No. SC101412

IN THE SUPREME COURT OF
MISSOURI

MERRIE SUZANNE LUTHER, et al.,
Appellants,
v.
DENNY HOSKINS,
Respondent,
and
MISSOURI REPUBLICAN STATE COMMITTEE,
Intervenor-Respondent

Appeal from the Circuit Court of Cole County, Missouri
Case No. 25AC-CC06964

Brief of Terrence Wise, Ashley Ball, Aimee Riederer Gromowsky, Cynthia Wrehe, and Cynthia Kay Lakin as *Amici Curiae* in Support of Appellants filed with consent of all parties

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***Of counsel and pro hac vice motion pending in trial court in Wise v. State, 2516-CV29597 (16th Cir. Ct.)*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

Amici adopt the jurisdictional statement set forth in Appellants' brief.

INTEREST OF *AMICI CURIAE* AND AUTHORITY TO FILE

Amici Terrence Wise, Ashley Ball, Aimee Riederer Gromowsky, Cynthia Wrehe, and Cynthia Kay Lakin are five Missouri citizens and voters that have an interest in voting in constitutional congressional districts in the 2026 election. *Amici* are residents of either Kansas City or Lee's Summit, all of whom resided in Congressional District ("CD") 5 under the 2022 Congressional Map. Under the 2025 Congressional Map, *Amici* now reside either in an entirely different CD or one that has been radically altered. *Amici* have an interest in protecting their constitutional right to fair and equal representation provided by the prohibition against mid-decade congressional redistricting in Article III, Section 45 of the Missouri Constitution. *Amici* have also filed a claim in a separate lawsuit challenging the constitutionality of the 2025 Congressional Map under Article III, Section 45. *See Wise v. State of Missouri*, Case No. 2516-CV29597, Petition for Injunctive and Declaratory Relief at 39-40.[1] *Amici*'s claim regarding the constitutionality of mid-decade redistricting has been stayed pending the resolution of this appeal, while their remaining claims under Section 45's substantive redistricting requirements (including its compactness requirement) are scheduled for trial in late January. *Amici* file this brief with the consent of all parties.

[1] Respondent and Intervenor-Respondents (collectively, "Respondents") are also defendants in the *Wise* case. In this brief, *Amici* thus address arguments raised by Respondents in *Wise* that are relevant here, specifically those presented in State Defendants' Suggestions in Opposition to Plaintiffs' Motion for Preliminary Injunction & Consolidation of Trial on Count I with Preliminary Injunction Hearing ("*Wise* Opp.").

STATEMENT OF FACTS

Amici adopt the facts set forth in Appellants' brief.

INTRODUCTION

The Missouri Constitution permits congressional redistricting to occur only once per decade in conjunction with the certification of the decennial census. In violation of the Constitution and in response to partisan political pressure, Governor Kehoe called an extraordinary session of the Legislature to hastily redraw the state's congressional districts in the middle of the decade, which the Legislature has now done. The map is unconstitutional because mid-decade congressional redistricting is impermissible under Article III, Section 45, as evidenced by the plain constitutional text as interpreted by this Court, the history of redistricting in Missouri and Section 45's adoption, and precedent from other state supreme courts regarding analogous provisions.

Amici respectfully request that this Court reverse the district court's decision and grant the relief request by Appellants.

ARGUMENT

I. Mid-decade congressional redistricting violates Article III, Section 45 of the Missouri Constitution.

Mid-decade congressional redistricting violates Article III, Section 45 of the Missouri Constitution. "In construing individual sections, the constitution must be read as a whole, considering other sections that may shed light on the provision in question." *Pestka v. State*, 493 S.W.3d 405, 409 (Mo. banc 2016) (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* 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 this 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, which has remained unchanged since the 1945 Constitution was adopted, is located in the part of Article III titled "LIMITATION OF LEGISLATIVE POWER."[2] *See Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 102 n.3 (Mo. banc 1994) ("The organizational headings of the constitution are strong evidence of what those who drafted and adopted the constitution meant....") (internal quotation marks and citation omitted)).

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 this Court, the history of redistricting in Missouri and Section 45's adoption, and precedent from other state supreme courts regarding analogous provisions.

A. The text of the Constitution as interpreted by this Court bars mid-decade congressional redistricting.

The constitutional text makes clear that the Legislature is limited to enacting a congressional redistricting plan once after each census. To start, Section 45's placement in Article III expressly imposing limitations on legislative power is "strong evidence" that the Framers intended to tie the Legislature's authority to redraw districts to each decennial

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

census, not to empower lawmakers to redraw at least once per decade as the Respondents suggest. *See Hammerschmidt*, 877 S.W.2d at 102 n.3. The Respondents' interpretation, if adopted, would flip the limiting purpose of Section 45 on its head.

The text of Section 45 clearly specifies "[w]hen" congressional redistricting is to occur. Mo. Const. art. III, § 45. In doing so, the Constitution necessarily denies the Legislature any plenary power to enact congressional redistricting legislation at other times. *See Brunk*, 34 S.W.2d at 95-96. 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. *Id.*

Further, the word "when" is obviously a temporal restraint. *See State ex rel. Major v. Patterson*, 129 S.W. 888, 891 (Mo. 1910) (defining "when" as "at the time that"). And the phrase "each census" was well understood in 1945, as it is today, to mean an event that occurs both decennially and only once per decade.[3] *See* 13 U.S.C. § 141(a) (requiring census "every ten years"). Thus, the only interpretation that gives effect to the full clause—consistent with its plain, ordinary, and natural meaning—is that Section 45 requires the congressional redistricting power be exercised in cadence with each decennial census once per decade. *See Wright-Jones v. Nasheed*, 368 S.W.3d 157, 159 (Mo. banc 2012) ("Words

[3] Indeed, by the time of the 1943-44 Constitutional Convention where Section 45 was adopted, Congress had already twice implemented the Permanent Reapportionment Act of 1929, codified in present form at 2 U.S.C. § 2a, which established decennial deadlines and automatic procedures for the certifying of each state's population and allotted number of congressional seats under the census to its governor for use in redistricting. *See* S. 312, 71st Cong. §§ 2, 22(b) (1929).

used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning."). This necessarily forecloses its exercise at any other time.

Indeed, this Court has characterized Section 45 as permitting congressional redistricting to occur only once per decade. In *Pearson v. Koster*, the 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 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.[4]

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

[4] In the opposition to *Amici*'s mid-decade redistricting claim in *Wise*, Respondents selectively quote *Pearson I*'s observation that Section 45 imposes three substantive map-drawing standards—contiguity, compactness, and population equality—to claim that these are the only constitutional limits on congressional redistricting. *Wise* Opp., Case No. 2516-CV29597, at 18, 24. Those standards dictate *how* the legislature draws maps once the duty to redistrict is triggered, but they do not inform *when* redistricting may occur, a question that is addressed separately in Section 45. On timing, the Court has expressed its understanding that Section 45 permits congressional redistricting only once per census.

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, which pertains to *federal* office, 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 redraw 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.[5]

Second, this Court has held that the government has *limited* authority to redraw state legislative districts, even where the Constitution allows such districts to be redrawn from "time to time as public convenience may require." In *Preisler v. Doherty*, this Court held that state senate districts in the City of St. Louis violated the Constitution's compactness requirement and that "public convenience" warranted a redraw. 284 S.W.2d at 435-37. In so holding, the Court explained that "[t]he times when a commission can act to alter

[5] This contrast also supports applying the canon that when the Constitution specifies the time or mode for exercising a power, that prescription operates as an implied prohibition for exercising it otherwise. *See Brunk*, 34 S.W.2d at 95-96; *State ex rel. City of St. Louis v. Seibert*, 27 S.W. 624, 625 (Mo. banc 1894); *Ex parte Arnold*, 30 S.W. 768, 770-71 (Mo. banc 1895). *Seibert* and *Arnold* describe this as *expressio unius*, but it is distinct from the modern statutory negative-implication canon referenced in *Six Flags Theme Parks, Inc. v. Dir. of Revenue*, 179 S.W.3d 266, 270 (Mo. banc 2005). As Respondent notes, *Wise* Opp., Case No. 2516-CV29597, at 28, *Six Flags* cautions against inferring exclusions from silence absent a "strong contrast." Here, the contrast between Sections 10 and 45 is precisely that: one provision expressly authorizes "time to time" changes, and the other does not.

districts is stated in Sec. 7," i.e., when a decennial census is certified, and that Section 10's "time to time" provision does not authorize a second redistricting within a Census period when districts have been lawfully enacted once. *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).[6]

Because the decennial census is also "the basis of reapportionment" of congressional districts, the logic of *Preisler* even more strongly compels the conclusion that Section 45 intends only one valid redraw of congressional districts each decade in conjunction with the certification of the Census. That conclusion is buttressed by the fact that, unlike state senate districts, there is no provision authorizing a redraw of congressional districts from "time to time as public convenience may require." *Compare* Mo. Const. art. III, § 10 *with* § 45.

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; in Missouri, that has already occurred. The 2025 mid-decade congressional

[6] *See also Major*, 129 S.W. at 894 (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.

redistricting is thus unconstitutional. "This must be true because the decennial census is made the basis of reapportionment." *Preisler*, 284 S.W.2d at 437.

i. The General Assembly's power to redistrict mid-decade is not plenary and is expressly limited by Article III, Section 45.

Respondent argues that the General Assembly has "plenary" authority to redistrict whenever it chooses. *See* Defs. Pretrial Brief (Nov. 10, 2025), Case No. 25AC-CC06964, at 14. Not so. While the General Assembly generally begins from a position of broad legislative authority under Article III, Section 1, that presumption does not apply to congressional redistricting. *State ex rel. Carroll v. Becker*, 45 S.W.2d 533, 536 (Mo. banc), *aff'd sub nom. Carroll v. Becker*, 285 U.S. 380 (1932). In *Carroll*, this Court specifically rejected the argument that Missouri has "the inherent right to make its own districts for its congressional Representatives." *Id.*; *see also Cook v. Gralike*, 531 U.S. 510, 522-23 (2001) (holding that Missouri exceeded its authority to regulate congressional elections). That alone forecloses the Respondents' argument—and the trial court's ruling—as to plenary power.

Furthermore, even "plenary" legislative authority may be "limited by some other provision of the constitution." *Bd. of Educ. of City of St. Louis v. City of St. Louis*, 879 S.W.2d 530, 532-33 (Mo. banc 1994); *see also Liberty Oil Co. v. Dir. of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991); *Three Rivers Junior Coll. Dist. of Poplar Bluff v. Statler*, 421 S.W.2d 235, 238 (Mo. banc 1967). Article III, Section 45 is such a limitation. It prescribes not only *how* congressional districts must be drawn but also *when*, by expressly tethering the timing of congressional redistricting to the decennial census. A power

bounded by an express constitutional timing and substantive requirements cannot, by any measure, be "plenary."

Still, Respondents claim that because Section 45 expresses its timing rule as a mandatory duty to redistrict at the time of the census (rather than as a negative prohibition), it cannot operate as an "express" limitation on mid-decade redistricting. *See, e.g.*, Defs. Pretrial Brief at 14. The Missouri Constitution does not treat constitutional limitations so narrowly. Indeed, apart from its grant of legislative authority in Article III, Section 1, the Constitution is otherwise itself wholly a limitation on the exercise of legislative power as "[a]ll the sovereign power of this state, except the portion delegated to the general government, rests with the people of the state." *Gordon*, 49 S.W.2d at 147. As such, "the general grant of the legislative authority of the state . . . is likewise subject to *all* the limitations, *express or implied*, contained in the Constitution." *Id.* (emphasis added).

In *State ex rel. City of St. Louis v. Seibert*, this Court acknowledged the distinction Respondent emphasizes between enumerated federal legislative power and plenary state legislative power, but this Court also explained that constitutional limits on legislative power "are equally effective, and not less to be regarded, when they arise by implication." 27 S.W. 624, 625 (Mo. banc 1894). In fact, as this Court explained, "the affirmative prescriptions and the general arrangements of the constitution are far more fruitful of restraints on the legislature. *Every positive direction contains an implication against anything contrary to it, or which would frustrate or disappoint the purpose of that provision.*" *Id.* (emphasis added).

Missouri courts have also repeatedly made clear that "when the Constitution defines the circumstances under which" an authority is to be "be exercised," that definition operates as an "implied prohibition" against its exercise in any other circumstances. *Brunk*, 34 S.W.2d at 95-96. And this implied prohibition is at its strongest when the Constitution specifies *how and when* a power must be exercised: "If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only." *Seibert*, 27 S.W. at 625; *see also Ex parte Arnold*, 30 S.W. 768, 770 (Mo. banc 1895) (same). The General Assembly does not have plenary power to do whatever it wants, however or whenever it wants, when the Constitution affirmatively describes how or when it must exercise its powers.

In short, the General Assembly does not possess plenary power over congressional redistricting. The Missouri Constitution is a document of limitations on legislative power, of which Section 45 is one. It specifies *when* the General Assembly must exercise its power to redraw congressional districts—upon certification of each decennial census. And by fixing that time, it operates both as an affirmative duty *and* an implied prohibition on the General Assembly's authority to exercise that power at other times mid-decade.

ii. Respondent wrongly contends that Section 45's text requires prohibitory language in order to limit the General Assembly's power to conduct mid-decade redistricting.

Respondent contends that Section 45 "imposes merely a constitutional floor" because its text lacks "prohibitory language" that features in various other provisions that the Missouri Constitution likewise labels "Limitations on Legislative Power." *See, e.g.,*

Wise Opp., Case No. 2516-CV29597, at 19-20, 29-31.[7] Respondents thus suggest that the only unambiguous limitations on the General Assembly's power contemplated by the Missouri Constitution are those pronounced in 'thou-shalt-not' terms.

But as explained *supra*, that is not at all how this Court has understood constitutional limitations on the General Assembly's power. Effective "restraints on the legislature" can arise from "affirmative prescriptions and the general arrangements of the constitution," the "frame of the government, [and] the erection of the principal courts of justice," which "create implied limitations upon the lawmaking authority, as strong as though a negative was expressed in each instance." *Seibert*, 27 S.W. at 625-26.

Consistent with this understanding, Missouri courts have repeatedly invalidated or assessed legislative enactments for conflict with affirmative constitutional commands that operate as limitations on legislative power, notwithstanding the absence of explicit "shall-not"-type language. *See, e.g.*, *Brunk*, 34 S.W.2d at 94, 95-96 (holding that a provision granting the legislature sole impeachment authority was an implied prohibition against any other removal method); *Pestka*, 493 S.W.3d at 410 (invalidating a statute enacted via an untimely Senate veto override as violating Art. III, Section 32's affirmative directive governing reconvening, despite no negative prohibition); *Fowler v. Missouri Sheriffs' Retirement System*, 623 S.W.3d 578, 584-85 (Mo. banc 2021) (invalidating statute

[7] As noted *supra*, in this brief *Amici* address arguments raised by Respondents in *Wise v. State of Missouri*, Case No. 2516-CV29597, that are relevant here, specifically those presented in State Defendants' Suggestions in Opposition to Plaintiffs' Motion for Preliminary Injunction & Consolidation of Trial on Count I with Preliminary Injunction Hearing ("*Wise* Opp.").

imposing court costs under Art. I, Section 14's open-courts guarantee, which contains no explicit restriction on legislative power); *Harrison v. Monroe County*, 716 S.W.2d 263, 267 (Mo. banc 1986) (same).

Respondent's cramped conception of constitutional limits is inconsistent with this Court's redistricting precedent. Recall that in *Preisler*, this Court held that the General Assembly lacks authority to redraw state senate districts absent an invalid apportionment, even though no constitutional provision expressly provides that the General Assembly "shall not" legislate in this realm. 284 S.W.2d at 427; *see also* Mo. Const. art. III, §§ 2, 7, 10 (1945). Under Respondent's approach, *Preisler* would have been wrongly decided because no explicit prohibition existed. That is not—and has never been—the sole means by which the Missouri Constitution limits legislative power.

iii. Respondents misread related text and precedent concerning state legislative redistricting, including *Preisler* and *Major*.

Respondents also misconstrue the constitutional provisions and case law concerning state legislative districts, specifically *Preisler* and *Major*, which, as noted *supra*, provide powerful textual and precedential support for reading Section 45 to require congressional redistricting once per decennial census.

Respondents offer essentially four reasons why, in their view, *Preisler* has no bearing here. None is persuasive.

First, they assert that *Preisler* addressed only the powers of redistricting commissions, not the General Assembly, which they claim "exercises plenary authority." *Wise* Opp., Case No. 2516-CV29597, at 34; *see also id.* at 16, 26-28. But *Preisler*'s

reasoning did not turn on the identity of the map-drawing institution. It depended on whether the Constitution contained a timing directive tied to the decennial census. Because senatorial redistricting was triggered by the result of "each decennial census" and the census was "the basis for reapportionment," the Court concluded that "only one valid apportionment is intended for each decennial period" (unless it was found invalid, in which case, there was a continuing duty to ensure a valid apportionment). *Id.* at 436-37.

There need be no speculation about how the analysis would differ if the General Assembly were instead the map-drawing body. Not at all, as the Court confirmed in an earlier case, *Gordon*, 49 S.W.2d 146. In *Gordon*, this Court considered senatorial redistricting under the 1875 Constitution, which required the General Assembly to redraw senate districts "at its first session after each United States census." *Id.* at 148. This Court noted that although a 1908 constitutional amendment establishing the initiative and referendum power arguably removed that express directive, this deletion would not eliminate the underlying constitutional limitation that redistricting occur only once per decennial census. As this Court put it, even without that timing clause, "it would follow that it is the duty of the Legislature, or the people, to redistrict the state for the election of Senators (*just once and upon the basis of the census*) after each United States Census, and that such duty is a continuing one which can be discharged only by performance." *Id.* (emphasis added). Same conclusion, same reasoning as *Preisler*.

Second, Respondents contend that *Preisler*'s statement that "only one valid apportionment is intended for each decennial period" applies only to "apportionment" and not redistricting. *Wise* Opp., Case No. 2516-CV29597, at 34. That distinction is illusory.

Courts use the terms apportionment, reapportionment, and redistricting interchangeably to refer to the allocation of population among districts. *See, e.g.*, *Davis v. Bandemer*, 478 U.S. 109, 161 n.1 (1986) (Powell, J., concurring); *Agre v. Wolf*, 284 F. Supp. 3d 591, 610 n.17 (E.D. Pa. 2018); *Essex v. Kobach*, 874 F. Supp. 2d 1069, 1075 n.6 (D. Kan. 2012); *see also Wesberry v. Sander*, 376 U.S. 1, 7 (1964) (referring to challenges to congressional district lines as "apportionment" cases). In Missouri, whatever historical distinction existed between apportionment and redistricting for the state House[8] did not apply to the Senate, as the 1875 and 1945 Constitutions fixed the number of senators at 34 and required election from single-member districts.[9] In any event, *Preisler* and *Gordon* both make clear that apportionment and redistricting are governed by the same constitutional constraint: both must be based on the census, and so they must be performed only once per decennial census. The same is true of congressional redistricting under Section 45.

Third, Respondents contend that the "time to time" proviso that *Preisler* interpreted does not imply a restriction on the General Assembly's congressional redistricting powers. *Wise* Opp., Case No. 2516-CV29597, at 35. But of course it does. The presence of the "time to time" provision in Section 10 and its omission in Section 45 shows that the members of the 1943-44 Constitutional Convention believed that such a provision was necessary to enable the redistricting body to redraw districts in the absence of a new decennial census.

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[8] The 1945 and 1875 Constitutions historically divided responsibilities for apportionment (assigning representatives per county) and redistricting (drawing sub-county districts). *See* Mo. Const. art. IV, § 2-3 (1875); Mo. Const. art. III, §§ 2-3 (1945).

[9] Sub-county redistricting was historically delegated to county officials for those counties that had more than one senate seat within it. *See* Mo. Const. art. IV, § 6 (1875); Mo. Const. art. III, § 8 (1945).

And although the members of the Convention were plainly aware that they could have conferred discretion to redraw districts more frequently, they chose not to do so for congressional districts. *See Russello v. U.S.*, 464 U.S. 16, 23 (1983) (describing the interpretive principle that presumes intentional omission where language is included in one section but not in another related section). *Preisler*'s determination that Section 10's text permitted only one valid redistricting per census—despite its "time to time" language—also confirms Section 45's meaning: congressional redistricting may occur only in conjunction with the census.

Fourth, Respondents claim that *Preisler* "does not displace" and in fact "adopts" the reasoning of *Major*, 129 S.W. at 888, which they believe is more favorable for them. *Wise* Opp., Case No. 2516-CV29597, at 34. They are correct that *Preisler* acknowledged *Major* but are mistaken that *Major* helps them. In *Major*, the question was whether the "time to time" provision allowing house (and senate) districts to be altered (then in Article IV, Section 9 of the 1875 Constitution) allowed a county court to rearrange district boundaries "at any time." *Id.* at 889. The Court held that the "time to time" provision was inapplicable to county courts because it applied only to the General Assembly, and that county courts could only redistrict once per decennial census pursuant to other redistricting provisions of the 1875 Constitution, namely Article IV, Sections 3 and 7. *Id.* at 894.

Article IV, Section 3 required county courts to draw state house districts "'when,' i.e., 'at the time that' the county is entitled to more than one representative." *Id.* at 892; *see id.* at 891 ("The word 'when' . . . is equivalent to 'at the time that.'"). Article IV, Section 7, in turn, required the General Assembly to determine each county's number of

representatives "on the basis of" and "after each census." *Id.* at 892. Because "[n]o other time was mentioned" for either task, and because both were expressly tied to the decennial census, the Court concluded that neither could occur more than once per decennial census. *Id.*; *see also id.* at 894 ("Section 3 clearly refers to decennial periods only."). The same logic applies to Section 45 here: Congressional redistricting is to occur "when" (i.e., at the time) of "each census." Art. III, § 45 (1945). It must be done "on the basis" of the decennial census. *Major*, 129 S.W. at 892. And, as in *Major*, "no other time [is] mentioned." *Id.* Thus, redistricting under Section 45 cannot occur more than once per decennial census.

As for the "time to time" provision in Article IV, Section 9 of the 1875 Constitution, the Court held that it applied solely to the General Assembly, permitting it to "readjust" state house and senate districts at other times it saw fit. *Id.* at 894.[10] But this interpretation of the 1875 text is of no help to Respondents here. Unlike Section 45, the 1875 text did not mandate that the decennial census be used as the basis for redistricting and therefore did not require that redistricting occur in conjunction with the census, as this Court reasoned in *Preisler*. Indeed, when the "time to time" provision returned to this Court in *Priesler*, it had been amended during the 1943-44 Convention to require use of "[t]he last decennial census . . . in apportioning representatives and determining the population of senatorial and representative districts." Art. III, § 10 (1945). When the Court encountered *this* version—with its express link to the decennial census—it concluded that senatorial redistricting had to occur only once per census, and the General Assembly had no power under the "time to

[10] Although the General Assembly had this power under the 1875 Constitution, the Court noted that it had never once been used. *Id.*

time" provision to readjust districts at any other time. *Preisler*, 284 S.W.2d at 436-37. In reaching this conclusion, the *Preisler* Court expressly relied on *Major*'s analysis of Article IV, Sections 3 and 9 of the 1875 Constitution—provisions that likewise tied redistricting to the census and therefore imposed an express timing limitation. *Id.*

In short, every decision from this Court addressing the timing of state legislative redistricting—*Preisler*, *Gordon*, and *Major*—has stood for the same principle: when the Constitution expressly ties exercise of redistricting power to the census, it must occur in tandem with the census, once per decade. The same rule governs Section 45.

B. Section 45's enactment history and Missouri's redistricting history both evidence a prohibition on mid-decade congressional redistricting.

Section 45's enactment history and Missouri's pre- and post-1945 redistricting history both evidence a prohibition on mid-decade congressional redistricting.

The history behind Section 45's adoption confirms that it prohibits mid-decade redistricting. During the 1943-1944 Constitutional Convention, the members considered various proposals that would have either required or allowed mid-decade redistricting of congressional districts—and ultimately rejected them all. Instead, the Convention adopted the current text of Art. III, Section 45, to synchronize congressional redistricting with the federal decennial census.

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. By mandating redistricting in the "first session following the adoption of this Constitution," this 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.

A group of delegates then proposed a version that would not have placed any time limitation on congressional redistricting whatsoever. 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. This second proposal contained no reference to the census or any other timing constraint.

On September 6, 1944, the Convention adopted an amendment to the June 28 proposal to make the timing of congressional redistricting contingent upon the decennial census. Specifically, Amendment 7 to File No. 21 replaced the proposed text from June 28 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 suggested certain revisions to the congressional redistricting provision, which were ultimately adopted and culminated in the version of Art. III, Section 45 that remains today. *See* 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, 22-23 (Sept. 19, 1944), https://babel.hathitrust.org/cgi/pt?id=umn.31951d024262663&seq=1083&q1=congress;

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 (emphasis added). By contrast, the committee noted that mid-decade redistricting could occur between 1945 and 1950 for the *state legislative* redistricting: "[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.

Thus, the committee that drafted the final text of Section 45 did not intend for the General Assembly to redraw congressional districts mid-decade. It expressly determined that, under Section 45, no congressional redistricting would be permissible between 1945 and the certification of the 1950 Census. *Id.* at 23-24. That forecloses Respondents' theory that Section 45 merely requires congressional redistricting following a census, i.e., setting a floor, while permitting it at all other times. If the General Assembly has authority to redistrict whenever it chooses, then it could have redistricted between 1945 and 1950, and the Constitutional Convention would have been wrong to view the 1951 redistricting as

"the first reapportionment" possible under Section 45. *Id.* Respondents' interpretation of Section 45 therefore contravenes its original intent.

This constitutional history confirms what the text itself reveals: Section 45 limits the Legislature to enacting congressional redistricting legislation "[w]hen" the census occurs. 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.

A review of Missouri's pre- and post-1945 redistricting practices confirms this interpretation. Prior to the ratification of the 1945 Constitution, Missouri operated under the 1875 Constitution, which was silent on the topic of congressional redistricting. Unsurprisingly, in the absence of a constitutional timing directive, the Missouri General Assembly engaged in redistricting at its discretion. In 1877, Missouri conducted a mid-decade congressional redistricting, while from 1901-1931, Missouri chose not to redistrict at all. This demonstrates that, because the 1875 Constitution had no mandate fixing congressional redistricting to the census, the General Assembly engaged in congressional redistricting at seemingly arbitrary intervals.

By contrast, where the 1875 Constitution *did* impose a census-based trigger—as it did with senatorial districts in Article IV, Section 5[11]—this Court in 1932 understood that to mean one redistricting per census. *See Gordon*, 49 S.W.2d at 148 ("[I]t is the duty of the

[11] "Number of Senators—Senatorial Districts. The Senate shall consist of thirty-four members, to be chosen by the qualified voters of their respective districts for four years. For the election of Senators, the State shall be divided into convenient districts, as nearly equal in population as may be, the same to eh ascertained by the last decennial census taken by the United States." Mo. Const. art. IV, § 5 (1875).

Legislature, or the people, to redistrict the state for the election Senators (just once and upon the basis of the census) after each . . . Census."). It was therefore understood, even under the 1875 Constitution, that when the constitution sets redistricting to occur at the time of the decennial census, it does so to the exclusion of any other times. *See State ex rel. T.J. v. Cundiff*, 632 S.W.3d 353, 357 (Mo. 2021) ("In construing a statute, the Court must presume the legislature was aware of the state of the law at the time of its enactment."); *Pestka*, 493 S.W.3d at 408-09 (applying standard rules of statutory construction to constitutional provisions).

The historical context suggests that both the partisan-motivated mid-decade congressional redraw following the 1875 Convention and the subsequent multi-decade failure to redistrict were on the minds of the 1943-44 Convention's members. Both problems share the same flaw: they untether redistricting from the decennial census, the only moment when a complete and accurate enumeration exists to draw equally populated congressional districts. And indeed, the 1945 Convention solved both problems by drafting Section 45 to limit the General Assembly's discretion and fix the time of congressional redistricting with the decennial census (i.e., once per decade).

The post-1945 history confirms this understanding. In contrast to the legislative free-for-all that had persisted for decades prior to 1945, the General Assembly has not conducted a mid-decade congressional redistricting (until now).[12] *See Pearson v. Koster*,

[12] The 1960's redraws Respondents misleadingly cite were not mid-decade redistricting efforts at all. *Wise* Opp., Case No. 2516-CV29597, at 22-24. They were multiple efforts at enacting the state's first valid redistricting map under the 1960 Census—after federal courts repeatedly invalidated (and thereby voided) the state's maps for violating the U.S.

367 S.W.3d 36, 57 (Mo. banc 2012) ("*Pearson II*") (Appendix A, collecting every decade map since 1921); *see also Conservation Comm'n v. Bailey*, 669 S.W.3d 61, 62 (Mo. banc 2023) (finding certain restrictions on conservation funds unconstitutional where it was "the first—and only—time" in relevant history that the General Assembly had attempted them).

The relevant history thus confirms that Section 45 prohibits mid-decade congressional redistricting.

C. The overwhelming weight of out-of-state precedent supports interpreting Section 45 as banning mid-decade congressional redistricting.

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 permitted only one congressional redistricting plan to be enacted per decennial period. 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

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Constitution's equal-population mandate. *See Kirkpatrick v. Preisler*, 394 U.S. 526, 528 (1969).

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 also interpreted its Constitution to prohibit redistricting more than once a decade. 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 Congressional districts] . . . " *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 per 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.*[13]

[13] Respondents contend that *Mooney* is inapplicable, *Wise* Opp., Case No. 2516-CV29597, at 38, but their arguments are unavailing. The provision of the Illinois Constitution at issue in *Mooney* required that apportionment shall occur "every ten years beginning with the year" 1871. Ill. Const. art IV, § 6 (1870). Similarly, the Missouri Constitution says that the

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.[14]

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 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.").

Only 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 the Georgia Constitution does not have a "time to time" provision for one type of districts but not another. *Blum*'s rationale therefore does not apply to Missouri, which does have a

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legislature shall apportion districts "when" the census happens—an event that occurs every ten years. Both constitutions require that redistricting occur every ten years, making *Mooney*'s reasoning directly applicable to Missouri.

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

"time to time" provision for non-congressional districts. 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). *Blum* and *Abbott* contradict the vast majority of state supreme courts—including most importantly *this Court*—which hold otherwise.

Respondents make much of the 1914 *Weatherill* case from the Minnesota Supreme Court, *Wise* Opp., Case No. 2516-CV29597, at 36-37, but that case just illustrates the majority rule across the states: there is a duty to redistrict following the Census which continues until discharged. *State ex rel. Meighen v. Weatherill*, 147 N.W. 105, 107 (Minn. 1914). As the *Weatherill* court explained, the reason for the 1913 mid-decade redistricting at issue was that the Minnesota legislature had failed to redistrict in the 1911 session. *Id.* at 106. The *Weatherill* court held that the "whole object" of redistricting is to ensure "participation upon an equal footing in the affairs of the state" by reconfiguring districts following the Census. *Id.* at 107. Given this, the court recognized that the constitution "impos[ed] a duty of reapportionment" that "continues until performed." *Id.* at 106 (emphasis added). *Weatherill* thus reflects the majority rule among the states and offers no support for an additional redistricting here, where the General Assembly already discharged its duty to pass a valid map in 2022.

Respondents also erroneously claim that precedent that addresses legislative rather than congressional redistricting is irrelevant here. *Wise* Opp., Case No. 2516-CV29597, at 39. Though the authority to conduct congressional redistricting comes from the federal constitution, that power must be exercised pursuant to the limitations in state law. *Moore v. Harper*, 600 U.S. 1, 22 (2023). Therefore, interpretations of state constitutional limitations on mid-decade redistricting are directly applicable. *See, e.g., Salazar*, 79 P.3d at 1221. Ironically, Respondents appear to concede the relevance of state legislative redistricting opinions given their extensive (though inapposite) reliance on *Weatherill* in their briefing in *Wise,* which was a state legislative case. *See Weatherill*, 147 N.W. at 105.

The overwhelming weight of out-of-state cases support what is clear from the Missouri Constitution's text: once congressional districts have been redistricted following the decennial census, they may not be redrawn again until the next one.

D. The federal Elections Clause does not authorize mid-decade congressional redistricting.

Finally, Respondents argue that the Elections Clause of the U.S. Constitution authorizes mid-decade redistricting. *See Wise* Opp., Case No. 2516-CV29597, at 17 (citing U.S. Const. art. I, § 4). They are mistaken. According to binding precedent from both the U.S. Supreme Court and this Court, redistricting legislation enacted under the Elections Clause must comply with the state constitution. *Moore*, 600 U.S. at 32; *Carroll*, 45 S.W.2d at 534. And here, Article III, Section 45 forbids mid-decade redistricting of congressional seats.

Only two years ago, the U.S. Supreme Court squarely rejected the arguments put forth by Respondents. While the Elections Clause authorizes state legislatures to regulate federal elections, "legislatures must abide by restrictions imposed by state constitutions when exercising the lawmaking power under the Elections Clause." *Moore*, 600 U.S. at 31-32 (quoting *Smiley v. Holm*, 285 U.S. 355, 369 (1932)) (cleaned up). In short, "[t]he Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review" for "compliance with state law." *Id.* at 19, 22; *see, e.g.. County of Fulton v. Sec'y of Commonwealth*, 330 A.3d 481, 499 (Pa. 2024) ("[S]tate legislatures do not retain unbridled authority under the Elections Clause; rather, they remain subject to the constraints of state constitutions.").

This Court reached the same conclusion nearly 100 years ago. In *Carroll*, the Court held that the Elections Clause—though it vests the authority to draw congressional districts in the state legislature—does not empower the General Assembly to ignore the state constitution and enact new districts over the governor's veto. 45 S.W.2d at 534, 537. For the reasons stated *supra*, the Missouri Constitution places significant limitations on the General Assembly's ability to redraw congressional districts, and the Elections Clause does nothing to free the state from those obligations.

Nor would judicial review intrude upon the General Assembly's limited authority over congressional redistricting. The Elections Clause is the only "constitutional provision [that] gives the States authority over congressional elections," and that authority is not plenary, inherent, or boundless. *Cook*, 531 U.S. at 522-23; *see also Carroll*, 45 S.W.2d at 536 ("So far as the state has authority to divide the state into congressional districts, it

derives that authority from the Federal Constitution and the acts of Congress."). Indeed, in *Cook*, the U.S. Supreme Court held that the Missouri legislature exceeded its authority under the Elections Clause by creating election rules designed to disadvantage certain congressional candidates. 531 U.S. at 523. "The [Elections] Clause grants to the States 'broad power' to prescribe the procedural mechanisms for holding congressional elections, but does not authorize them to dictate electoral outcomes, to favor or disfavor a class of candidates, *or to evade important constitutional restraints*." *Id.* (emphasis added). Enforcing those limitations is undoubtedly part of ordinary judicial review.

CONCLUSION

The plain constitutional text as interpreted by this Court, the history of redistricting in Missouri and Section 45's adoption, and precedent from other state supreme courts regarding analogous provisions all compel the conclusion that Article III, Section 45 of the Missouri Constitution prohibits mid-decade congressional redistricting. *Amici* ask that this Court rule in favor of and grant relief to Appellants.

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Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on January 12, 2025, the foregoing brief was filed electronically and served automatically on the counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06(b); and (3) contains 9,618 words (excluding the cover, signature block, and this certificate of service and compliance), as determined using the word-count feature of Microsoft Office Word. Finally, the undersigned certifies that the electronically filed brief was scanned and found to be virus-free.

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