IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

TERRENCE WISE, *et al.*, Plaintiffs, v. STATE OF MISSOURI, *et al.*, Defendants.	Case No. Division:

SUGGESTIONS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND CONSOLIDATION OF TRIAL ON COUNT 1 WITH PRELIMINARY INJUNCTION HEARING

The Missouri Constitution permits congressional redistricting to occur only once per decade and requires congressional districts to be configured in as compact a form as may be. In violation of the Constitution, Governor Kehoe called an extraordinary session of the Legislature to redraw the state's congressional districts in the middle of the decade, which the Legislature has now done. The publicly stated goal was to prevent Black Democrat Rep. Emmanuel Cleaver from winning re-election by dismantling the compact, Kansas City-based District 5 and submerging the metropolitan area into several rural-based districts. The map is unconstitutional because (1) mid-decade congressional redistricting is impermissible and (2) districts 4 and 5 violate the Missouri Constitution's compactness requirement.[1] Plaintiffs file this motion for a preliminary injunction on Count 1 regarding the impermissibility of mid-decade congressional redistricting, which is a pure legal question.

[1] Plaintiffs allege two other violations of the state constitution, due to an apparent error by the Legislature—namely that the new districts fail to comply with the equal-population and contiguity requirements of Art. III, Section 45 of the Missouri Constitution.

LEGAL STANDARD

Courts evaluating whether to grant preliminary relief weigh: (1) the threat of irreparable harm to the moving party, (2) balancing this harm with any injury an injunction would inflict on the other interested parties; (3) whether the moving party is likely to prevail on the merits; and (4) the effect on the public interest. *See Comprehensive Health of Planned Parenthood Great Plains v. State*, No. SC 101176, 2025 WL 2346611, at *2 (Mo. Aug. 12, 2025); *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731-33 (8th Cir. 2008). Each of these factors weighs heavily in favor of the entry of a preliminary injunction in this case.

ARGUMENT

I. Plaintiffs are likely to succeed on the merits of Count 1.

Plaintiffs are likely to succeed on the merits of Count 1 of their petition challenging the constitutionality of mid-decade congressional redistricting. "Constitutional provisions are subject to the same rules of construction as other laws, except that constitutional provisions are given a broader construction due to their more permanent character." *Pestka v. State*, 493 S.W.3d 405, 408-09 (Mo. banc 2016) (internal quotation marks omitted). "In construing individual sections, the constitution must be read as a whole, considering other sections that may shed light on the provision in question." *Id.* at 409 (internal quotation marks omitted). The Court "must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage." *Id.* (internal quotation marks omitted). Under general rules of construction, "when the Constitution defines the circumstances under which" an authority "may be exercised," it is "an implied prohibition" against its exercise in other circumstances. *See State ex inf. Shartel v. Brunk*, 34 S.W.2d 94, 95-96 (Mo. banc 1930) (internal quotation marks omitted) (holding that constitutional provision conferring "the Legislature with sole power to remove [an officer] by

impeachment proceedings, is an implied prohibition against legislation providing for his removal for any other causes or in any other manner").

The Constitution is a limitation on the power of the Legislature, and it retains political power in the people. *See also* Mo. Const. art. I, § 1 ("That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole."). As the Missouri Supreme Court has explained, "[a]ll the sovereign power of this state, except the portion delegated to the general government, rests with the people of the state. . . . [T]he general grant of the legislative authority of the state . . . is likewise subject to all the limitations, express or implied, contained in the Constitution." *State ex rel. Gordon v. Becker*, 49 S.W.2d 146, 147 (Mo. banc 1932).

The Missouri Constitution specifies the time at which congressional redistricting may occur—after each census—and the substantive requirements that the Legislature must follow in configuring districts:

> **Section 45. 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 has remained unchanged since the 1945 Constitution was adopted and is located in the part of Article III titled "LIMITATION OF LEGISLATIVE POWER."[2]

[2] In 1984, Missouri voters approved Amendment 5 to add a state lottery, which added the title "STATE LOTTERY" before new Section 39(b), with Section 39(c) through 39(g) related to gambling added in subsequent amendments. *See* Mo. Const. art. III, § 39(c)-(g). There is no reason to believe that in adding a state lottery, Missouri's voters intended to categorize Sections 40-48 as

Section 45 must be read as *limiting* the Legislature to enacting a congressional redistricting plan *only* once a decade—*i.e.*, "[w]hen the number of" congressional seats is certified to the Governor "under the census of 1950 and each census thereafter." Mo. Const. art. III, § 45. This conclusion flows from the plain constitutional text as interpreted by the Missouri Supreme Court, the history of Section 45's adoption, and precedent from other state supreme courts regarding analogous provisions.

Text and Missouri Supreme Court Precedent. The constitutional text makes clear that the Legislature is limited to enacting a congressional redistricting plan once after each census. First, its placement in the section of Article III expressly imposing limitations on legislative power compels that conclusion. Section 45 specifies "[w]hen" congressional redistricting is to occur. Mo. Const. art. III, § 45. By doing so as an express limitation on legislative power, the Constitution necessarily is denying the Legislature any plenary power to enact congressional redistricting legislation at other times. This conclusion flows as well from the rule of construction that the Constitution, by defining the circumstances under which congressional redistricting may occur, has impliedly prohibited its occurrence under different circumstances. *See Brunk*, 34 S.W.2d at 95-96. Indeed, the Missouri Supreme Court has characterized Section 45 as permitting congressional redistricting to occur only once per decade. In *Pearson v. Koster*, the Missouri Supreme Court said the following about the 2011 congressional redistricting:

> Article III, section 45 of the Missouri Constitution was triggered when the results of the 2010 United States Census revealed that the population of the State of Missouri grew at a lower rate than the population of other states and Missouri would lose one member of its delegation to the United States House of Representatives. It is the responsibility of the Missouri General Assembly to draw new congressional election districts. The new districts will take effect for the 2012 election and *remain*

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relating to the State Lottery, as opposed to the Limitation of Legislative Power category to which they had always been designated.

in place for the next decade or until a Census shows that the districts should change.

359 S.W.3d 35, 37 (Mo. banc 2012) (per curiam) ("*Pearson I*") (emphasis added). The *Pearson I* Court's conclusion flows from the plain text of Section 45.

This conclusion is likewise confirmed by a separate provision of the Constitution—also unchanged since 1945 and based on a predecessor provision from the 1875 Constitution—pertaining to the timing of state legislative redistricting. Article III, Section 10 provides that "[t]he last decennial census of the United States shall be used in apportioning representatives and determining the population of senatorial and representative districts. Such districts *may be altered from time to time* as the public convenience may require." Mo. Const. art. III, § 10 (emphasis added). This provision makes clear that congressional redistricting *cannot* be undertaken more than once a decade for two reasons.

First, the Constitution must be "read as a whole, considering other sections that may shed light on the provision in question." *Pestka*, 493 S.W.3d at 409 (internal quotation marks omitted). The expression of authority to redistrict state legislative districts "from time to time" is powerful evidence that the absence of that expressed authority with respect to congressional districts means that mid-decade congressional redistricting is disallowed.

Second, the Missouri Supreme Court has held that Section 10's "time to time" provision is severely limited even with respect to legislative districts. In *Preisler v. Doherty*, the Court considered the interplay between Article III, Sections 7 and 10. 284 S.W.2d 427, 436 (Mo. banc 1955). At the time, Section 7 provided that "within sixty days after the population of the state is reported to the President for each decennial census of the United States," a committee shall form to create state senate districts" and "senators shall be elected according to such districts until a re-apportionment is made as herein provided." Mo. Const. art. III, § 7 (1945). If the commission

failed to complete its duties, senators would be elected at large. *Id.* In counties with more than one state senator, Article 8 provided that the county court[3] "shall divide the county into districts." *Id.* § 8 (1945). In *Preisler*, the Court held that the City of St. Louis violated the substantive requirements for compact state senate districts and that the City's Board of Election Commissioners was required to redraw the districts rather than have at-large elections. 284 S.W.2d at 435-37. In so holding, the Court explained that the Constitution created a "continuing duty and obligation to make a valid redistricting" and cited Section 10 for this proposition, reasoning that "public convenience requires [redistricting] now that the present division . . . has been held invalid." *Id.* at 436.

But the Court limited Section 10's "time to time" provision to the circumstance of an invalid apportionment. The Court explained that "[t]he times when a commission can act to alter districts is stated in Sec. 7" and Section 10's "time to time" provision does not authorize a second redistricting within a Census period. *Id.* "*[O]nly one valid apportionment is intended for each decennial period. This must be true because the decennial census is made the basis of reapportionment*." *Id.* at 436-37 (emphasis added).[4]

The Missouri Supreme Court has thus held that because the responsibility to redistrict state legislative districts is triggered by the Census, the Constitution must be interpreted as permitting

[3] In the City of St. Louis, this task was to be performed by the body responsible for establishing election precincts. *Id.*

[4] *See also State ex rel. Major v. Patterson*, 129 S.W. 888, 894 (Mo. 1910) (holding that county courts could only redistrict once a decade after each census and the 1875 Constitution's "time to time" provision only applied to the legislature). The *Major* Court held that the "time to time" provision in the 1875 Constitution reserved power to the Legislature to make adjustments but noted that the Legislature had never used that power. *Id.* The *Preisler* Court explained that because the 1945 Constitution removed the Legislature's role in redistricting state legislative districts entirely, the "time to time" provision only applied to the commission and local authorities responsible for state legislative redistricting under the 1945 Constitution. 284 S.W.2d at 436-37.

only one valid apportionment per decade even though Section 10 separately provides for state legislative redistricting to occur "from time to time." Mo. Const. art. III, § 10. Because Section 7's requirement that state senate redistricting be triggered "within sixty days after the population of the state is reported to the President for each decennial census of the United States," Mo. Const. art. III, § 7 (1945), permits only one legislative redistricting per decade under the Missouri Supreme Court's binding precedent, then Section 45's requirement that congressional redistricting be triggered following "each Census," *id.* § 45, must likewise be so interpreted. This is especially so given that there is no provision allowing redistricting from "time to time" for congressional districts. *Preisler* mandates this conclusion.

The plain text of the Constitution and binding precedent from the Missouri Supreme Court compel the conclusion that Section 45 permits redistricting only once after each Census and thus the 2025 mid-decade congressional redistricting is unconstitutional. "This must be true because the decennial census is made the basis of reapportionment." *Preisler*, 284 S.W.2d at 437.

History. The history behind Section 45's adoption confirms that it prohibits mid-decade redistricting. Prior to 1945, Missouri's Constitution was silent on the topic of congressional redistricting. During the 1943-1944 constitutional convention, Delegate Alroy S. Phillips first suggested adding a provision regarding congressional redistricting. On November 9, 1943, his Proposal No. 170 was first read to the convention. It would have provided that

> [a]t its first session following the adoption of this Constitution, and after each decennial census of the United States, the General Assembly shall by law divide the State into districts corresponding with the number of Representatives of the Congress of the United States, which districts shall be composed of contiguous and compact territory containing as nearly as practicable an equal number of inhabitants, in each of which districts there shall be elected one Representative, and until such division is made all Representatives shall be elected at large.

Proposal No. 170 in the Constitutional Convention of Missouri (Nov. 9, 1943), https://babel.hathitrust.org/cgi/pt?id=umn.319510020300015&seq=491; *see also* Journal of the Constitutional Convention of Missouri—1943 at 2 (Nov. 9, 1943), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262655&seq=264&q1=congress.

On June 28, 1944, Committee No. 16 on Congressional, State Senatorial and Representatives Districts issued its Report, with half the members signing on to a Supplemental Report about congressional redistricting. *See* File No. 21, Supplemental Report at 13-14 (June 28, 1944), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=255&q1=congress. "[T]aken from Proposal No. 170," these delegates suggested the following text:

> The general assembly shall by law apportion the state into districts corresponding with the number of representatives to which it may be entitled in the house of representatives of the Congress of the United States, which districts shall be composed of contiguous and compact territory containing as nearly as practicable an equal number of inhabitants.

Id.

On September 6, 1944, The Convention met to take up various amendments to constitutional provisions. Amendment 7 to File No. 21, which was adopted, was to strike the above quoted proposed text from June 28 and replace it with the following:

> The General Assembly immediately following the decennial census of 1950 and the General Assembly immediately following each succeeding decennial census and the determination of the number of representatives in Congress to which the state is entitled shall by law apportion the state into districts corresponding with the number of representatives of the Congress of the United States, which districts shall be composed of contiguous and compact territory containing as nearly as practicable an equal number of inhabitants.

Journal of the Constitutional Convention of Missouri—1943-1944 at 10 (Sept. 6, 1944), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=844&q1=congress.

On September 19, 1944, the Committee on Phraseology, Arrangement and Engrossment issued its report with its "corrections as to phraseology" to the provisions on state legislative and congressional redistricting. File No. 21, Report No. 1 of Committee No. 23 on Phraseology, Arrangement and Engrossment, Article IV, Legislative Department, Congressional, State Senatorial and Representative Districts at 19 (Sept. 19, 1944), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=1083&q1=congress. With respect to the state legislative redistricting provision, the committee noted that "[u]nder the re-writing of this section the reapportionments could be made in 1945 and 1950 in time for the primary and general elections in 1946 and 1952." *Id.* at 22.

The committee suggested rewriting the congressional provision to the text that was ultimately adopted and remains the same today. *See id.* at 22-23; *see supra* (quoting text of Section 45). The committee explained its changes to the congressional provision as follows:

> U.S. Code, Title 13, sections 201-02 require that within eight months of the first day of the year each census is started the population of each state for apportionment of representatives shall be reported to the President.
>
> U.S. Code, Title 2, section 2(a)-(b) require that the President transmit to the clerk of the house a statement showing the population and number of representatives of each state within the first week of the first regular session of congress beginning January 3, 1951 and each ten years thereafter, and that within fifteen days thereafter the clerk of the house must send the governor of each state a certificate of the number of representatives to which the state is entitled. Under the rewriting of this section the first reapportionment would be made in 1951 for the election in 1952.

Id. at 23-24.

This history confirms what the text itself reveals: Section 45 limits the Legislature to enacting congressional redistricting legislation "[w]hen" the census occurs. The original proposal of the 1943-1944 Convention would have *required* a mid-decade redistricting of congressional districts in 1945, followed by redistricting after each subsequent census. The second proposal

would not have placed any time limitation on congressional redistricting whatsoever. And the final proposal, which was ultimately adopted, made clear that congressional redistricting was not to occur until after the 1950 Census and then at "each census thereafter," Mo. Const. art. III, § 45, unlike the mid-decade redistricting of state legislative districts expressly required by the new Constitution in 1945. Indeed, the Phraseology Committee expressly stated that congressional redistricting could not occur until after the 1950 Census. If the text of Section 45 did not permit congressional redistricting between 1945 and 1950, then it likewise does not permit congressional redistricting in 2025.

Precedent from other States. This understanding of Section 45 as prohibiting mid-decade congressional redistricting accords with how other state supreme courts have interpreted their own similar constitutional provisions.

In *People ex rel. Salazar v. Davidson*, 79 P.3d 1221 (Colo. 2003), the Colorado Supreme Court held that its Constitution only permitted one congressional redistricting plan to be enacted per decennial period. At the time, article V, section 44 of the Colorado Constitution provided that the General Assembly shall redistrict congressional seats "[w]hen a new apportionment shall be made by Congress." *Id.* at 1225 (quoting Colo. Cons. art. V, § 44 (2003)). The court reasoned that the provision must be interpreted as limiting congressional redistricting to once per decade because, like the Missouri Constitution, the Colorado Constitution authorized only state legislative districts to "be altered from time to time, as public convenience may require." *Id.* (quoting Colo. Const. art. V, § 47 (1876)). "Had the framers wished to have congressional district boundaries redrawn more than once per census period, they would have included the 'from time to time' language contained in the legislative redistricting provision. They did not." *Id.*

In *Legislature v. Deukmejian*, 669 P.2d 17 (Cal. 1983), the California Supreme Court interpreted its Constitution to prohibit redistricting more than once a decade. At the time, California's Constitution provided that "[i]n the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of" "Congress at the beginning of each decade . . . ." *Id.* at 24 (quoting Cal. Const. art. XXI, § 1 (1980)). The court held that, like prior versions of the provision, it prohibited mid-decade redistricting. "The provisions . . . being construed as limitations . . . it follows from their terms, and from the application of the maxim, *expressio unius est exclusio alterius*, that the legislative power to form legislative districts can be exercised but once during the period between one United States census and the succeeding one." *Id.* at 23 (quoting *Wheeler v. Herbert*, 152 Cal. 224, 237 (Cal. 1907)).

Similarly, the New Hampshire Constitution provides that

> [a]s soon as possible after the convening of the next regular session of the legislature, and at the session in 1971, and every ten years thereafter, the legislature shall make an apportionment of representatives according to the last general census of the inhabitants of the state taken by authority of the United States or of this state.

N.H. Const. pt. II, art. 9. The New Hampshire Supreme Court has held that this provision permits just one redistricting per census period. "[O]nce the legislature has fulfilled its constitutional obligation to reapportion based upon the decennial census figures, it has no constitutional authority to make another apportionment until after the next federal census." *In re Below*, 855 A.2d 459, 471 (N.H. 2004).

The South Dakota Constitution provides that "[a]n apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991. Such apportionment shall be accomplished by December first of the year in which [it] is required." S.D. Const. art. 3, § 5. The South Dakota Supreme Court held that this provision prohibited the legislature from enacting more

than one plan a decade. "When there is an affirmative constitutional mandate for legislative action at a certain specified time, there in an implied prohibition of action at any other time." *In re Certification of a Question of Law from the U.S. Dist. Ct., Dist. of S.D., W. Div.*, 615 N.W.2d 590, 595 (S.D. 2000) (internal quotation marks omitted).

Similarly, the Illinois Supreme Court held that a constitutional provision authorizing the legislature to enact redistricting every ten years following the census implied a prohibition on it acting at a different time. In *People ex rel. Mooney v. Hutchinson*, 50 N.E. 599 (Ill. 1898), the court acknowledged that "[t]here is no express denial in the constitution of the right to exercise this power whenever the legislature may see fit," *id.* at 601, but held that "where the constitution fixes the time and mode of exercising a particular power it contains a necessary implication against anything contrary to it, and by setting a particular time for its exercise it also sets a boundary to the legislative power." *Id.*

Likewise, the Wisconsin Constitution provides that "[a]t its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Wis. Const. art. IV, § 3. In *State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416 (Wis. 1953), the Wisconsin Supreme Court held that this language means that "no more than one valid apportionment may be made in the period between federal enumerations." *Id.* at 661.[5]

Other state supreme courts agree. *See Harris v. Shanahan*, 387 P.2d 771, 779-80 (Kan. 1963) ("It is the general rule that once a valid apportionment law is enacted no future act may be passed by the legislature until after the next regular apportionment period prescribed by the Constitution."); *Lamson v. Sec'y of Commonwealth*, 168 N.E.2d 480, 483 (Mass. 1960) (provision

[5] The 1951 version of the provision had immaterial differences. *See id.* at 649.

requiring redistricting at first general session following census created power of legislature to redistrict "until the power is exercised and discharged"); *Opinion of the Justices*, 47 So. 2d 714, 716 (Ala. 1950) ("[O]nly one apportionment is contemplated during the ten-year period that a given census enumeration is in effect.").[6]

The text, precedent from the Missouri Supreme Court, history of Section 45's adoption, and precedent from other jurisdictions all compel the conclusion that the Legislature may not enact a mid-decade congressional redistricting plan.

II. The remaining factors favor a preliminary injunction.

A. Plaintiffs will suffer irreparable harm absent injunctive relief.

Without a preliminary injunction, Plaintiffs will suffer irreparable harm. "[B]eing subject to an unconstitutional statute, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019) (as modified June 25, 2019) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Furthermore, it has been found with "unmistakable clarity that the right to vote is fundamental to Missouri citizens." *Weinschenk v. State*, 203 S.W.3d 201, 211 (Mo. banc 2006). The fundamental right to vote includes the right to vote in lawful election districts, which, for congressional elections, means the districts drawn following the decennial census and apportionment. Mo. Const. art. III, § 45. And, "[i]rreparable

[6] Two state supreme courts have held otherwise. In *Blum v. Schrader*, 637 S.E.2d 396, 399 (Ga. 2006), the Georgia Supreme Court distinguished the *Davidson* case, because, unlike Colorado and Missouri, the Georgia constitution does not have a "time to time" provision for one type of districts but not another. And the Texas Supreme Court has held that its Constitution's specified time for legislative redistricting "provides a mechanism to ensure that the Legislature exercises this power in a timely fashion following each decennial census, but it neither expressly nor impliedly forecloses this power from being exercised at another time." *Abbott v. Mexican Am. Legis. Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 702 (Tex. 2022). These decisions contradict the vast majority of state supreme courts—including most importantly the Missouri Supreme Court—which hold otherwise.

harm is established if monetary remedies cannot provide adequate compensation for improper conduct." *Glenn v. City of Grant City*, 69 S.W.3d 126, 130 (Mo. App. W.D. 2002) (quoting *Walker v. Hanke*, 992 S.W.2d 925, 933 (Mo. App. W.D. 1999)).

Here, implementation of H.B. 1 will cause irreparable harm to Plaintiffs if they are forced to vote under a congressional map that has been unconstitutionally altered in the middle of the decade. All five Plaintiffs lived in CD 5 under the 2022 Map but have now been sorted into new, completely altered districts under the 2025 Map. Pet. ¶¶ 10-14. Only two of these Plaintiffs remain in a district labeled CD 5. *Id.* ¶¶ 10-11. But what was CD 5 has been transformed beyond recognition, from a district comprising closely united territory centered on the Kansas City metropolitan area to one that connects just part of Kansas City with far-flung rural territory in the center of the state. *Id.* ¶¶ 128-30. Two other Plaintiffs now live in the newly constituted CD 4, which connects parts of Kansas City and its close suburbs to rural counties far to the south and east. *Id.* ¶¶ 12-13, 131-33. And one Plaintiff now lives in CD 6, no longer sharing a district with the rest of Kansas City but instead finding herself in a district which extends across the entirety of the northern part of Missouri to the Illinois border. *Id.* ¶¶ 14, 126-27. If the 2025 Map is not enjoined, Plaintiffs will be prevented from exercising their fundamental right to vote for members of Congress in their lawfully constituted districts, and that right cannot be restored after the election. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) ("[T]he right of qualified voters . . . to cast their votes effectively … rank[s] among our most precious freedoms").

The new map also carves up the communities that once constituted Plaintiffs' congressional districts, upsetting the relationship that Plaintiffs have had with their long-time Congressman and their connections to other constituents with whom they previously shared a congressional district—threatening their core expressive and associational rights in the upcoming election. *See*

Obama for Am. v. Husted, 697 F.3d 423, 436 (6th Cir. 2012) ("When constitutional rights are threatened or impaired, irreparable injury is presumed.").

No monetary award could adequately compensate for these deprivations of constitutional rights. *See Glenn*, 69 S.W.3d at 130. And the election season is quickly approaching. The candidate filing begins in February 2026, § 115.349(2), RSMo. "[O]nce the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

Plaintiffs will thus be irreparably harmed absent a preliminary injunction. And because Plaintiffs have "shown a likely violation" of fundamental rights, "the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied." *Willson v. City of Bel-Nor*, 924 F.3d 995, 999 (8th Cir. 2019).

B. The balance of harms favors plaintiffs.

The balance of harms weighs heavily toward granting injunctive relief. "[T]he purpose of a preliminary injunction is to preserve the status quo until the trial court adjudicates the merits of the claim for a permanent injunction." *State ex rel. Myers Mem'l Airport Comm., Inc. v. City of Carthage*, 951 S.W.2d 347, 352 (Mo. App. S.D. 1997). Here, the status quo is a constitutional map that has been used for the last two election cycles, while Defendants have upset that status quo with the passage of H.B. 1.

The 2022 Map was passed by the Legislature, signed by the Governor, and used for two cycles of congressional elections, and there is no serious suggestion that the current congressional map is illegal or unconstitutional. But the new H.B. 1 map likely *is* unconstitutional. *See supra*.

Keeping in place a constitutional map the Legislature itself proposed and passed maintains the status quo and does not harm Defendants.

The Legislature has enacted a mid-decade congressional map redraw for partisan political gain and to acquiesce to the demands of the President. But being unable to effectuate their preferred partisan map via an unconstitutional redraw does not constitute a serious harm. *See, e.g.*, *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (there can be "no harm from the state's nonenforcement of invalid legislation"); *see also see Int'l Bhd. of Elec. Workers, AFL--CIO, Loc. No. 1 v. St. Louis Cnty.*, 117 F. Supp. 2d 922, 935 (E.D. Mo. 2000) ("Partisan political activity restrictions . . . is not to[o] onerous a price to pay."). That is especially true when partisanship is not a permissible basis for redistricting under the Missouri Constitution. *See Preisler*, 284 S.W.2d at 435; *see also Pearson v. Koster* ("*Pearson II*"), 367 S.W.3d 36, 53 (Mo. banc 2012). Nor is it a harm to reinstitute the valid 2022 map because "administrative inconvenience" is the "weakest justification" for the loss of a right. *State ex rel. Mack v. Purkett*, 825 S.W.2d 851, 857 (Mo. banc 1992). Indeed, there are no administrative hurdles to implementing the same map that has governed the past two election cycles. On the other hand, forcing Plaintiffs to vote in districts drawn in violation of the Constitution causes serious irreparable harm. The balance of harms thus favors Plaintiffs.

C. A preliminary injunction will serve the public interest.

Issuing a preliminary injunction will serve the public interest. It is "always in the public interest to protect constitutional rights." *Ass'n for Accessible Medicines v. Ellison*, 140 F.4th 957, 961 (8th Cir. 2025) (citation omitted). Furthermore, "the determination of where the public interest lies also is dependent on the determination of the likelihood of success on the merits . . . because it is always in the public interest to protect constitutional rights." *Phelps-Roper v. Nixon*, 545 F.3d

685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester*, 697 F.3d 678 (8th Cir. 2012). Injunctive relief will protect the public's interest in voting districts drawn in accordance with the commands of Article III, Section 45 of the Missouri Constitution.

All Missourians will have worse representation and less responsive institutions under the newly gerrymandered districts the state has enacted, which upset historic relationships between constituents and their representatives because the State disapproves of the candidate Kansas City voters elect. The Missouri Supreme Court has repeatedly recognized that partisan gerrymandering is a "legislative evil." *Preisler*, 284 S.W.2d at 435 (citing *State ex rel. Barrett v. Hitchcock*, 146 S.W. 40, 61, 65 (1912)). Gerrymandering "threatens, not only the peace of the people, but the permanency of our free institutions." *See Barrett*, 146 S.W. at 57 (quoting *Giddings v. Blacker*, 93 Mich. 1, 11, 52 N.W. 944, 948 (1892)). When the legislature draws district lines for "nothing more nor less than a partisan advantage, taken in defiance of the Constitution, and in utter disregard of the rights of the citizen," "[t]he courts alone, in this respect, can save the rights of the people, and give to them a fair kind of equality of representation." *See id.* "[T]he public is served by the preservation of constitutional rights," and this Court should issue an injunction restoring the lawfully enacted 2022 districts. *D.M. by Bao Xiong v. Minn. State High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019).

III. The Court should advance and consolidate the trial on the merits of Count 1 with the preliminary injunction hearing.

The Court should advance and consolidate the trial on the merits of Count 1 with the preliminary injunction hearing. "At any time the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application for a preliminary injunction." Mo. R. Civ. P. 92.02(c)(3). "An order accelerating the trial on the merits and consolidating it with the preliminary injunction hearing must be clear and unambiguous." *State ex*

rel. Cohen v. Riley, 994 S.W.2d 546, 548 (Mo. banc 1999). An order advancing and consolidating the trial on the merits with the preliminary injunction hearing "must be given in sufficient time to afford a litigant a reasonable opportunity to marshal, and present, its evidence." *Estate of Hutchison v. Massood*, 494 S.W.3d 595, 602 (Mo. App. W.D. 2016) (internal quotation marks omitted). "Such a ruling may occur before or, conceivably, after the beginning of, the preliminary hearing," but "must be made *explicitly*." *Id.* at 605 (internal quotation marks omitted) (emphasis in original). The Court may order consolidation "for whatever reason the judge may find suitable." *Id.* (internal quotation marks omitted).

In this case, Count 1 presents a pure legal question and involves no factual determination. Advancing and consolidating the trial on the merits of Count 1 with the preliminary injunction hearing will thus promote judicial economy by resolving the predicate legal question of whether the Constitution permitted mid-decade redistricting. Final resolution of this legal question in an expedited manner will most efficiently resolve the litigation. Moreover, advancement and consolidation with the trial on the merits will allow the Court to enter permanent injunctive relief and judgment on this dispositive legal questions in a timely manner in light of the election deadlines and the potential for appellate review on an expedited schedule.

CONCLUSION

For the foregoing reasons, Defendants should be preliminarily enjoined from implementing H.B. 1 because it violates the Missouri Constitution's prohibition on mid-decade congressional redistricting.

September 12, 2025

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing was served by email on September 12, 2025, to the following and will also be served by process server:

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