 241 U.S. at 569. And this Court has repeatedly reaffirmed that holding. *See, e.g., Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 805 (2015); *Moore v. Harper*, 600 U.S. 1, 25–26 (2023). Just like the Ohio Constitution reviewed in *Hildebrant*, the Missouri Constitution reserves to the people the power to approve or reject “any act of the general assembly” by referendum, subject to enumerated exceptions. Mo. Const. art. III, § 49. This Court’s precedent thus forecloses Plaintiffs’ claim.

CONCLUSION

The Application should be granted.

Respectfully submitted,

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