No. 26A326

In the Supreme Court of the United States

PEOPLE NOT POLITICIANS AND RICHARD VON GLAHN,
Applicants,
v.

CONGRESSMAN ROBERT ONDER, RICHARD BRATTIN, PATRICIA THOMAS, AND DEBRA HAVENS,
Respondents,

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

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OPPOSITION TO APPLICATION FOR STAY

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September 10, 2026

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicants People Not Politicians and Richard von Glahn were the Intervenor-Defendants in the U.S. District Court for the Eastern District of Missouri and Appellants in the U.S. Court of Appeals for the Eighth Circuit.

Congressman Robert Onder, Richard Brattin, Patricia Thomas, and Debra Havens were Plaintiffs in the U.S. District Court for the Eastern District of Missouri and Appellees in the U.S. Court of Appeals for the Eighth Circuit.

The State of Missouri and Missouri Secretary of State Denny Hoskins were Defendants in the U.S. District Court for the Eastern District of Missouri and Defendant-Appellees in the U.S. Court of Appeals for the Eighth Circuit.

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RELATED PROCEEDINGS

U.S. District Court for the Eastern District of Missouri:

Congressman Robert Onder, et al., v. State of Missouri and Missouri Secretary of State Denny Hoskins, No. 4:26-cv-01424-SRC (Sept. 8, 2026) (temporary restraining order)

U.S. Court of Appeals for the Eighth Circuit:

Congressman Robert Onder, et al., v. State of Missouri and Missouri Secretary of State Denny Hoskins, No. 26-2797 (8th Cir. Sept. 8, 2026) (denial of application for stay)

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RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondents the State of Missouri and Missouri Secretary of State Denny Hoskins represent that they do not have any parent entities and do not issue stock.

/s/ Louis J. Capozzi, III
Louis J. Capozzi, III

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

Missouri indisputably has a compelling interest in running a timely and orderly congressional election in 2026. The District Court's TRO ensures that it can. That order requires Missouri to use the same congressional map for the General Election that it used in the Primary Election. Appl. App. at 13a. Only that TRO is preventing the disenfranchisement of hundreds of thousands of voters in the Primary Election. *Id.* at 4a–5a, 8a–12a. Only that TRO is ensuring that Missouri will conduct congressional elections that comply with the federal election calendar. Both trial judges to have considered this question agreed it would be extraordinarily burdensome to change Missouri's congressional map with the Primary Election having been completed. *Id.* at 12a; Resp. App. at 104a.

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Seeking to destabilize Missouri's imminent General Election, Applicants ask this Court to second-guess a series of highly fact-bound determinations. Indeed, Applicants fail to meaningfully engage with this Court's standard for assessing stay applications. *See Nken v. Holder*, 556 U.S. 418, 433–34 (2009). They offer no explanation on certworthiness. *Contra Does 1-3 v. Mills*, 142 S. Ct. 17, 17–18 (2021) (Barrett, J., concurring in the denial). They fail to meaningfully discuss their irreparable harms. And they ignore the reality that a stay would change Missouri's congressional map for a *third time* in a week—and that a stay would come *after* the state-law deadline to alter ballots and just nine *days* before the federal-law deadline to send out military and overseas ballots. 52 U.S.C. § 20302(a)(8).

The Eighth Circuit (Loken, Stras, Smith, JJ.) unanimously deemed Applicants' stay application so weak that they denied it without even waiting for opposition briefs. Appl. App. at 73a. Applicants provide no good reason for this Court to proceed differently, and several independently sufficient reasons justify denying a stay.

First, Applicants lack appellate standing. This Court's decision in *Hollingsworth v. Perry* held that initiative proponents lack appellate standing to appeal an order voiding the state law they support when the State refuses to appeal. 570 U.S. 693, 708–09 (2013). As was true of the intervenor-defendants in *Hollingsworth*, Applicants below asserted only generalized interests in the status of the congressional map governing Missouri's general election. Resp. App. at 60a. That is insufficient for appellate standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam); *Gill v. Whitford*, 585 U.S. 48, 68 (2018).

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Second, Applicants fail to even brief whether their alleged legal errors are certworthy, despite this Court repeatedly stating this is a mandatory showing. *Does 1-3*, 142 S. Ct. at 17–18 (Barrett, J., concurring in the denial); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays). This is understandable. To start, Applicants ask this Court to second-guess a TRO ruling, which it generally lacks jurisdiction to do. *Dep't of Educ. v. California*, 604 U.S. 650, 651 (2025) (per curiam). Even if that reality does not pose a jurisdictional bar, the tentative nature of the District Court's merits rulings cuts against certworthiness. Additionally, it is undisputed that Applicants' merits arguments are highly fact-bound and unlikely to recur. Missouri is the only state where citizens

have attempted to unilaterally void a congressional map before a statewide vote. And this Court is highly unlikely to frequently see situations where courts are ordering States to change congressional maps between the Primary and the General Election. At most, von Glahn has cited *just two* analogous scenarios, where the changes were much less disruptive. *See* von Glahn Br. at 40, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sept. 7, 2026) (citing *Vera v. Bush*, 933 F. Supp. 1341 (S.D. Tex. 1996); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982)).

Third, Applicants identify no legal error—let alone one worthy of certiorari. Applicants lean heavily on Justice Kavanaugh's denial of the State's prior stay application, Stay Appl. at 1–4, even though the Court has consistently recognized that unreasoned denials of stay applications or certiorari petitions should not be interpreted as silent merits judgments. *See Merrill*, 142 S. Ct. at 879 (Kavanaugh, J., concurring in grant of applications for stays). In any event, this case arises in a very different posture that justifies fresh consideration. Whereas Applicants previously asserted alleged independent and adequate state-law grounds, von Glahn Br. at 14–17, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sept. 7, 2026), no such grounds exist here. Applicants also previously challenged whether it was equitable for Secretary Hoskins to invoke equity given the Missouri Supreme Court's view that he had acted inequitably. *Id.* at 35–37. Here, by contrast, candidates and voters are asserting their own constitutional rights, and the burden is on *Applicants* to show it would be equitable to enter a stay. *Nken*, 556 U.S. at 433–34.

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In *this* case, Applicants identify no error in the decisions of the District Court or Eighth Circuit. The District Court correctly held that substituting a dramatically different congressional map post-Primary and rendering the Primary Election pointless would violate Article I, Section 2, which provides that "[t]he House of Representatives shall be composed of Members *chosen every second Year by the People* of the several States." U.S. Const. art. I, § 2; Appl. App. at 8a–9a; *United States v. Classic*, 313 U.S. 299, 318–19 (1941); *Montano v. Lefkowitz*, 575 F.2d 378, 385–86 (2d Cir. 1978) (Friendly, J.). Likewise, the District Court found an imminent Equal Protection Clause violation because voters and candidates moved by the map change would be arbitrarily disadvantaged compared to voters and candidates not moved by the map-change. Appl. App. at 9a–11a. And although the District Court did not address this argument,[1] Applicants are also unlikely to succeed on the merits because it violates the Elections Clause for a State to permit small minorities of voters to unilaterally void an enacted congressional map before any statewide vote.

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Applicants' two alleged, fact-bound procedural errors in the TRO are likewise unavailing. Plaintiffs here did not challenge the "constitutionality of the apportionment of congressional districts," 28 U.S.C. § 2284(a), so a three-judge court would lack jurisdiction in this case. Plaintiffs' theory has never been that either the 2022 or 2025 congressional maps are unconstitutional "apportionment[s]," but merely that it violates the U.S. Constitution to use a map other than the 2025 map for the

[1] The District Court rejected a different argument—that the Elections Clause requires a clear statement of an intent to authorize referenda on redistricting plans that the Missouri Constitution lacks. Appl. App. at 6a–7a.

2026 general election. Appl. App. 3a. Nor is *Younger* abstention appropriate. At the time the District Court issued its TRO relying on federal law, there was no "ongoing" state-court proceeding. *Steffel v. Thompson*, 415 U.S. 452, 460 (1974). The Missouri Supreme Court had entered a final judgment based solely on state law; it denied rehearing; it denied a stay. Appl. App. 28a–29a; Resp. App. 68a. Only *after* the TRO issued did Applicants successfully ask the Missouri Supreme Court to schedule a contempt hearing. So even assuming *Younger* could somehow apply to a state-court contempt proceeding based on a state official's compliance with a federal court order, the District Court could not have abstained because there was no "ongoing" proceeding to abstain for. *Steffel*, 415 U.S. at 460.

Finally, Applicants must prove that the equities *support* a stay, *Nken*, 556 U.S. at 433–34—but they overwhelmingly justify denying one. To start, Applicant barely explains what his irreparable harm is, Stay Appl. at 9–10, and understandably so. Applicants are the proponents of a referendum campaign; even if this Court denies a stay, they will *get their vote*. Even assuming their generalized interest in having a lawful congressional map be in effect is cognizable for standing purposes, it is not especially weighty in the equitable analysis.

Applicants instead focus on minimizing the equitable interests of Plaintiffs and the State by relying heavily on this Court's *Purcell* caselaw. Stay Appl. at 10–14. In Applicants' telling, the lawful status quo is set by state courts—no matter how last-minute or how disruptive *their* change to an imminent federal election is. *See id.* at 11–12. But Applicants cite no case in which private individuals were allowed to

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assert *Purcell*—let alone while *contradicting* a State's explanation of its election-related needs. Regardless, this Court has *never* applied *Purcell* in a case like this—where granting a stay would require a State to switch congressional maps after a Primary Election and *increase* chaos in the State. Such an order would be directly contrary to *Purcell*'s primary rationale: "When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 880–81 (Kavanaugh, J., concurring in grant of applications for stays).

The case most analogous to this one is *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026)—which the district court cited in its equitable analysis. Appl. App. 12a. There, a state court violated federal law in changing a congressional map four months *before* an imminent primary election. Although New York argued that the *Purcell* principled barred a stay, this Court granted one anyway. As Justice Alito explained, the Court's "stay, far from causing disruption or upsetting legitimate expectations, eliminates much of the uncertainty and confusion that would exist if the [New York] Independent Redistricting Commission proceeded to draw a new district that this Court would likely strike down if the cases reached us in time." *Malliotakis*, 146 S. Ct. at 811 (Alito, J., concurring in grant of stay). And that made sense; this Court has prohibited court-ordered changes to congressional maps many months before primary elections begin. *See*, e.g., *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (per

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curiam) (prohibiting changes to Texas's congressional map for the 2026 elections over ten months ago).

By contrast, granting a stay here would cause chaos dwarfing that present in *Purcell* or any of this Court's other *Purcell*-related case. Back in *March 2026*, Democracy Docket—the publication founded by Elias Law Group founder Marc Elias—acknowledged that practical realities would likely require keeping the HB 1 map in effect for 2026. *See* Jen Rice, *GOP derails bid to stop Missouri gerrymander for 2026*, Democracy Docket (Mar. 27, 2026).[2] That is only truer now. A stay would force Missouri to use a dramatically different congressional map for the General Election than the Primary—a scenario this Court has never confronted (let alone mandated). Whereas the District Court's ruling came before Missouri's state-law deadline to alter ballots, a stay from this Court would come *after* that deadline, *see* Mo. Rev. Stat. § 115.125.2—when county election officials have already started printing ballots in compliance with the District Court's order. Resp. App. at 11a, 13a. And after *both* trial courts to consider this situation found that changing congressional maps would be chaotic and even "impossible," Resp. App. at 104a; *accord* Appl. App. at 12a, a stay would force Missouri election officials to scramble to switch congressional maps with federal law requiring it to send out ballots in **nine days**. 52 U.S.C. § 20302(a)(8).

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[2] https://archive.is/pUnQs.

For all these reasons, the Court should deny a stay and permit Missouri to run a timely election that complies with federal law.[3]

DECISIONS BELOW

The District Court's September 8, 2026 order granting the temporary restraining order is included in Applicants' Appendix. Appl. App. 1a–13a. The Eighth Circuit's order is included. Appl. App. 73a.

JURISDICTION

This Court's jurisdiction is in doubt because appellate courts generally lack jurisdiction to appeal grants of TROs. *California*, 604 U.S. at 651.

Additionally, as the State will explain, Applicants lack appellate standing to assert a generalized interest in the congressional map that will govern Missouri's elections. *Hollingsworth*, 570 U.S. at 706. Nor can Applicants assert the State's interests to create standing. *Id.* at 708–09.

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STATEMENT

I. The enactment of the HB 1 map and subsequent failed challenges to it.

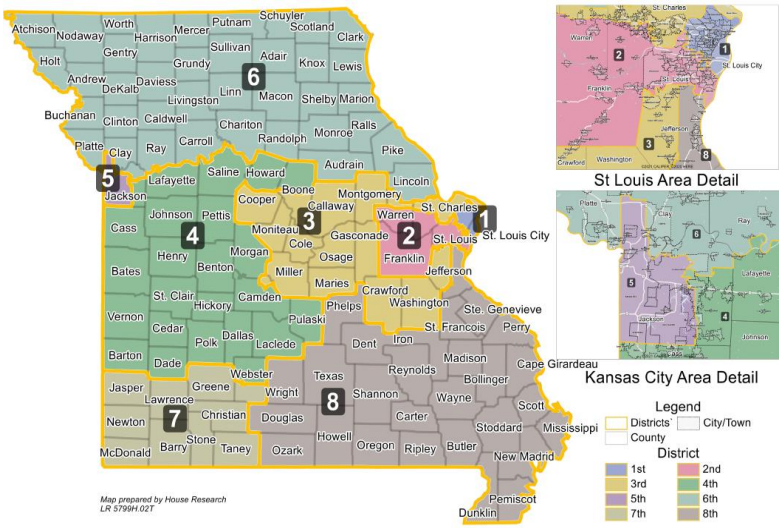
Unlike some States, Missouri did not redistrict in the middle of 2026 or leave courts with only limited time for judicial review. *Cf. Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (per curiam). On September 12, 2025, the Missouri General

[3] The Defendant-Respondents are not required to file a notice of appeal. When a defendant who intervened on behalf of the State files a notice of appeal, the "State remains a party" to the case. *Diamond v. Charles*, 476 U.S. 54, 63 (1986). The state officer, as the "nominal defendant," may "advocate" to defend the order below. *Windsor v. United States*, 699 F.3d 169, 176 (2d Cir. 2012), *aff'd on other grounds*, *United States v. Windsor*, 570 U.S. 744 (2013).

Assembly passed House Bill 1 ("HB 1"), which redistricted the boundaries of Missouri's eight congressional districts. HB 1 abrogated Missouri's previous congressional map enacted in 2022. These two maps are quite different, as these reproductions demonstrate:

Missouri's 2025 Congressional Map

Missouri's 2022 Congressional Map



In response, Applicants Richard von Glahn and People Not Politicians initiated the referendum petition at issue in this case. Applicants' public statements have long emphasized that they merely want a statewide vote on the HB 1 map. *See, e.g.*, Jen Rice, *Missouri court upholds GOP's gerrymandered map for midterms, other legal challenges continue*, Democracy Docket (Mar. 12, 2026).[4] But they have also acknowledged a less democratic goal: suspending the State's congressional map merely by submitting a referendum *petition* signed by "five percent of the legal voters in each of two-thirds of the congressional districts in the state" (approximately 3.3% of Missouri's voters). Mo. Const. art. III, §§ 52(a), 52(b); *see also* Jason Rosenbaum, *Missouri's stack of redistricting lawsuits expected to grow over whether new map is in effect*, St. Louis Public Radio (Dec. 16, 2025).[5]

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Applicants' latter goal put Missouri in a quandary. No court had ever addressed whether a small minority of voters could void a congressional map by submitting signatures, and the concept seemed implausible to state officials. The State tried to obtain guidance from a federal district court in October 2025—arguing that a referendum was not permitted under state law and would violate the Elections Clause. *See Mo. Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *1 (E.D. Mo. Dec. 8, 2025). But that court dismissed on ripeness grounds and abstained so the Missouri Supreme Court could potentially avoid the federal constitutional question. *Id.* at *1, *4 n.4 (citing Mo. Rev. Stat. § 116.120).

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[4] https://archive.is/QeQPj.
[5] https://archive.is/m00Zy.

After the federal court's decision, Applicants submitted their referendum petition. Resp. App. 70a. The Secretary strictly complied with his state-law duties in processing Applicants' referendum petition. *See* Mo. Rev. Stat. §§ 116.120–116.150. Within two weeks of the petition's submission, the Secretary forwarded Respondent's referendum petition to Missouri's 116 local election authorities so that they could begin reviewing the signatures on Respondent's petition to verify validity. *See id.* § 116.130.1. That process takes a long time, which is why state law gave local election officials until July 28 and the Secretary until August 4, 2026—the day of the Primary Election—to finish the process. *See id.* §§ 116.130.2, 116.150.3.

While county officials processed signatures, substantial state-law litigation against the map ensued. The Missouri Supreme Court rejected all four challenges to the map it considered. *See Luther v. Hoskins*, 730 S.W.3d 567 (Mo. 2026); *Healey v. Missouri*, 732 S.W.3d 827 (Mo. 2026); *Maggard v. Missouri*, 733 S.W.3d 411 (Mo. 2026); *NAACP v. Kehoe*, 734 S.W.3d 338 (Mo. 2026). In one of those cases—*Maggard*—the Missouri Supreme Court held that laws go into effect despite referendum petitions being *submitted*, but it suggested in dictum that a certified referendum would result in the law being retroactively deemed void. 733 S.W.3d at 420. The court also, however, expressly reserved the question whether federal congressional maps are subject to referenda under state law at all. *Id.* at 414 n.7. And the court did not address the State's argument that—under the state-law equivalent of the *Purcell* principle, it was *already* too late to change maps in 2026. *See Hadley v. Junior Coll. Dist. of Metro. Kan. City*, 460 S.W.2d 1, 2–3 (Mo. 1970).

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Even though the State invoked *Hadley* in all four cases, the Missouri Supreme Court never hinted that it would order last-minute changes to the HB 1 map.

When the Missouri Supreme Court issued its *Maggard* decision in May 2025, the Secretary faced an imminent Primary Election. *Cf. Abbott v. LULAC*, 146 S. Ct. at 419 (staying order affecting congressional map much further in advance of upcoming primary election). Candidate filing had closed in March 2026 under the HB 1 map, and campaigns had already long relied on the HB 1 map. Mo. Rev. Stat. § 115.349.1. Under those circumstances, the Secretary issued a certificate rejecting the referendum petition on the final day permitted by the state-law deadline—the same day as the 2026 Primary Election. *Id.* § 116.150.3. He did not dispute that Applicants had obtained enough signatures. But he expressed his view that Missouri law does not authorize referenda on congressional maps, that the U.S. Constitution's Elections Clause prohibits suspending maps before statewide referendum votes, and that switching maps between the Primary and General Elections would violate the U.S. Constitution and federal statutes. *See* Appl. App. at 20a n5.

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That same day, Missouri held its Primary Election. About 1.2 million Missourians voted in the elections. Resp. App. at 71a. The State did so following the Missouri Supreme Court's repeated upholding of the HB 1 and the Attorney General's issuance of an opinion letter on May 13, 2026 explaining why the 2026 Primary Election must occur under the HB 1 map. *Id.* No court ever suggested that Missouri could not use the HB 1 map for the Primary Election.

II. The *von Glahn* state-court litigation.

Applicant von Glahn promptly sued in state court the day of the Primary Election. His complaint sought an injunction "reversing Defendant Hoskins' certification decision," and an injunction "[r]estrain[ing]" the Secretary "and those acting in concert with him from taking any further steps to implement or mandate the use of HB 1." Resp. App. at 24a.

The state trial court rejected Applicant's requests on several grounds, holding that both the Missouri and U.S. Constitutions prohibit referenda on congressional maps. *Id.* at 74a–94a. It also held that the U.S. Constitution's Elections Clause forbids changing Missouri's congressional map based on a referendum petition signed by just "five percent of the legal voters in each of two-thirds of the congressional districts in the state." *Id.* at 91a–94a (quoting Mo. Const. art. III, § 52(a)). The court further held that changing Missouri's congressional map between the Primary and General Elections would violate Article I, Section 2 of the U.S. Constitution and the Equal Protection Clause. *Id.* at 94a–98a. Finally, the trial court held it would not change the HB 1 map before the 2026 election in light of Missouri's version of the *Purcell* principle. *Id.* at 99a–104a (citing *Hadley*, 460 S.W.2d 1).

The state trial court supported its holdings with several factual findings—none of which were subsequently contested (or mentioned) by the Missouri Supreme Court. The trial court found that "changing the maps at this late juncture is not just 'impractical,' it is impossible." *Id.* at 104a. It also found that, "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."

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Id. at 102a. Also, the trial 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.* at 72a. The court also held that "[t]hose voters would possess materially less voting power than voters whose district remained the same." *Id.* at 97a.

The state trial 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.* at 102a. In light of these findings, the trial court "decline[d] to order an unprecedented remedy that is impossible to implement." *Id.* at 104a.

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Surprisingly, the Missouri Supreme Court reversed and directly issued an injunction prohibiting the Secretary—"and all those acting in concert with him"—"from implementing, using, or mandating the use of the congressional redistricting in HB 1." Appl. App. at 28a. Although the court provided no detail on *how* Missouri is to comply with its order, a footnote in the court's opinion stated that Missouri must use "the congressional redistricting [plan] the General Assembly established in 2022." *Id.* at 27a n.8. That court justified this injunction by concluding that, under the Missouri Constitution, just 3.3% of the State's voters can unilaterally override the state legislature and impose their preferred congressional map for an entire election cycle. *See id.* at 20a n.5, 26a–28a (citing Mo. Const. art. III, §§ 52(a), 52(b)). That

court also explicitly eschewed any consideration of the "confusion, expense, and practical difficulties" that "may result" from its injunction. *Id.* at 27a n.8. And it did so while never questioning or discussing the trial court's finding that "changing the maps at this late juncture is not just 'impractical,' it is impossible." Resp. App. at 104a.

The Missouri Supreme Court also refused to address the Secretary's federal defenses. The court stated in a footnote that it deemed these arguments waived because the Secretary did not raise these points in his certificate of insufficiency, Appl. App. at 20a n.5—even though the certificate expressly incorporated by reference an Attorney General opinion that did address these arguments, *id.*

One day after the decision, the State asked this Court for an emergency stay. In opposing the stay, Applicant von Glahn argued—among other things—that the Missouri Supreme Court's decision was supported by an adequate and independent state-law ground and that Secretary Hoskins could not invoke equitable principles as the applicant. von Glahn Br. at 14–17, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sept. 7, 2026). On September 8, Justice Kavanaugh denied the application without comment. *Hoskins v. von Glahn*, No. 26A304 (U.S. Sept. 8, 2026).

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III. The present *Onder* lawsuit.

On September 4, two congressional candidates and two voters who were moved to new congressional districts by the Missouri Supreme Court's order sued Secretary Hoskins and the State itself (collectively, the "State"). They argued the State would—because of the Missouri Supreme Court's order—imminently violate their federal constitutional rights by changing congressional maps. Although the State was

formally adverse to Plaintiffs because it lacked the power to voluntarily give them the relief it sought, it informed the Court that it agreed with Plaintiffs' argument that the Missouri Supreme Court's order would force it to violate the U.S. Constitution, and that the equities favored maintaining the congressional map that governed the Primary Election. Resp. App. at 134a–38a; *cf. Hollingsworth*, 570 U.S. at 708–09; *Nat'l Republican Senatorial Comm. v. FEC*, 146 S. Ct. 2404, 2413 (2026) (federal government declining to defend unconstitutional statute).

Applicants promptly moved to intervene—and were granted intervention. Appl. App. at 3a; *see also* Resp. App. at 46a–67a. Applicants moved to dismiss on several procedural grounds. Resp. App. at 112a–31a. The District Court ordered Plaintiffs and the State to respond, *id.* at 132a, and for all parties to address the Court's own questions, about whether abstention doctrines applied, the applicability of the *Rooker-Feldman* doctrine, and this Court's anticipated stay decision in the *von Glahn* case would affect the case before it, *id.* at 133a.

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After the stay denial in *von Glahn*, the District Court granted Plaintiffs' request for a TRO and ordered the State to use the HB 1 map for the General Election. Appl. App. at 1a–13a. On the merits, the District Court found Plaintiffs have a "high probability of success" because the State was poised to "disenfranchise voters of their votes in the primary election, in clear violation of Article I, Section 2" of the U.S. Constitution. *Id.* at 9a. The District Court also found a "high probability of success" on Plaintiffs' Equal Protection Clause claim. *Id.* at 11a. The court reasoned that: "Using any map other than HB 1's for the general election creates two classes of

voters: those who happen to stay in their HB 1 congressional districts, and those who do not. Likewise, it divides candidates between those who retain the same electorate, and those who do not. In both situations, those who 'do not' are divested of their fundamental electoral rights." *Id.* at 10a. Finally, the District Court rejected an argument under the Elections Clause that the U.S. Constitution requires—but the Missouri Constitution lacks—a clear statement authorizing referenda against congressional maps. *Id.* at 6a–7a. The District Court did not respond to a separate argument that the Missouri Constitution violates the Elections Clause by permitting 3.3% of registered voters to void a governing congressional map *before* a statewide vote. Resp. App. at 37a–38a.

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The District Court also analyzed the other TRO factors. The District Court found Plaintiffs would be irreparably harmed absent relief because voters "would have to cast their general-election votes for candidates whom they had no role in nominating" and candidates had "campaign[ed] and raise[d] money in the HB 1 districts that Missouri's highest election authority presented to them." Appl. App. at 4a–5a.

On the equities, the District Court cited this Court's decision in *Malliotakis v. Williams* and reasoned that the *Purcell* principle supports—or at least does not foreclose—relief to prevent chaos in Missouri's imminent federal election. *Id.* at 11a–12a. And Missouri being forced to use "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." *Id.* at 12a. The court also noted that "[w]idespread voter confusion would inevitably follow." *Id.* The court thus ordered the State to use the HB 1 map for the 2026 General Election. *Id.* at 13a.

Following the District Court's decision, Missouri's state-law deadline for altering the ballot for the 2026 General Election passed. Mo. Rev. Stat. § 115.125.2. Accordingly, in accordance with the District Court's order, the Secretary instructed county election officials to comply promptly with the Court's order. Appl. App. at 34a. With the deadline to send out military and absentee ballots just *nine days* away, local election officials have promptly started printing ballots based on the HB 1 map. Resp. App. at 13a. Although each county must determine precisely when to print ballots, more are likely to have done so with each passing hour. *Id.*

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Applicants took two quick steps in response to the District Court's order. First, they filed a motion on the Missouri Supreme Court's *von Glahn* docket and asked that court to hold Secretary Hoskins in contempt and to issue an order barring him from complying with the federal court's order. Appl. App. 39a–42a. Specifically, they asked the Missouri Supreme Court "make clear that regardless of other orders (except from the United States Supreme Court) the Missouri Secretary of State must comply with this court's injunction." *Id.* at 42a. The Missouri Supreme Court promptly issued a show-cause order that noted the District Court's decision but suggested it

was issued in violation of the *Rooker-Feldman* doctrine (an argument Applicants wisely no longer press).[6] *Id.* at 43a.

Second, Applicants asked the Eighth Circuit for a stay pending appeal. On September 9, the Eighth Circuit (Loken, Stras, Smith, JJ.) rejected the stay application without even waiting for Plaintiffs or the State to respond. The panel reasoned that it lacked jurisdiction to review a TRO and, alternatively, that Applicants failed to satisfy the *Nken* stay factors. Appl. App. at 73a.

Applicants promptly filed this stay application. Justice Kavanaugh ordered a response by September 10 at 10:00 a.m. EDT.

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REASONS FOR DENYING A STAY

"A stay is not a matter of right, even if irreparable injury might otherwise result," but is instead "an exercise of judicial discretion." *Nken*, 556 U.S. at 433 (internal quotations omitted). Applicants bear "the burden of showing" four factors: (1) "whether the stay applicant has made a strong showing that he is likely to succeed on the merits;" (2) "whether the applicant will be irreparably injured absent a stay;" (3) "whether issuance of the stay will substantially injure the other parties interested in the proceeding;" and (4) "where the public interest lies." *Id.* at 433–34 (citation omitted). As part of the merits factor, the applicant must provide "not only an assessment of the underlying merits but also a discretionary judgment about whether

[6] The *Rooker-Feldman* doctrine does not bar *non-parties* from bringing federal claims. *See Lance v. Dennis*, 546 U.S. 459, 465–66 (2006) (per curiam).

the Court should grant review in the case." *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring in the denial of application for injunctive relief).

I. Applicants lack standing to appeal.

Applicants lack standing to appeal the District Court's order.[7] This Court has instructed that an "'actual controversy'" must "persist throughout *all* stages of litigation." *Hollingsworth*, 570 U.S. at 705 (emphasis added) (citation omitted). Parties seeking appellate review must meet the standing requirement of Article III, "just as it must be met by persons appearing in courts of first instance." *Id.* (citation omitted). This Court has repeatedly emphasized that "[t]he decision to seek review 'is not to be placed in the hands of concerned bystanders,' persons who would seize it 'as a vehicle for the vindication of value interests.'" *Arizonians for Off. Eng. v. Arizona*, 520 U.S. 43, 64–65 (1997) (internal quotation marks omitted) (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). Rather, persons wishing to appeal must demonstrate that they have suffered a "concrete and particularized injury." *Hollingsworth*, 570 U.S. at 700.

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Applicants cannot make this showing. This Court "has never identified initiative proponents as Article-III-qualified defenders." *Arizona*, 520 U.S. at 45. And here, Applicants' only asserted interest is a generalized grievance "that is plainly undifferentiated and common to all members of the public." *Lance*, 549 U.S. at 440–

[7] Plaintiff candidates had standing to bring this case below because they have strong interests in the rules governing an upcoming election. *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 76–79 (2026). The voter plaintiffs had standing to bring this case below because the State was imminently about to violate their federal constitutional rights. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–27 (2021).

41 (citation omitted); *Gill*, 585 U.S. at 65–67. Applicants' asserted interests are defending the Missouri Supreme Court's order and vindicating their "right to a referendum on legislative acts." Resp. App. at 60a. But Applicants will receive their referendum vote this November. The only implication of this case is the status of Missouri's congressional map statewide. These are classic generalized grievances. *See Lance*, 549 U.S. at 441–42 (finding plaintiffs lacked standing where they alleged a generalized grievance that the government failed to comply with the law); *Gill*, 585 U.S. at 65–67 (holding that plaintiffs complaining of statewide gerrymandering, without alleging that they lived in gerrymandered districts, asserted only a generalized grievance).

This Court's decision in *Hollingsworth*, which held that proponents of a California initiative lacked standing to appeal after the enacted law was found unconstitutional, is instructive. 570 U.S. at 712–13. Similar to this case, the plaintiff in *Hollingsworth* challenged the constitutionality of a state law enacted by initiative, but the State refused to defend it. *Id.* at 702. Like this case, the trial court allowed the initiative's proponents to intervene. *Id.* The trial court agreed the state law was unconstitutional, and the State declined to appeal; only the initiative's proponents appealed. *Id.* In holding that the proponents lacked standing, this Court noted that "[w]e have never before upheld the standing of a private party to defend the constitutionality of a state statute when state officials have chosen not to." *Id.* at 715.

Instead, the Court explained, in order to demonstrate "[s]tanding to defend on appeal in the place of the original defendant," Applicants must "possess[] a direct

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stake in the outcome" *beyond* their interest in vindicating the interest of the State. *Id.* at 712 (first alteration in original) (citation omitted). But Applicants have not made this showing. Below, Applicants asserted that their interest in the litigation stems from their Missouri constitutional "right to a referendum on legislative acts." Resp. App. at 60a. But the District Court's order does not disturb HB 1's place on the November ballot. Appellants will have the opportunity to exercise their right to referendum by voting on HB 1 in the General Election. Beyond that, Applicants seemingly assert only that they care about which congressional map will apply in Missouri in the General Election—a generalized injury that cannot confer standing. *See Gill*, 585 U.S. at 65–67.

Applicants have not alleged that they will suffer a "concrete and particularized" injury as a result of the District Court's order. It simply "is not enough that" Applicants "have a keen interest in the issue." *Hollingsworth*, 570 U.S. at 700. Thus, Applicants lack appellate standing and this Court should deny a stay.

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II. Applicants do not argue that this case is certworthy. It is not.

This Court has repeatedly recognized that a stay applicant must identify legal errors that are certworthy. *See Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring in the denial of application for injunctive relief); *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring in the grant of stay) ("[T]he Court can and should take care to focus on certworthiness when considering emergency applications."); *Hollingsworth*, 558 U.S. at 190. Yet Applicants do not even bother to discuss this mandatory showing. That alone justifies denying a stay because Applicants must establish that each stay factor is satisfied. *Nken*, 556 U.S. at 433–34.

In any event, it is hard to see how Applicants *could* show certworthiness. Applicants' alleged legal errors are merely preliminary decisions issued in a district court's temporary restraining order. As the Eighth Circuit recognized, that would ordinarily divest this court of jurisdiction. Appl. App. at 73a (citing *In re Rutledge*, 956 F.3d 1018, 1026 (8th Cir. 2020) (explaining that "we ... ordinarily lack jurisdiction to hear an interlocutory appeal from the district court's grant ... of a TRO")). Even if it does not, the TRO posture of this case still militates against certiorari.

There is also no split of authority on any of the issues presented in Applicants' briefing. The Missouri Supreme Court never addressed the federal questions at issue in this case. *See* Appl. App. at 20a n.5. Meanwhile, every court that *has* considered the federal implications of changing the congressional districts of hundreds of thousands of Missourians between a Primary and General Election has agreed that violates the Equal Protection Clause and Article I, Section 2 of the U.S. Constitution. *See* Appl. App. at 8a–11a; Resp. App. at 95a–98a; *see also* Appl. App. at 73a.

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Additionally, it is hard to imagine alleged legal errors more fact-bound than these, and this Court does not engage in fact-bound error correction. *See* Sup. Ct. R. 10. Applicants invite this court to grant certiorari on the District Court's holdings under Article I, Section 2 and the Equal Protection Clause. Stay Appl. at 18–24. But their principal argument is that no court has applied these provisions—and associated precedents—like the District Court and the Missouri trial court did here. *See id*. Yet that only militates against certiorari, especially when no court has disagreed with the District Court's application of these doctrines. This Court should

not, on its interim docket, hold that changing a congressional map between a Primary and a General Election has no bearing on the rights of voters under Article I, Section 2 and the Equal Protection Clause. Such a significant holding should come only after time for extensive briefing, with opportunity for reasoned consideration.

Moreover, Applicants' alleged errors arise in an unprecedented and extremely unusual factual scenario that is unlikely to recur. To start, it seems unlikely that this Court will regularly see cases involving court orders to change congressional maps between primary and general elections. Additionally, it is undisputed that Missouri is the only State where any referendum campaign has tried—let alone, been allowed—to void a congressional map before any statewide vote. The fact that the unique scenario in this case is unlikely to recur counsels against certworthiness.

When Applicants eventually address certworthiness in their reply, Applicants will likely note that Respondents argued recently that *Hoskins v. von Glahn*, No. 26A304, presented a certworthy application for this Court's consideration. But in that circumstance, Missouri argued that certiorari was warranted because it would be impossible for the State to host a timely, lawful election under the burden of the Missouri Supreme Court's state-law injunction. Stay Appl. at 30–31, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sept. 4, 2026). But now that the District Court issued a federal injunction to use the HB 1 map, Missouri will be able to hold a lawful, timely, federal election. Thus, the prior emergency Missouri cited has been checked.

Because Applicants fail to identify any issue in this appeal as one in which this Court is likely to grant certiorari, the Court should deny the stay application.

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III. Applicants are unlikely to succeed on the merits.

A. Applicants' objections to the District Court's jurisdiction are meritless.

1. First, Applicants argue that the District Court lacked jurisdiction because the TRO should have been issued by a three-judge panel under 28 U.S.C. § 2284. Stay Appl. at 14–16. But this case does not fall within 28 U.S.C. § 2284(a). That statute states: "A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts …." 28 U.S.C. § 2284(a). The key word is "apportionment." *Id.* As the District Court itself noted, Plaintiffs are not challenging the constitutionality of any apportionment enacted by the Missouri General Assembly. Resp. App. at 1a–2a. They are arguing that referenda on congressional maps in Missouri violate the Elections Clause and that ordering Missouri to switch to an old map between elections violates Article I, Section 2 and the Equal Protection Clause. *See* Appl. App. at 3a, 6a–11a. No one is challenging the underlying constitutionality of any "apportionment" plan, and thus § 2284(a) does not apply here.

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Regardless, even if § 2284 did apply, subsection (b)(3) plainly permits a single district judge to enter TRO before a three-judge panel is convened. 28 U.S.C. § 2284(b)(3). Even Applicants admit "[a] single judge may enter a temporary restraining order" under § 2284(b)(3). Stay Appl. at 15. Thus, Applicants have failed to prove a likelihood of success on the merits of their first jurisdictional argument.

2. Applicants next contend the District Court was required to abstain under *Younger* because—*after* the District Court entered its order—Applicants successfully

convinced the Missouri Supreme Court to open contempt proceedings against Secretary Hoskins for following the District Court's order. Stay Appl. at 16–17. The District Court's thorough and persuasive analysis of *Younger* fully rebuts Applicants' arguments. *See* Resp. App. at 3a–6a.

Applicants also cite no case suggesting a federal court must abstain where the losing party in federal court is asking a state court to hold a party in contempt for violating a federal court order. And this Court's precedent suggests *Younger* abstention would not apply to cases like this one. *See Juidice v. Vail*, 430 U.S. 327, 338 (1977) (no abstention when state court proceeding initiated in "bad faith").

Fortunately, this Court need not consider whether *Younger* applies to unusual situations like this one because *Younger* only requires federal courts to defer to "ongoing" state proceedings. *Steffel*, 415 U.S. at 460. Here, *Younger* did not bar the District Court's decision because there was no "ongoing" state contempt proceeding *when* the federal action was filed and when the district court issued its decision. The state proceedings in *von Glahn* were complete three times over before the District Court entered the TRO. The Missouri Supreme Court had issued its judgment. Appl. App. 28a–29a. That court denied rehearing, *id.* at 29a, and a motion for a stay, Resp. App. at 68a. And this Court had denied a stay. *Hoskins v. von Glahn*, No. 26A304 (U.S. Sep. 8, 2026). Thus there were no more proceedings contemplated by law. It was only *after* the District Court entered its TRO that the Missouri Supreme Court instituted contempt proceedings against Secretary Hoskins at Applicants' request. Appl. App. at 39a–43a. But requiring the District Court "to [have] step[ped] aside

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when no state [proceeding] [wa]s pending … would turn federalism on its head." *Steffel*, 415 U.S. at 472.

B. Changing Missouri's congressional map would violate the voting rights of hundreds of thousands of voters—as every judge to consider that question has agreed.

Applicants do not contest that—if Missouri's congressional map changes—hundreds of thousands of Missourians will vote for candidates in the General Election that they never considered in the Primary Election. *See* Appl. App. at 10a; Resp. App. at 72a; *see generally* Stay Appl. Nor could they. That is exactly what they demand.

Missouri held a Primary Election on the HB 1 map over a month ago. Appl. App. at 2a. At that time, hundreds of thousands of voters, including Plaintiffs, voted under the map. *Id.* at 1a; Resp. App. at 72a. Yet, last Thursday, when the Missouri Supreme Court ordered the certification of von Glahn's referendum petition, the map was purportedly suspended under the Missouri Constitution. Appl. App. at 27a–29a. And, in light of Article III, Section 52(b)'s suspension mechanism, *see* Mo. Const. art. III, § 52(b), hundreds of thousands of Missourians will be forced to vote for a slate of candidates in the General Election that they never had an opportunity to consider in the Primary. As the District Court found, this plainly violates Article I, Section 2 of the U.S. Constitution because it disenfranchises Missourians from a fundamental aspect of choosing *their* representative. Appl. App. at 8a–9a. Indeed, a side-by-side look at the maps reveals that *many* Missouri voters will be disenfranchised if the Court grants a stay. *See* Resp. App. at 20a–21a.

That would be unconstitutional. Article I, Section 2 provides, "The House of Representatives shall be composed of Members *chosen* every second Year *by the*

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People of the several States." U.S. Const. art. I, § 2, cl. 1 (emphasis added). This language protects the right to vote and prohibits States from nullifying votes cast in federal congressional elections. *See id.* Additionally, the Supreme Court has recognized that the Constitution protects a fundamental right to vote. *See, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 (2008) (plurality op.). If that right protects *anything*, surely it prohibits forcing voters to choose between General-Election candidates that they had no role in nominating in the Primary Election. *See 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").

Indeed, a host of federal judges have recognized that "[p]rimary 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." *Terrazas v. Slagle*, 821 F. Supp. 1154, 1159 (W.D. Tex. 1992) (rejecting Texas's attempt to change a state legislative map between a primary and general election); *see also 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 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) (same), *vacated on other grounds sub nom.*, *Cantor v. Personhuballah*, 135 S. Ct. 1699 (2015); *Vera v. Richards*, 861 F. Supp. 1304, 1310, 1351 (S.D. Tex. 1994), *aff'd sub nom.*, *Bush v. Vera*, 517 U.S. 952 (1996). The District Court here, Appl. App. at 8a–9a, and the Missouri trial court three weeks ago, Resp. App. at 94a–98a, merely sided with this

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long line of decisions refusing to change maps between a Primary and General Elections.

Nor does the fact that, as applied here, the Missouri Constitution nullifies a Primary Election—as opposed to a General Election—change anything. Article I, Section 2 "applies to the entire process by which federal legislators are chosen." *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 227 (1986). "Where 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. *Classic*, 313 U.S. at 318–19. And that is obviously true in Missouri, which has long recognized that congressional primaries are "an integral part of the electoral process" in the State. *Pollard v. Bd. of Police Comm'rs*, 665 S.W.2d 333, 340 (Mo. 1984) (citing *Classic*, 313 U.S. 299; *Smith v. Allwright*, 321 U.S. 649 (1944)).

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Sure enough, Missouri law specifically provides that "all candidates for elective office shall be nominated at a primary election." Mo. Rev. Stat. §§ 115.339, 115.343. And 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; *see* Mo. Rev. Stat. § 115.343. Like Louisiana's election laws in *Classic*, Missouri law makes the Primary Election an "integral" part of choosing representatives in Missouri. *Classic*, 313 U.S. at 314–19. Therefore, Article I, Section 2 of the U.S. Constitution preempts Article III, Section 52(b) of the Missouri

Constitution to the extent that it deprives voters of the ability to vote for their representatives in the Primary Election.

Applicants suggest that, so long as Missourians had a right to vote in *a* Primary, that is *good enough* to satisfy their right to have their ballots counted. Stay Appl. at 22–24. But Missourians are deprived of their right to "cho[o]se" *their* representative when they are cut off from an integral aspect of Missouri's process for selecting representatives. U.S. Const. art. I, § 2; *see Mosley*, 238 U.S. at 386. "It is simply inconsistent with the concept of election of Representatives by districts that a candidate should be chosen in part by persons outside the district elected to these posts as such." *Montano v. Lefkowitz*, 575 F.2d 378, 385 (2d Cir. 1978) (Friendly, J.). As Judge Friendly aptly put it, "[i]f the state provides a primary election to select party candidates for the House of Representatives, the voters in each district are entitled to participate in it on the same basis both of equality and of independence from other districts having possibly divergent interests that they enjoy in the election itself." *Id.* at 385–86. Applicants ask this Court to simply "close [its] eyes to [this] fact." *See Classic*, 313 U.S. at 319.

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Because Article I, Section 2 prohibits cutting off voters from the right to "choose" *their* representative, U.S. Const. art. I, § 2, Applicants are unlikely to succeed in obtaining certiorari and reversal on this point.

C. Changing Missouri's congressional map would violate the equal-protection rights of hundreds of thousands of voters.

Article III, Section 52(b) of the Missouri Constitution, as applied here, violates the Equal Protection Clause by transferring hundreds of thousands of voters to new

districts, but leaving other voters in the same district. Resp. App. at 97a–98a. Article III, Section 52(b)'s application to HB 1 post-Primary thus disadvantages voters based solely on where they live—unlawfully diluting the influence of voters who must change districts in violation of the Equal Protection Clause. U.S. Const. amend. XIV, § 1.

The Equal Protection Clause forbids weighting the votes of some Missourians "more heavily" than others. *Gray v. Sanders*, 372 U.S. 368, 379 (1963). "[A]ll who participate in [an] 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*." *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; *Reynolds v. Sims*, 377 U.S. 533, 576 (1964) (holding that voters have a right to their "vote[s]" being "weighted equally with those of all other citizens"). "And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. This Court's precedents are also clear that if a State grants some voters a privilege and "den[ies] the privilege to other classes of otherwise qualified voters in similar circumstances, without affording a comparable alternative means to vote," the State engages in "arbitrary discrimination violative of the Equal Protection Clause." *Am. Party of Tex. v. White*, 415 U.S. 767, 795 (1974).

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Changing the congressional map between the Primary and General Elections violates these standards because it deprives hundreds of thousands of Missourians of the chance to choose their representative in the Primary. All the while, other Missourians will be able to choose their representative through both the Primary and General Elections. Here, the District Court found 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." Appl. App. at 10a (quoting *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)); *see also* Resp. App. at 97a.

Applicants do not even attempt to dispute this disparate treatment of voters—which materially affects voters' abilities to select *their* representatives. *See Gray*, 372 U.S. at 379–80. Instead, Applicants argue that *Gray* and its progeny have never been applied to a scenario where discrimination occurred by virtue of categorically depriving some voters from participating in a Primary for their representative, while allowing other voters to participate. *See* Stay Appl. at 19. But 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). And here, the Missouri Supreme Court's injunction would disenfranchise some voters from the right to participate in selecting their representative solely based on where they live. That is an Equal Protection Clause violation. *See Gray*, 372 U.S. at 379–80; *Reynolds*, 377 U.S. at 576; *White*, 415 U.S. at 795.

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Applicants also cite this Court's decision *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982). Stay Appl. at 19–21. But *Rodriguez* helps—rather than harms—the State's position. That case concerned Puerto Rico's procedure for "filling interim vacancies" in its legislature. 457 U.S. at 5. Specifically, the late incumbent's party would appoint a replacement "without the necessity of a full-scale special election." *Id.* This Court rejected a claim that the State's failure to host a special election resulted in an equal protection violation because it advantaged the late incumbent's political party. *Id.* at 12. However, this Court carefully noted that nothing in its opinion should be understood to apply to elections:

> To be sure, *when a state … has provided that its representatives be elected*, 'a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.' However, the Puerto Rico statute at issue here does not restrict access to the electoral process or afford unequal treatment to different classes of voters or political parties. *All qualified voters have an equal opportunity to select a district representative in the general election.*

Id. at 10 (emphasis added) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)). Thus, *Rodriguez* explicitly affirms that the Equal Protection Clause applies here—where all "qualified voters" in Missouri will *not* "have an equal opportunity to select a district representative in the general election"—because voters moved by the court's order are disadvantaged compared to those not moved. *Id.*

Respondent's invocation of circuit precedent fairs no better. *Donatelli v. Mitchell* recognizes the exact distinction that *Rodriguez* itself recognizes: "The Court in *Rodriguez* found no equal protection violation [because] … '[a]ll qualified voters ha[d] an equal opportunity to select a district representative in the general election.'"

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2 F.3d 508, 517 (3d Cir. 1993) (quoting *Rodriguez*, 457 U.S. at 10). That will not be true in Missouri if voters are forced to vote under a different map on Election Day (assuming that a timely election would occur at all in that circumstance). *Republican Party of Oregon v. Keisling* is also inapposite. 959 F.2d 144 (9th Cir. 1992). That case concerned a voting claim under the First Amendment, not the Fourteenth Amendment—as the Ninth Circuit made clear in its opinion. *Id.* at 145.

Nothing Applicants cite rebuts the District Court's finding of a likely Equal Protection Clause violation. Applicants are thus unlikely to succeed on the merits.

D. The Elections Clause forbids divesting the Missouri General Assembly of its redistricting authority based on a referendum petition signed by just 3.3% of Missouri voters.

The Court should also deny a stay on the merits in light of the Elections Clause. The Elections Clause empowers state legislatures to adopt the rules regulating federal elections. U.S. Const. art. I, § 4, cl. 1. Applicants' theory is that, under the Missouri Constitution, just "five percent of the legal voters in each of two-thirds of the congressional districts in the state," Mo. Const. art. III, § 52(a)—approximately 3.3% of voters—can force Missouri to use a new congressional map *before* any statewide referendum vote by submitting signatures. Stay Appl. at 3–4. Under this profoundly antidemocratic approach, a small minority of voters can force the use of their preferred map for an election cycle—regardless of the state legislature's wishes.

For the past year, the State did not believe state law required this implausible result. Compl. at 13–20, *Mo. Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB (E.D. Mo. Oct. 15, 2025), ECF No. 1. The Cole County Circuit Court agreed with the

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State. Resp. App. at 73a–94a. But the Missouri Supreme Court disagreed last Thursday. Appl. App. at 20a–29a.

The State is not asking this Court to second-guess that holding. It makes a different point—that allowing a referendum petition to force changing congressional maps *before* a statewide referendum vote violates the Elections Clause. No court in American history—*ever*—has sanctioned Applicants' profoundly anti-democratic maneuver. Yes, this Court has upheld statewide referendum votes. *See Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916). But it has never held that small minorities of voters can unilaterally void a map *before* any statewide vote. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n* ("*AIRC*"), 576 U.S. 787, 840 (2015) (Roberts, C.J., dissenting) ("The result of the [Ohio referendum] was to send the *Ohio Legislature* back to the drawing board to do the redistricting." (emphasis in original)). If *that* is permissible, it is hard to see what is left of the Elections Clause. The Court can deny a stay on this basis too. *See Thigpen v. Roberts*, 468 U.S. 27, 30 (1984) ("[W]e may affirm on any ground that the law and the record permit.").

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E. 2 U.S.C. § 2a does not require this Court to enforce federally unconstitutional state law.

In a single paragraph, Applicants float the argument that the District Court violated 2 U.S.C. § 2a(c) by enjoining implementation of any map other than the HB 1 map. Stay Appl. at 12. However, this argument is not preserved because Applicants never argued it below. Regardless, Section 2a(c) does not require federal courts to enforce any congressional map established by state law. Rather, the text of the statute sets a default plan for how a state is to host congressional elections "[*u*]*ntil*

[the] State is redistricted in the manner provided by the law thereof." 2 U.S.C. § 2a(c) (emphasis added). Applicants severely misinterpret the text by insisting that § 2a(c) somehow gives States a blank check to impose a congressional map *whenever* and *however* they want—even if it violates the U.S. Constitution. No court has ever accepted that reading of Section 2a(c), and this Court should not endorse that plainly incorrect reading now on its interim docket.

IV. The Court should deny a stay based on the equities alone.

A. A stay would change Missouri's congressional map for the third time in a week, and would cause catastrophic irreparable harm.

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Nken requires denial of a stay because "issuance of the stay will substantially injure the other parties interested in the proceeding," 556 U.S. at 434—including Missouri voters, candidates, and the State itself.

The State—and all Missouri election officials—enforced HB 1 as Missouri's congressional map between December 11, 2025, and until last Thursday, when the Missouri Supreme Court certified von Glahn's referendum petition and enjoined the HB 1 map while *only considering state law*. *See* Appl. App. at 20a n.5. To prevent "palpably notable" harm to Plaintiffs' federal rights, the District Court enjoined the Secretary and—"on federal law grounds"—*required* him to use "the HB 1 map for the November 3, 2026 general election." *Id.* at 5a, 13a. Changing the map now would only plunge the State back into chaos. To be clear: If this Court grants a stay, that would be the *third* time that the map has changed in the last week. Absentee voting in Missouri's General Election will begin in just *nine* days. 52 U.S.C. § 20302(a)(8).

Moreover, Missouri law sets the deadline for finalizing the general-election ballot on September 8—two days ago. Mo. Rev. Stat. § 115.125.2. The District Court complied with that deadline; but a stay by this Court would not. At a minimum, the state-law deadline's passage confirms that a stay would only promote instability in Missouri's imminent federal election.

Additionally, a stay would change Missouri's map *back* to a map that was never used in Missouri's primary—which would disenfranchise Plaintiffs and hundreds of thousands of other Missourians. Indeed, as the District Court correctly found, "[p]laintiffs face irreparable harm absent a TRO because many Missouri voters would have to cast their general-election votes for candidates whom they had no role in nominating." Appl. App. at 4a. The state trial court reached the same conclusion weeks ago. Resp. App. at 97a.

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The State will also suffer irreparable injury if this Court grants a stay. Federal law requires the Secretary and Missouri to hold its General Election on November 3, 2026. 2 U.S.C. § 7; *see Foster v. Love*, 522 U.S. 67, 73–74 (1997). But—three weeks ago—the state trial court relied on a longtime election official's affidavit and found that holding a timely federal election under a congressional map other than HB 1 would be "impossible." Resp. App. at 104a.

Moreover, even if Missouri election officials can undertake heroic efforts to disprove the trial court's factual finding, a stay would almost certainly require Missouri to violate UOCAVA, 52 U.S.C. § 20302; Resp. App. at 12a–13a. UOCAVA requires Missouri to send mail ballots to overseas and military voters by

September 19—just *nine* days from now. That is why—following the District Court's order—the Secretary instructed state officials to start implementing the order. Appl. App. at 34a. This is a straightforward task—because election officials already applied the HB 1 map in the Primary Election and voters are thus assigned to those districts. Resp. App. at 10a–11a. Election officials have thus already started printing ballots, *id.* 12a–13a, and a stay would only waste those resources. But switching back to the 2022 congressional map would take substantial time. Based on the Cole County Circuit Court's factual findings and an affidavit from a longtime Missouri election official, the Secretary estimates it would take at least some counties about a month to prepare and send out ballots implementing the 2022 map. *Id.* at 12a, 107a–10a. A UOCAVA violation thus seems inevitable if this Court grants a stay. *See id.*

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Not only would a stay harm Missouri election officials, but it would also upend electoral campaigns that relied on the HB 1 map for over a year before it was enjoined. Tens of millions of dollars were raised based on the HB 1 map. *See* Appl. App. at 4a–5a. Candidates got to know voters based on the HB 1 map. *Id.* Voters would understandably be confused if hundreds of thousands are suddenly shifted to new congressional districts post-Primary. *Id.* To avoid these profound irreparable harms, this Court can deny a stay on this basis alone.

B. Applicants' attempt to invoke *Purcell* against Missouri election officials flips the doctrine on its head.

In response, Applicants heavily rely on the *Purcell* principle. Stay Appl. 10–14; *see Purcell v. Gonzalez*, 549 U.S. 1 (2006). To start, the State is unaware of any authority suggesting a private party can invoke the *Purcell* principle—let alone

against the State. Applicant von Glahn has previously insisted *Purcell* is merely a federalism doctrine. *See* von Glahn Br. at 36–37, *Hoskins v. von Glahn*, No. 26A304 (U.S. Sept. 7, 2026). If that is true, the Court should not allow von Glahn to assert this doctrine against the State, which is far better positioned to understand the practical impact of court orders on the running of elections.

Even if Applicants can assert *Purcell* against the State, they provide no good reason to do so here. Missouri has an overriding interest maintaining a congressional map that 1.2 million Missourians voted under during the Primary Election. Resp. App. at 71a–72a. Missouri also has a compelling interest in preventing hundreds of thousands of its voters from being disenfranchised in Missouri's electoral process. Appl. App. at 10a. And Missouri rightly wants to hold a timely federal election—which is only possible under the HB 1 map. Resp. App. at 9a–13a. Both trial courts to consider these interests credited them. *See id.* at 71a–72a, 102a–104a; Appl. App. at 10a–11a. Comparatively, Applicants cite zero record evidence supporting the idea that a timely federal election is even possible if Missouri's congressional map changes. *See* Stay Appl. at 10–14. The best that Applicants can do is cite to *one* extra-record news article, about *one* county election office in Missouri. *Id.* at 14. Yet the fact that election officials are debating the feasibility of switching congressional maps, Resp. App. at 9a–13a, only reinforces that a stay would inflict chaos.

In this scenario, *Purcell* supports, rather than undermines, the TRO. As the District Court explained, the HB 1 map is the *de facto* status quo in Missouri because state law allowed it to be used in the Primary Election, which means voters and

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candidates relied on it. Appl. App. at 4a–5a. The HB 1 map survived almost a year of state-court challenges until last Thursday. It was the Missouri Supreme Court's order to switch maps—not the TRO—that destabilized Missouri's elections. In fact, the TRO is the only thing *protecting* Missouri from the chaos created last week.

The most analogous of this Court's *Purcell*-related cases is *Malliotakis v. Williams*, which the District Court relied on. Appl. App. at 12a. There, New York's Primary Election was scheduled to begin four months after the Court granted stay. *Malliotakis*, 146 S. Ct. at 816 (Sotomayor, J., dissenting from grant of stay). Justice Alito recognized that a state court changing a congressional map before a Primary—as occurred in *Malliotakis*—is disruptive. *Id.* at 810–11 (Alito, J., concurring in grant of stay). Certainly changing a map after the Primary is far worse. And here, voting for the 2026 General Election begins in just *nine* days. 52 U.S.C. § 20302(a)(8).

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C. Applicant will suffer no harm if this Court denies a stay.

Applicant must show that a stay is *equitable*. *Nken*, 556 U.S. at 433–34. But the Court will rarely confront equities more lopsided than here. Regardless of what this Court does, Applicant gets a statewide vote on the HB 1 map. On the other hand, a stay would jeopardize Missouri's ability to hold a timely election. It would disenfranchise hundreds of thousands of Missourians who voted in the Primary. It would force election officials across the State to scramble. It would render political campaigns over the past year pointless. And it would leave all Missourians doubting the integrity of their elections. Denying a stay is the only equitable course.

CONCLUSION

This Court should deny the application for stay.

September 10, 2026

Respectfully submitted,

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