

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MERRIE SUZANNE LUTHER,

et al.,

Plaintiff,

v.

MISSOURI SECRETARY OF STATE,

Defendant.

Case No. 25AC-CC06964

**INTERVENOR MISSOURI REPUBLICAN STATE COMMITTEE'S  
PRETRIAL BRIEF**

Plaintiffs cannot carry their heavy burden of proving that House Bill 1 (“HB 1”) “clearly and undoubtedly contravene[s] the constitution.” *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012) (quotations omitted). Nothing in Article III, Section 45 (“Section 45”) “expressly prohibit[s]” the General Assembly from performing mid-decade congressional redistricting. *State v. Clay*, 481 S.W.3d 531, 532 (Mo. banc. 2016). In fact, the U.S. Constitution’s Elections Clause grants the General Assembly plenary power to conduct congressional redistricting, see U.S. Const. art. I, § 4, cl. 1, including to perform mid-decade redistricting, see *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 415, 418-19 (2006) (plurality op.) (“LULAC”).

The Court should dismiss the Petition and deny Plaintiffs’ request for relief.

## BACKGROUND

The United States Census Bureau conducted a decennial census in 2020 and certified the results to the Governor of Missouri on August 12, 2021. Joint Stipulation ¶¶ 14-15. “Thereafter, the General Assembly drew congressional districts based on the 2020 Census and passed such districts in House Bill 2909 (2022).” *Id.* ¶ 16. The General Assembly enacted a new congressional districting map in HB 1 on September 12, 2025, and Governor Kehoe signed it into law on September 28, 2025. *Id.* ¶¶ 10, 12.

Plaintiffs are qualified voters in the State of Missouri. *See id.* ¶¶ 1-8. They filed their Petition challenging HB 1 in this Court on September 12, 2025. *See* Petition. The Petition names Secretary of State Denny Hoskins as the Defendant. *See id.* ¶¶ 14-17. Plaintiffs’ sole claim posits that Section 45 prohibits mid-decade congressional redistricting and, thus, that the General Assembly’s enactment of HB 1 is unconstitutional. *See id.* ¶¶ 34-39. Plaintiffs seek declaratory relief and an injunction enjoining Secretary Hoskins from using the new map to conduct any congressional election. *See id.* ¶ b.

The Missouri Republican State Committee moved to intervene in defense of HB 1 on October 31, 2025. *See* Motion to Intervene. This Court granted the motion to intervene on November 5, 2025. The case is set for trial on November 12, 2025.

## LEGAL STANDARD

“The Constitution is not a grant but a restriction upon the powers of the legislature.” *Liberty Oil Co. v Director of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991). “Consequently, the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained by the Constitution.*” *Id.* (quotations omitted) (emphasis in original); *see also Bohrer v. Toberman*, 227 S.W.2d 719, 723 (Mo. banc. 1950) (General Assembly has “all the powers and privileges which are necessary to enable it to exercise in all respects . . . its appropriate functions, except so far as it may be restrained by the express provisions of the Constitution”). Thus, “where the constitution is silent, the legislature may properly address the issue.” *State ex rel. Mathewson v. Bd. of Elec. Comm’rs of St. Louis Cnty.*, 841 S.W.2d 633, 636 (Mo. banc 1992).

Like any statute, a redistricting plan enacted by the General Assembly “is assumed to be constitutional and will not be held unconstitutional unless the plaintiff proves that it ‘clearly and undoubtedly contravene[s] the constitution.’” *Johnson*, 366 S.W.3d at 20 (quoting *Mo. Prosecuting Att’ys v. Barton Cnty.*, 311 S.W.3d 737, 740-41 (Mo. banc 2010)). Courts therefore must uphold a redistricting plan “unless it plainly and palpably affronts fundamental law embodied in the constitution.” *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741). Any “doubts will be resolved in favor of the constitutionality’

of the plan.” *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741)*Id.*; see also *Liberty Oil Co.*, 813 S.W.2d at 297 (“Deference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by any reasonable construction of that action or by any reasonable construction of the Constitution.”).

**ARGUMENT**

**I. Plaintiffs Cannot Carry Their Heavy Burden Because Mid-Decade Congressional Redistricting Is Constitutional.**

Section 45 does not prohibit the General Assembly from conducting mid-decade congressional redistricting. On the contrary, the Elections Clause of the U.S. Constitution vests power to conduct congressional redistricting, including mid-decade redistricting, in the General Assembly. Plaintiffs’ challenge to HB 1 therefore fails.

**A. Section 45 Does Not Expressly Prohibit Mid-Decade Congressional Redistricting.**

Section 45 directs:

**Congressional apportionment.**— When the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled, which districts shall be composed of contiguous territory as compact and as nearly equal in population as may be.

Mo. Const. art. III, § 45.

Section 45 “sets out only three requirements for the redistricting of seats in Missouri for the United States House of Representatives”: Congressional districts “shall” be composed of “contiguous territory as compact and as nearly equal in population as may be.” *Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. banc 2012) (cited at Pet. ¶¶ 36-40). “As long as the districts comply with these constitutional requirements, the circuits court *shall* respect the political determinations of the General Assembly.” *Id.* at 40 (emphasis added).

Section 45’s lone mention of the timing of congressional redistricting mandates only that the General Assembly “shall” adopt a new plan after the 1950 census and every census thereafter. Mo. Const. art. III, § 45. Missouri adopted Section 45 after decades of the General Assembly failing to redraw its congressional map. See Erik J. Engstrom, *Stacking the States, Stacking the House: The Partisan Consequences of Congressional Redistricting in the 19th Century*, 100 AM. POL. SCI. REV. 419, 421 (Aug. 2006); Lloyd M. Short, *Congressional Redistricting in Missouri*, 25 AM. POL. SCI. REV. 634, 639 (1931). The 1945 Constitution therefore imposed a minimum mandatory duty on the General Assembly to perform congressional redistricting after each decennial census, see Mo. Const. art. III, § 45; *Am. Fed’n of State, Cnty. & Mun. Emps. v. State*, 653 S.W.3d 111, 120 (Mo. banc 2022) (“the word ‘shall’ imposes a mandatory duty”), years before the U.S. Supreme Court articulated the one-person, one-vote mandate conveying a similar duty, see, e.g., *Wesberry v.*

*Sanders*, 376 U.S. 1, 7-8 (1964).

Section 45, however, is completely silent on whether the General Assembly may choose to conduct mid-decade redistricting. See Mo. Const. art. III, § 45. It therefore places no “express[] prohibit[ion]” or “restrain[t]” on the General Assembly’s power to make that choice. *Liberty Oil Co.*, 813 S.W.2d at 297. This silence alone dooms Plaintiffs’ challenge to HB 1, see *id.*; *Bohrer*, 227 S.W.2d at 723; *State ex rel. Mathewson*, 841 S.W.2d at 636, and forecloses their claim that HB 1 “clearly and undoubtedly contravenes the constitution,” *Johnson*, 366 S.W.3d at 20 (quotations omitted); see also *Liberty Oil Co.*, 813 S.W.2d at 297.

Plaintiffs’ Petition does not acknowledge, much less attempt to reconcile their claim with, their heavy burden of proof or the rule, established by long precedent, that the General Assembly has power to legislate “except as expressly restrained by the Constitution.” *Id.* Instead, Plaintiffs assert three main arguments in an effort to read a non-existent prohibition on mid-decade congressional redistricting into Section 45. All fail.

*First*, Plaintiffs’ main thrust posits that, by mandating that the General Assembly “shall” draw a new congressional map after each decennial census, Section 45 means that “Missouri’s congressional districts may only be drawn *once* in a decennial period.” Pet. ¶ 41. Plaintiffs attempt to bolster this position by pointing out that “[n]o provision of Missouri law allows the General

Assembly to divide the state into congressional districts at any other time.” *Id.*

¶ 43. But, as explained, Section 45’s silence—and, indeed, the silence of all of “Missouri law” and the Missouri Constitution, *id.*—on this topic *disproves* Plaintiffs’ claim and *proves* that the General Assembly has authority to engage in mid-decade congressional redistricting. *See Clay*, 481 S.W.3d at 532, 537; *Bohrer*, 227 S.W.2d at 723; *State ex rel. Mathewson*, 841 S.W.2d at 636; *see also Johnson*, 366 S.W.3d at 20.

If more were somehow needed, the Framers of the 1945 Constitution knew how to impose “express[] prohibit[ions]” on the General Assembly’s exercise of legislative power. *Clay*, 481 S.W.3d at 532. The Constitution is replete with such prohibitions framed in declarations that the General Assembly “shall have no power to” or “shall not” have certain powers. *See, e.g.*, Mo. Const. art. III, §§ 37 (“shall have no power.”); 38(a) (“shall have no power”); 39 (“shall not have power [to] ...”); 40 (“shall not pass ...”). Indeed, the terms “shall have no power” and “shall not” are “words of prohibition.” *Brooks v. State*, 128 S.W.3d 844, 847 (Mo. banc 2004). That the Framers did not include those terms in Section 45—or anywhere else in “Missouri law” when it comes to congressional redistricting, Pet. ¶ 43—only further underscores that the Constitution permits, rather than prohibits, mid-decade congressional redistricting by the General Assembly.

*Second*, Plaintiffs point to the Missouri Supreme Court’s decision in

*Pearson*, see Pet. ¶¶ 36-40, but once again that case undermines Plaintiffs’ claim and supports Defendants’ reading of the Constitution. *Pearson* did not address the question of mid-decade congressional redistricting, much less read the Constitution to forbid it. In fact, *Pearson* recognized that Section 45 “sets out only three requirements for” congressional redistricting—none of which precludes mid-decade redistricting—and that “[a]s long as the districts comply with these constitutional requirements, the circuit court shall respect the political determinations of the General Assembly.” *Pearson*, 359 S.W.3d at 38, 40 (emphasis added). Thus, if anything, *Pearson* confirms that the choice whether to conduct mid-decade congressional redistricting is precisely the type of “political question” the Constitution entrusts to the General Assembly. *Id.* at 39.

*Third*, Plaintiffs actually give their case away when they argue that HB 1 violates Section 45’s equal-population requirement because “it utilized the 2020 census.” Pet. ¶ 42. Indeed, if this argument were correct, it would *require*, not forbid, mid-decade redistricting.

Because population shifts between censuses are inevitable, “before the new census, States operate under the legal fiction that even 10 years later, [redistricting] plans are constitutionally apportioned” and comply with equal-population requirements. *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003). That legal fiction continues even when the legislature “enacts a voluntary, mid-

decade plan” that “relie[s]” on the decennial census. *LULAC*, 548 U.S. at 421 (plurality op.).

By contrast, if Plaintiffs were correct that intra-census population shifts destroy a plan’s compliance with equal-population requirements, then the General Assembly would be constitutionally *obligated* to conduct mid-decade redistricting—and, in fact, to conduct redistricting before *every* election—to come back into compliance. Moreover, under Plaintiffs’ theory, the General Assembly would be precluded from relying upon the decennial census results in performing that recurring task. Instead, it would be required to use, and perhaps even to develop at its own expense, some unspecified other data reflecting the intervening population shifts in the State.

In other words, under Plaintiffs’ theory, the plan enacted in House Bill 2909, Laws 2022, had become unconstitutional, and the General Assembly had a duty to replace it (using some unspecified new data), because “it utilized the 2020 census” and thus prescribed districts that are no longer “as nearly equal in population as may be.” Pet. ¶ 42. Plaintiffs cite no authority for their position that plans are unconstitutional when they rely upon census data mid-decade. They also offer no explanation for how this position can be reconciled with their claim that the General Assembly lacks authority to conduct mid-decade redistricting. Nor could they have done so, because no such authority or explanation exists.

Finally, in all events, even if the Court concludes that Plaintiffs have raised “doubt” regarding the General Assembly’s authority to conduct mid-decade congressional redistricting, it must resolve that doubt in favor of the General Assembly and HB 1’s constitutionality. *Johnson*, 366 S.W.3d at 20; *see also Clay*, 481 S.W.3d at 537. The Court should dismiss the Petition.

**B. The Elections Clause Authorizes The General Assembly To Conduct Mid-Decade Congressional Redistricting.**

Plaintiffs’ claim fails for another reason as well: Construing Section 45 to preclude mid-decade redistricting would violate the U.S. Constitution’s Elections Clause. Once again, the Petition does not even *mention* the Clause, much less explain how Plaintiffs’ claim survives it.

Because federal offices “aris[e] from the Constitution itself,” state authority “to regulate election to those offices . . . ‘had to be delegated to, rather than reserved by, the States.’” *Cook v. Gralike*, 531 U.S. 510, 522 (2001) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804-05 (1995)). The Elections Clause effects that delegation by directing that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof,” subject to a grant of authority to Congress to “make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1. The Elections Clause thus vests the Missouri General Assembly with authority “to provide a complete code for congressional elections.” *Smiley v.*

*Holm*, 285 U.S. 355, 366 (1932).

That grant of authority includes the power to conduct mid-decade redistricting. “[T]he Constitution and Congress state no explicit prohibition on “mid-decade redistricting to change districts drawn earlier in conformance with a decennial census.” *LULAC*, 548 U.S. at 415 (plurality op.). Moreover, “[t]he text and structure of the Constitution and [Supreme Court] case law indicate there is nothing inherently suspect about a legislature’s decision to re[district] mid-decade.” *Id.* at 418-19. The Missouri General Assembly has authority under the Elections Clause to enact mid-decade congressional redistricting plans like HB 1. *See, e.g.*, U.S. Const. art. I, § 4, cl. 1; *LULAC*, 548 U.S. at 414-15 (plurality op.); *Smiley*, 285 U.S. at 366.

For their part, courts “must respect” the Framers’ “deliberate choice” to “expressly vest[] power” to set federal election rules “in ‘the Legislature’ of each State.” *Moore v. Harper*, 600 U.S. 1, 34 (2023). Indeed, the Elections Clause imposes significant limitations on state courts’ power to review, much less to set aside, under state law a state legislature’s statutes governing federal elections, including its congressional redistricting plans. *See id.*; *see also* THE FEDERALIST NO. 59 (Alexander Hamilton) (C. Rossiter ed., 1961) (explaining that the Elections Clause vests primary responsibility for election regulation in state legislatures). Accordingly, state courts do not have “free rein” to set aside such laws or redistricting plans. *Moore*, 600 U.S. at 34. Instead, they

must abide by “the ordinary bounds of judicial review” when applying state constitutions in this context. *Id.* at 36. A state court thus violates the Elections Clause when it “transgress[es] the ordinary bounds of judicial review such that [it] arrogate[s] . . . the power vested in [the General Assembly] to regulate federal elections.” *Id.*

Construing the Missouri Constitution to preclude the General Assembly from engaging in mid-decade congressional redistricting would constitute such a violation. After all, Missouri law is clear that “the General Assembly has the power to do whatever is necessary to perform its functions *except as expressly restrained by the Constitution*,” *Liberty Oil Co.*, 813 S.W.2d at 297—and nothing in Section 45 or any other provision of the Missouri Constitution purports to prohibit or restrain the General Assembly’s authority to conduct mid-decade congressional redistricting, *see supra* Part I. Arriving at the conclusion that the Missouri Constitution somehow *does* effect such a prohibition would grossly depart from governing Missouri law and, thus, “transgress the ordinary bounds of judicial review” in violation of the Elections Clause. *Moore*, 600 U.S. at 36. Plaintiffs’ claim fails for this reason as well.

### CONCLUSION

The Court should dismiss the Petition.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via the Court's electronic filing system on November 10, 2025 on all parties of record.

/s/ Marc H. Ellinger