MISSOURI COURT OF APPEALS
WESTERN DISTRICT

PEOPLE NOT POLITICIANS and RICHARD VON GLAHN,	)	
Appellants,	)	
v.	)	**WD88795**
DENNY HOSKINS, IN HIS OFFICIAL CAPACITY AS THE MISSOURI SECRETARY OF STATE,	)	**Filed: April 30, 2026**
Respondent.	)	

Appeal from the Circuit Court of Cole County
The Honorable Brian K. Stumpe, Judge

Before Special Division: Karen King Mitchell, P.J., and Alok Ahuja and Janet Sutton, JJ.

In September 2025, the General Assembly passed legislation redefining Missouri's congressional districts. The Appellants are proponents of a referendum petition which seeks to put the redistricting legislation before voters at the November 2026 general election. Appellants filed this lawsuit in the Circuit Court of Cole County to challenge the fairness and sufficiency of the summary statement drafted by the Secretary of State to describe their referendum petition. The circuit court found that certain phrases in the Secretary's summary statement were insufficient and unfair; the court then

certified a revised summary statement. Appellants appeal, contending that further revisions to the summary are necessary to make it fair and sufficient. We agree that additional revisions to the summary statement are required to bring it into compliance with statutory standards. We accordingly reverse the judgment of the circuit court, and certify a revised summary statement to the Secretary of State.

Factual Background

Following the 2020 decennial United States Census, the Missouri General Assembly in 2022 adopted legislation dividing the State into eight congressional districts, from which Missourians would elect members to the United States House of Representatives. *See* H.B. 2909, 101st Gen. Assembly, 2d Reg. Session (2022).

On August 29, 2025, the Governor issued a proclamation calling the General Assembly into special session to consider a new map of Missouri's congressional districts. The General Assembly convened on September 3, 2025 to consider the new map. On September 12, the General Assembly truly agreed to and finally passed House Bill 1, titled "To repeal sections 128.345 and 128.348, RSMo, and to enact in lieu thereof twelve new sections relating to the composition of congressional districts." H.B. 1, 103rd Gen. Assembly, 2d Extraordinary Sess. (2025). HB 1 adopted the district map which the Governor had proposed. The Governor signed HB 1 into law on September 28, 2025.

On September 29, 2025, Richard von Glahn submitted a sample petition to the Secretary of State, referring HB 1 to voters. The Secretary denominated von Glahn's petition as Referendum Petition 2026-R004. On November 13, 2025, the

Secretary certified the official ballot title for the petition. The ballot title contained the following summary statement which the Secretary had drafted:

> Do the people of the state of Missouri approve the act of the General Assembly entitled "House Bill No. 1 (2025 Second Extraordinary Session)," which repeals Missouri's existing gerrymandered congressional plan that protects incumbent politicians, and replaces it with new congressional boundaries that keep more cities and counties intact, are more compact, and better reflects [*sic*] statewide voting patterns?

The official ballot title, including the summary statement, will appear on the ballot if the Secretary certifies that referendum proponents have submitted sufficient qualifying signatures. *See* § 116.230.[1]

This suit challenges the fairness and sufficiency of the Secretary's summary statement. It was filed in the Circuit Court of Cole County on November 20, 2025, by von Glahn and by People Not Politicians, a campaign committee organized to support the referendum effort. We refer to von Glahn and People Not Politicians collectively as the referendum petition's "Proponents."

Proponents did not challenge any portion of the Secretary's summary statement up through the word "existing." Instead, they challenged the series of words and phrases that characterize the congressional districts adopted in 2022, and that compare those districts to the districts defined by HB 1. Thus, Proponents challenged the summary statement's assertions that the existing map

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[1] Statutory citations refer to the 2016 edition of the Revised Statutes of Missouri, updated by the 2025 Cumulative Supplement, with one significant exception: due to the Supreme Court's decision in *Nicholson v. State*, No. SC101308, 2026 WL 202013 (Mo. Jan. 23, 2026), our citations to §§ 116.190 and 116.334 refer to the versions of those statutes as they existed *prior to* the amendments made by Senate Bill 22, 103rd General Assembly, 1st Regular Session (2025).

was "gerrymandered" and "protects incumbent politicians," and the assertions that the new map's boundaries "keep more cities and counties intact," "are more compact," and "better reflect[ ] statewide voting patterns."

Proponents propounded contention interrogatories on the Secretary, asking the Secretary to identify the basis for the challenged assertions in the summary statement. Among other things, Proponents asked the Secretary to:

> Describe the analytical methods used, if any, to determine that the new congressional boundaries enacted by HB 1 "keep more cities and counties intact," including the baseline used for comparison, the specific metrics applied, and the results.
>
> Identify and describe all facts, metrics, methodologies, and analyses you contend support the assertion that HB 1 creates districts that "are more compact," including which compactness measures were used (e.g., Polsby-Popper, Reock, Schwartzberg, perimeter-to-area, convex hull, or others), how they were calculated, and how they compare to the 2022 Congressional Plan.
>
> Identify all facts and documents supporting any contention that HB 1 reduces the number of municipal or county splits as compared to the 2022 Congressional Plan, including a list of each city and county that is split under each plan.
>
> Identify all facts and documents supporting any contention that HB 1's districts are more compact than the 2022 Congressional Plan, including district-by-district compactness scores under each metric used for both plans.

The Secretary objected to these interrogatories. The Secretary quoted *State ex rel. Kander v. Green*, 462 S.W.3d 844 (Mo. App. W.D. 2015), for the proposition that "a court's review of a [ballot title] challenge involves a review of the language of the ballot summary and a comparison of the summary's language to the provisions of the initiative; it does not require any foray into the state of mind of the summary's drafters." *Id.* at 849. Because an assessment of the

fairness and adequacy of a summary statement requires courts to compare the summary statement to the provisions of the relevant measure, the Secretary argued that "[t]he facts, metrics, methodologies, and analyses used by [the Secretary]" to draft the summary statement "ha[ve] no bearing on whether the Summary Statement's final language is insufficient and unfair."

Proponents filed a motion to compel, challenging the Secretary's objections to their interrogatories. The parties resolved the discovery dispute in a Joint Stipulation. Under the Joint Stipulation, the Secretary agreed that he would not introduce any of his own evidence at trial, with the exception of certain listed exhibits: the text of HB 1; the Secretary's ballot title for the referendum petition; maps of the 2022 and 2025 congressional districts; and the summary statements prepared by the Secretary of State's office for three earlier referendum petitions (which addressed issues unrelated to legislative redistricting).

Proponents also attempted to take the deposition of a representative of the Secretary of State's office. The Secretary moved to quash the deposition notice. He argued, once again, that such a deposition would not lead to the discovery of admissible evidence, because the fairness and sufficiency of the summary statement must be decided by objectively comparing the summary to the language of the referred measure:

> The critical test is whether the language fairly and impartially summarizes the purposes of the measure so that voters will not be deceived or misled. The Court evaluates this challenge under an objective standard that focuses on an inquiry into the language of the ballot summary and a comparison of that language to the provisions of the underlying measure. Accordingly, Missouri courts have found that discovery is rarely relevant to such a challenge.

(Cleaned up.) The circuit court granted the Secretary's motion to quash the representative deposition.

The Secretary's original answer contested all of the Proponents' challenges to the fairness and sufficiency of the summary statement. Senate Bill 22, 103rd General Assembly, 1st Regular Session (2025), had amended § 116.190, and had given the Secretary of State multiple opportunities to revise a summary statement which a circuit court found to be deficient, before the court could revise the statement itself. The Supreme Court declared Senate Bill 22 to be unconstitutional in *Nicholson v. State*, No. SC101308, 2026 WL 202013 (Mo. Jan. 23, 2026). Within five days of the *Nicholson* decision, the Secretary moved for leave to file an amended answer, which the circuit court granted. The Secretary's amended answer now admitted that the phrases "gerrymandered" and "protects incumbent politicians" in the original summary statement were argumentative and likely to prejudice voters in favor of the new congressional districts. Based on these admissions, the Secretary moved for entry of judgment in favor of Proponents, and for a remand of the summary statement to his office for further revision. The circuit court took the Secretary's motion for entry of judgment with the case, and ultimately denied the motion in its final judgment by certifying alternative language for the summary statement.

The circuit court held a bench trial on February 9, 2026, during which Proponents presented the testimony of von Glahn and a Political Consultant[2] who had participated in earlier Missouri redistricting efforts. Political Consultant

[2] Pursuant to § 509.520.1(5), and Supreme Court Operating Rule 2.02(c), we do not provide the names of any non-party witnesses in this opinion.

testified that it could not be determined whether the new redistricting plan divided less cities than the existing plan solely by reviewing the 2022 and 2025 legislation, and the official maps illustrating the districts. Although Political Consultant testified that the legislation and official maps do not provide information about *municipal* boundaries, he acknowledged that by reviewing HB 1, "[y]ou could see how many [*counties*] are intact as whole units." On cross-examination, Political Consultant agreed with the following statement, based on a review of HB 2909, HB 1 and the official maps: "of the nine counties that were split under the existing 2022 congressional plan, four of them are kept intact under House Bill 1."

Political Consultant also testified that there are multiple different tests to evaluate the compactness of legislative districts, and that the relative compactness of the districts adopted in 2022 and 2025 could not be determined from the legislation and district maps alone.

The circuit court entered its judgment on March 20, 2026. The judgment accepted the Secretary's concessions that the use of the word "gerrymandered," and the statement that the existing congressional districts "protect[ ] incumbent politicians," were insufficient and unfair. The circuit court also found unfair and insufficient the statement that the districts adopted in 2025 "better reflect[ ] statewide voting patterns." The circuit court rejected Proponents' remaining challenges to the summary statement, however. With respect to the statement that HB 1 "keep[s] more . . . counties intact," the judgment found that "[t]he text of House Bill 1 identifies the counties that were split by the new congressional

map." The judgment found that "House Bill 1 splits fewer counties [(five)] than House Bill 2909," which divided nine counties.

Although the Secretary of State had not offered any exhibits at trial, other than the official maps depicting the 2022 and 2025 districts, the circuit court's judgment purported to take judicial notice of "the locations of cities within the state," as well as unspecified "administrative records and maps hosted by the Office of Administration, as well as the contents of the ArcGIS system" (a piece of proprietary computer-mapping software). The circuit court also noted that the official maps illustrating HB 2909 and HB 1 "demonstrat[ed] that a number of cities split by House Bill 2909 were kept intact by House Bill 1" in the Kansas City and St. Louis areas. Based on this information, the court concluded that the Secretary's claim that HB 1 kept "more cities . . . intact" was accurate.

The circuit court's judgment also rejected Proponents' challenge to the summary's assertion that the 2025 district boundaries were "more compact." The court observed:

> [A] visual comparison of the maps created by House Bill 1 and House Bill 2909 demonstrates the more compact nature of House Bill 1. The districts formed by House Bill 1 better resemble the squares, rectangles, and hexagons that indicate compactness. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 394 (Mo. banc 2024), reh'g denied (Apr. 2, 2024).

The court noted that Political Consultant "testified that some districts are more compact, mathematically, under H.B.1 and others are less compact." The court found, however, that Political Consultant "did not provide comparative scores nor did he rebut the visual compactness of House Bill 1." As a result, the judgment stated that Political Consultant's "testimony was unhelpful to the Court."

Based on its conclusions concerning the fairness and sufficiency of the phrases Proponents challenged, the circuit court certified the following revised summary statement to the Secretary:

> Do the people of the state of Missouri approve the act of the General Assembly entitled "House Bill No. 1 (2025 Second Extraordinary Session)," which repeals Missouri's congressional plan, and replaces it with new congressional boundaries that keep more cities and counties intact, and are more compact?

Notably, the summary statement certified by the circuit court omitted the word "existing" before "congressional plan," even though Proponents had not challenged the use of the word "existing." The judgment offered no explanation for eliminating the word "existing" from the summary statement.

Proponents filed their notice of appeal on March 23, 2026. On March 25, the circuit court entered an order pursuant to Rule 81.045, declaring that its judgment was immediately appealable.

Under § 116.190.5, actions challenging the official ballot title of a referendum petition must be "fully and finally adjudicated within one hundred eighty days of filing, . . . unless a court extends such period upon a finding of good cause for such extension." Because Proponents filed their petition on November 20, 2025, this action must be finally concluded by May 19, 2026 (barring a court-ordered extension). Due to these time constraints, this Court substantially expedited the consideration of this appeal.

Discussion

As we explained in *Stickler v. Ashcroft*, 539 S.W.3d 702 (Mo. App. W.D. 2017):

> Section 116.334.13 specifies that, if a referendum or initiative petition is approved as to form,
>
> > the secretary of state shall prepare and transmit to the attorney general a summary statement of the measure which shall be a concise statement not exceeding one hundred words. This statement shall be in the form of a question using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.
>
> Section 116.190.3 permits citizens to challenge a proposed summary statement on the basis that it "is insufficient or unfair."

Id. at 708-09 (footnote omitted).

> For a summary statement to be sufficient and fair, it must be adequate and state the consequences of the initiative without bias, prejudice, deception, or favoritism. The summary statement must fairly and impartially summarize the purposes of the proposed measure to prevent voters from being deceived or misled. Because section 116.334 requires a 100-word limit, the summary statement need not set out the details of the proposal or resolve every peripheral question related to it. A summary statement should inform voters of the central features of the initiative or referendum proposal. The test is whether the summary statement language fairly and impartially summarized the purpose of the initiative, not whether the secretary of state used the best language.

McCarty v. Mo. Sec'y of State, 710 S.W.3d 507, 515 (Mo. 2025) (cleaned up). A summary statement "should accurately reflect the legal and probable effects of the proposed initiative." *Brown v. Carnahan*, 370 S.W.3d 637, 654 (Mo. 2012) (citation omitted).

"As in any court-tried matter, we will sustain the circuit court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Mo. Mun. League v. Carnahan*, 303 S.W.3d 573, 579 (Mo. App. W.D. 2010) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976)). "*De novo* review of the trial court's legal

conclusions about the propriety of the secretary of state's summary statement . . . is the appropriate standard of review when there is no underlying factual dispute that would require deference to the trial court's factual findings." *Brown*, 370 S.W.3d at 653.

Proponents assert seven Points Relied On in their briefing. Their arguments challenge four aspects of the summary statement certified by the circuit court. First, they challenge the exclusion of the word "existing" from the summary statement. Proponents also challenge the assertions in the summary statement that the congressional boundaries adopted by HB 1 (1) "keep more cities . . . intact"; (2) "keep more . . . counties intact"; and (3) "are more compact," as compared to the districts created in 2022 by HB 2909. We address Proponents' arguments relating to each of the challenged words or phrases, in the order in which those words and phrases appear in the summary statement.

I.

Proponents first challenge the exclusion of the word "existing" from the summary statement which the circuit court certified. The Secretary's original summary statement referred to the congressional districts adopted in HB 2909 in 2022 as the "existing . . . congressional plan." Proponents argue that, because they did not challenge the use of the word "existing" in the original summary, and because the circuit court did not find the word "existing" to be unfair or insufficient, the court had no authority to rewrite the summary by removing it. We agree.

This Court recently reiterated that a circuit court is only authorized to revise those aspects of a summary statement which the court finds to be

insufficient or unfair; the court has no authority to modify the summary beyond fixing phrasing which fails to meet statutory standards. *Adams v. Hoskins*, No. WD88831, 2026 WL 1027637 (Mo. App. W.D. April 16, 2026). Quoting from numerous prior decisions, we explained:

> "Missouri courts have regularly cautioned restraint in the modification of summary statements and have indicated that modifications should be made in the most limited fashion possible." "Missouri courts have recognized that '[s]ection 116.190 allows the trial court to correct any insufficient or unfair language of the ballot title and to certify the corrected official ballot title to the secretary of state.'" Although section 116.190 plainly empowers a trial court to correct a summary statement that it determines is insufficient or unfair, a trial court "has no authority to rewrite the summary statement but only to correct the aspect of the language that rendered it unfair or insufficient."

Id. at *8 (citations and footnote omitted).

The circuit court did not find the use of the word "existing" in the Secretary's summary statement to be insufficient or unfair. Nor did the circuit court offer any <u>*other*</u> justification for removing the word "existing" (such as word-limit constraints caused by other revisions to the summary, or the need to clarify or conform the summary's language due to other revisions). Without <u>*some*</u> justification based on a deficiency in the summary's language, the circuit court had no authority to remove the word "existing" from the Secretary's original summary statement.

The Secretary argues that, because the effective date of HB 1 has now passed, the boundaries adopted in 2022 in HB 2909 are no longer Missouri's "existing" congressional districts. We take no position as to whether HB 1 is in effect <u>*today*</u>, based on the fact that Proponents have submitted signatures to the

Secretary of State to have HB 1 referred to the People. That issue is being litigated in a separate action. *See Maggard v. State*, Case No. 25AC-CC09120 (Cir. Ct. of Cole Cnty., judgment entered March 30, 2026), *on appeal*, No. SC101581 (Mo.). The issue here is not whether the districts established by HB 2909 in 2022 are the "existing" congressional boundaries *today*; the issue is whether the boundaries created by HB 2909 could fairly be characterized as the "existing" district boundaries *if the referendum is certified to appear on the ballot* at the November 2026 general election.

If the referendum is certified for inclusion on the ballot, voters will be asked on Election Day whether they wish to adopt the new congressional districts defined by HB 1; in that context, the districts established by HB 2909 could fairly be described as the "existing" congressional map. In *Stickler v. Ashcroft*, 539 S.W.3d 702 (Mo. App. W.D. 2017), this Court explained that, when a referendum petition is certified for inclusion on the ballot, this has the effect of "suspending" or "annulling" the statute passed by the General Assembly; voters are then tasked with deciding whether to adopt the referred statute as an original proposition:

> Article III, § 52(b), . . . provides that "[a]ny measure referred to the people shall take effect *when approved by a majority of the votes* cast thereon, and not otherwise." (Emphasis added.) Similarly, § 116.320.1 provides that "[e]ach statewide ballot measure receiving *a majority of affirmative votes* is adopted." (Emphasis added.) Article III, § 52(b) and § 116.320.1 plainly contemplate that referendum questions will be framed in the affirmative, asking voters whether they wish to "approve[ ]" a particular measure.
>
> The Missouri Supreme Court has likewise described the referendum process in a way which requires affirmative voter approval of the referred measure. The Court explained that

> [the] "[p]urpose of referendum is to suspend or annul a law which has not gone into effect and to provide the people a means of giving expression to a legislative proposition, and *require their approval* before it become operative as a law[.]"
>
> *State ex rel. Moore v. Toberman*, 363 Mo. 245, 250 S.W.2d 701, 706 (Mo. banc 1952) (emphasis added; citation omitted).

Stickler, 539 S.W.3d at 712–13.

> As described in *Toberman*, the gathering of sufficient signatures to place a referendum question on the ballot has a similar effect to the Supreme Court's grant of transfer following a decision by the Court of Appeals. The grant of transfer vacates the Court of Appeals' decision; following the transfer grant, the Supreme Court decides the case "as on original appeal," without regard to the Court of Appeals' decision. *Philmon v. Baum*, 865 S.W.2d 771, 774 (Mo. App. W.D. 1993); *see also Bolden v. State*, 423 S.W.3d 803, 808 n.6 (Mo. App. E.D. 2013) (following Supreme Court's grant of transfer, decision of Court of Appeals "'may be referred to as *functus officio*,' meaning 'without further authority or legal competence'" (citation omitted)). In the same way, once a referendum petition has received sufficient signatures to be placed on the general election ballot, the referred measure is placed before the people for their consideration as an original proposition; the prior action by the General Assembly and the Governor on the referred measure is "suspend[ed] or annul[led]," and has no further legal effect or consequence.

Id. at 713 n.9; *see also id.* at 717 ("assuming the referendum petition receives sufficient signatures[,] SB 19 will be 'suspend[ed] or annul[led],' and will not take effect as law unless and until it is approved by a majority of voters" (citation omitted)).

Notably, although the Secretary denies that HB 2909 *currently* defines the "existing" districts, he asserts in his Brief that "the 2025 map is not suspended *until the signatures are deemed sufficient*." (Emphasis altered.) But the referendum will only appear on the ballot – and voters will only see the summary statement – if "the signatures are deemed sufficient." *If* that occurs, the map

established by HB 2909 in 2022 could fairly be described as the "existing" congressional-district map on Election Day, as *Stickler* suggests (and as the Secretary effectively concedes).

The Secretary of State's original summary statement used fair and impartial language in referring to the congressional districts created by HB 2909 as "the existing . . . congressional plan." The circuit court had no authority to remove the word "existing" from the summary statement.

II.

Proponents also argue that the summary statement certified by the circuit court is unfair and insufficient due to its statement that the congressional districts defined by HB 1 "keep more cities . . . intact." We agree.

A.

As a general proposition, the fairness and sufficiency of a summary statement is determined by comparing the language of the underlying measure to the language contained in the summary statement. In *State ex rel. Kander v. Green*, 462 S.W.3d 844 (Mo. App. W.D. 2015), we held that discovery concerning a Secretary of State's personal views on a measure was unwarranted, even though § 116.334 prohibits "intentionally argumentative" language in a summary statement. Our opinion in *State ex rel. Kander* emphasizes that the fairness and sufficiency of a ballot summary is generally decided based on the provisions of the underlying measure alone, without resort to extrinsic evidence.

> [A] court's review of a section 116.190 challenge involves a review of the language of the ballot summary and a comparison of the summary's language to the provisions of the Initiative; it does not require any foray into the state of mind of the summary's drafters. We judge the final product of the Secretary's efforts, i.e., the actual

> language of the ballot summary. And we fail to see how the motives of the Secretary are in any way relevant to the court's analysis of the Secretary's summary statement.
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> . . . .
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> . . . [S]ection 116.334 refers only to whether the language used in the ballot summary is intentionally argumentative; it does not refer to the subjective intent of anyone involved in the drafting process. . . .
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> . . . Courts reviewing ballot summary challenges have unanimously indicated that the *language* of the ballot summary is the relevant consideration. . . . [T]he appropriate inquiry involves both a review of the ballot summary to ensure that it does not use language that is intentionally argumentative and a comparison of the summary to the provisions of the ballot measure to ensure that the summary fairly and adequately summarizes the proposed measure.

Id. at 849-50 (cleaned up).

Similarly, in *State ex rel. Humane Society of Missouri v. Beetem*, 317 S.W.3d 669 (Mo. App. W.D. 2010), we granted a writ of prohibition to prevent opponents of an initiative petition from discovering focus group studies commissioned by the initiative's proponents, which evaluated alternative wording and political strategies for the initiative. The initiative petition sought to regulate large-scale dog-breeding operations, and defined the offense of "puppy mill cruelty" – a term which the Secretary of State quoted in her summary statement. Opponents of the measure contended that the use of the term "puppy mill cruelty" in the summary statement would bias voters in favor of the initiative. We held that "the determination of whether the Secretary's summary language is unfair, in the context of this case, is essentially a question of law." *Id.* at 674 (footnote omitted). As in *State ex rel. Kander*, we explained that

evaluating the fairness and sufficiency of a summary statement generally did not involve consideration of extraneous materials:

> The motives and political strategies of initiative proponents are not relevant to the court's analysis of the Secretary's summary statement. The Secretary had the independent duty to draft official ballot language in accordance with the law. Her duty required that she use her own judgment, and materials such as [focus group studies] are irrelevant to the exercise of that duty. We judge the final product of her efforts – not the dreams, wishes, and internal calculations of [the initiative's proponents]. If courts must determine the plain meaning of words to resolve an issue, we go where the law tells us to go – the dictionary. Focus group information is not a valid substitute.

Id. at 673 (footnote and citation omitted).

It may be necessary or appropriate, in certain situations, for the Secretary of State to go beyond the strict confines of the underlying measure's text. Thus, the Supreme Court has recognized that "[s]ometimes it is necessary for the secretary of state's summary statement to provide a context reference that will enable voters to understand the effect of the proposed change." *Brown v. Carnahan*, 370 S.W.3d 637, 654 (Mo. 2012) (citing *Mo. Mun. League v. Carnahan*, 364 S.W.3d 548, 553 (Mo. App. W.D. 2011)). Such "context reference[s]" may include references to existing law with which a proposed measure would interact. *See McCarty v. Mo. Sec'y of State*, 710 S.w.3d 507, 516 (Mo. 2025); *Pippens v. Ashcroft*, 606 S.W.3d 689, 708 (Mo. App. W.D. 2020) ("Where a ballot measure's adoption would directly nullify or substantially alter existing legal rules, reference to the measure's effect on existing law may often be necessary to adequately inform voters of 'the legal and probable effects of the propos[al].'"); *Mo. Mun. League*, 364 S.W.3d at 553.

But even if limited reference to extrinsic matters may be appropriate in some cases, it is not appropriate *in this case* to rely on the sorts of geographic, demographic, and statistical information which would be necessary to determine the accuracy of the summary statement's assertions. The Secretary has himself consistently argued that the fairness and sufficiency of his summary statement should be evaluated based solely on the text of HB 1 and its predecessor HB 2909, and the official maps accompanying both bills. In addition, the Secretary actively prevented the Proponents from developing evidence concerning any extrinsic information or analyses which supported the assertions in the summary statement.

Thus, when Proponents sought to conduct discovery concerning the facts, documents, and methodologies upon which the Secretary relied to come up with his characterizations of HB 2909 and HB 1, the Secretary successfully blocked Proponents' discovery efforts. By doing so, the Secretary prevented Proponents from investigating, evaluating, and challenging any extrinsic materials on which the Secretary may have relied in formulating the summary statement.

When successfully moving to quash Proponents' deposition notice for a representative of the Secretary of State's office, the Secretary's counsel explicitly argued that the legislation and official maps were the ***only*** information the court or Proponents needed in order to assess the fairness and sufficiency of the summary statement:

> [T]he Secretary provided the factual underpinnings of the summary statement in his interrogatories responses, the 2022 map, House Bill 1 and the 2025 map. In other words the exact documents his office was supposed to examine, namely the underl[y]ing measure. This aligns with prior instruction from Missouri Courts, that whether a

> statement is unfair or insufficient involves a review of the language of the ballot summary and a comparison of the summary's language to the underlying measure.

The Secretary also agreed to a Joint Stipulation which limited the evidence he could introduce at trial to support the assertions in the summary statement. In the Joint Stipulation the Secretary once again took the position that the sufficiency of the summary statement should be determined based on a simple review and comparison of the text of HB 2909 and HB 1, and of the maps illustrating the districts those bills created.

Even in his appellate briefing, the Secretary has maintained the position that the fairness and sufficiency of the summary statement must be determined solely by reference to the 2022 and 2025 legislation, and the associated maps. The Secretary's Brief notes his "insistence that the only documents relevant to this litigation were the text and map of HB 1 and the 2022 Congressional plan." The Secretary's Brief also states that he has "consistently asserted that HB 1, the 2025 map, and the 2022 Congressional plan – documents widely available to the public – supported the summary statement. The Secretary has maintained this position throughout litigation." (Record citations omitted.)

In these circumstances, we limit our review to the text of the summary statement, and the legislation and maps adopted in 2022 and 2025.

B.

The summary statement's assertion that HB 1 "keep[s] more cities . . . intact" than HB 2909 cannot be proven or disproven by reference to the text of HB 1 and HB 2909, or by review of the official maps which §§ 128.469 and 128.479 directed the Revisor of Statutes to publish as appendices in the Revised Statutes of Missouri. The text of HB 1 and HB 2909 make no explicit reference to

municipal boundaries. While the official maps may include inset maps showing municipal boundaries in the Kansas City and St. Louis areas, those inset maps cannot establish, one way or the other, whether HB 1 "keep[s] more cities . . . intact" across the State as a whole.

To support the summary statement's assertion concerning municipal boundaries, the Secretary's proposed judgment suggested that the circuit court take judicial notice of "the locations of cities within the state," as well as "administrative records and maps hosted by the Office of Administration as well as the contents of the ArcGIS system." (ArcGIS is geographic information system software developed by Environmental Systems Research Institute, Inc. or "Esri".) The circuit court adopted this portion of the Secretary's proposed judgment.

Judicial notice cannot establish the accuracy of the summary statement, however. "Judicial notice is a rule of evidence. The facts of which a trial court does take judicial notice must be offered in evidence so as to become a part of the record in the case." *Randall v. St. Albans Farms, Inc.*, 345 S.W.2d 220, 223 (Mo. 1961) (citations omitted). During trial, the Secretary did not offer any of the information of which the circuit court took judicial notice – and if he had done so, it would arguably have violated the Secretary's agreement in the Joint Stipulation to limit the evidence on which he would rely. By failing to request that the circuit court take judicial notice *during trial*, the Secretary denied Proponents any opportunity to address, or attempt to rebut, that evidence. "A fact judicially noticed is not conclusive, . . . and may be rebutted as any other fact in evidence." *Jackson v. Cherokee Drug Co.*, 434 S.W.2d 257, 264 (Mo. App. 1968) (citation omitted). "Even though judicial notice be taken of a fact, the

opposing party has a right to offer rebuttal evidence." *Morrison v. Thomas*, 481 S.W.2d 605, 607 (Mo. App. 1972).

In addition, the circuit court made no *factual findings* based on the information vaguely described in its judgment. Even if the circuit court was entitled to take judicial notice of the matters identified in its judgment, "the facts noticed are only presumptively correct, and the issues involved remain questions of fact, rather than being changed into questions of law." *Id.* at 608. Determining how many cities are divided by HB 1 or HB 2909 does not appear to be a simple exercise. There are several hundred municipalities in Missouri, at least some of which straddle county lines. To determine how many cities are divided by each district map would require overlaying the boundaries of several hundred cities onto congressional districts which are defined by counties, voting districts, and U.S. Census tract-blocks. The circuit court's judgment made no findings concerning what such an analysis would have revealed.

The assertion in the summary statement that HB 1 "keep[s] more cities . . . intact" does not fairly and accurately describe the referendum petition. The circuit court erred by failing to remove the reference to municipal boundaries from the summary statement.

III.

Proponents also argue that the summary statement certified by the circuit court is unfair and insufficient due to its assertion that HB 1 "keep[s] more . . . counties intact." We disagree.

Both HB 2909 and HB 1 define Missouri's congressional districts by reference to "counties, voting districts (VTD), and tract-blocks (Block) as

reported to the state by the United States Bureau of the Census for the 2020 census." § 128.345.2. The eight districts defined by HB 2909 appear in §§ 128.461 to .468, while the districts defined by HB 1 appear in §§ 128.471 to .478. The statutes which define the districts identify the whole counties which appear in each district. Where counties are divided between more than one congressional district, the statutes identify the specific voting districts and tract-blocks from the split-county which appear in each congressional district.

Thus, from the text of the statutes alone, it is possible to determine which counties were divided by each bill. A review of the relevant statutes reflects that nine counties are divided between congressional districts by HB 2909 (Boone, Camden, Clay, Jackson, Jefferson, St. Charles, St. Louis, Warren, and Webster Counties), while only five counties are divided by HB 1 (Boone, Jackson, Jefferson, St. Louis, and Webster Counties). The text of HB 1 and HB 2909 demonstrates that the statement that HB 1 "keep[s] more . . . counties intact" is accurate.

It was appropriate for the Secretary to advise voters in the summary statement that HB 1 preserves more intact counties than the map it is intended to replace. In the specific context of congressional redistricting, the Missouri Supreme Court has recognized that

> [c]ounties are important governmental units, in which the people are accustomed to working together. Therefore, it has always been the policy of this state, in creating districts of more than one county (congressional, judicial or senatorial) to have them composed of entire counties. . . . We must hold that it was proper for the legislature to follow this policy. In fact, to do otherwise could lead to the most vicious kind of gerrymander.

Pearson v. Koster, 367 S.W.3d 36, 49 (Mo. 2012) (quoting *Preisler v. Hearnes*, 362 S.W.2d 552, 556-57 (Mo. 1962)). The Secretary could fairly decide that the preservation of existing county boundaries was a salient feature of HB 1, of which voters should be advised.

The circuit court did not err in rejecting Proponents' challenge to the summary statement's assertion that HB 1 "keep[s] more . . . counties intact."

IV.

Finally, Proponents challenge the assertion in the summary statement that the congressional boundaries established by HB 1 are "more compact" than those specified in HB 2909.

As Political Consultant testified at trial, the text of HB 1 and HB 2909, standing alone, do not permit any conclusion as to the compactness of the districts defined by the bills. The statutes enacted by HB 1 and HB 2909 merely list the counties, voting districts, and Census tract-blocks which comprise each of Missouri's eight congressional districts.

The circuit court held that the Secretary could fairly determine that the 2025 congressional districts were "more compact" than those adopted by the General Assembly in 2022, simply by looking at the official maps depicting the 2022 and 2025 districts. The court's judgment states that

> a visual comparison of the maps created by House Bill 1 and House Bill 2909 demonstrates the more compact nature of House Bill 1. The districts formed by House Bill 1 better resemble the squares, rectangles, and hexagons that indicate compactness. *See Faatz v. Ashcroft*, 685 S.W.3d 388, 394 (Mo. banc 2024), reh'g denied (Apr. 2, 2024).

The visual appearance of the congressional districts defined by HB 2909 and HB 1 cannot alone establish whether the districts contained in one map are "more compact" than those contained in the other. Article III, § 45 of the Missouri Constitution provides for the establishment of congressional districts. It states:

> 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.

In *Pearson v. Koster*, 367 S.W.3d 36 (Mo. 2012), the Missouri Supreme Court emphasized that the term "compact" as used in Article III, § 45 is a "vague" standard, and does not refer to the *physical shape* of a particular congressional district. The Court explained:

> Courts considering the definition of "compact" as used in the context of the reapportionment of districts have recognized two possible definitions. Some courts define "compact" as referring to "the physical shape or size of electoral districts," while others define it as referring to "closely united territory, a phrase not necessarily limited to physical dimensions." See Kurtis A. Kempter, Annotation, *Application of Constitutional "Compactness Requirement" to Redistricting*, 114 A.L.R.5th 311 (2003). A century ago, this Court adopted the latter definition, finding that "compact" for Missouri redistricting purposes means "closely united territory" and, in effect, rejecting the proposition that "compact" refers solely to physical shape or size. *See* [*Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. 2012) ("*Pearson I*")] (quoting *State ex rel. Barrett v. Hitchcock*, 241 Mo. 433, 146 S.W. 40, 61 (1912)).
>
> Because the word "compact" does not refer solely to physical shape or size, a visual observation, although relevant, is not the decisive factor in determining whether a district departs from the

> principle of compactness. In fact, scholars have recognized that "compactness" is a vague standard and have developed various statistical measures to be utilized in determining compactness, as shown by two articles that were admitted into evidence. One article states that "multiple measures should be used whenever possible," and that there is no threshold level that can be shown by statistics.

Id. at 48-49 (other citations and footnote omitted).

Judge Fischer's concurring opinion in *Pearson* emphasized even more strongly that visual observation of a district map is not alone sufficient to establish the compactness of congressional districts within the meaning of Article III, § 45. His opinion emphatically rejected the notion that "a pure cursory glance at the map, by itself, [was] sufficient to determine whether the constitutional standard of 'compact as may be' [was] met." *Id.* at 67 (Fischer, J., concurring). Judge Fischer explained that "the Map was insufficient evidence [of compactness because] it does not inform as to population density, history or traditional communities of interests, or other circumstances the legislature may consider when drawing districts." *Id.* at 70.

The article to which *Pearson* refers identifies a series of factors which may be relevant to determining whether legislative districts satisfy the "closely united territory" interpretation of "compactness." *See* 14 A.L.R.5th 311, at § 3(b). The article explains that the requirement of "closely united territory" is intended to produce districts which are "conducive to communication and interaction among representatives and constituents." *Id.* Accordingly, the requirement of "closely united territory" may be satisfied where the counties comprising a district are "situated along the chief lines of travel and commerce running through them and were compact in interests as well as in means of intercommunication"; on the other hand, districts may not consist of "closely united territory" "when

geographic barriers . . . severely limit communication and transportation within proposed districts." *Id.* (citation omitted).

The text of HB 2909 and HB 1, and the official maps published to illustrate the districts, do not provide a basis to determine whether the districts created by HB 1 are "more compact" than the districts defined in HB 2909. "Because the word 'compact' does not refer solely to physical shape or size, a visual observation, although relevant, is not the decisive factor in determining whether a district departs from the principle of compactness." *Pearson*, 367 S.W.3d at 48-49. Determining the relative compactness of the districts would require consideration of a variety of factors, including the various mathematical and statistical measures of compactness, as well as other facts which "closely unite" territories (such as the areas' interconnectedness in terms of transportation and communication, and other geographic and demographic factors). None of this can be determined by reference to the materials on which the Secretary's summary statement must be based.

The circuit court cited *Faatz v. Ashcroft*, 685 S.W.3d 388 (Mo. 2024), to justify its reliance on a visual inspection to determine compactness. But *Faatz* interpreted a different – and differently worded – provision of the Missouri Constitution. *Faatz* involved the establishment of legislative districts for the Missouri House of Representatives, *not* the United States House of Representatives. The establishment of State House districts is governed by Article III, § 3 of the Missouri Constitution, not by Article III, § 45 (which governs congressional districts). Unlike Article III, § 45, which requires that congressional districts be "composed of contiguous territory as compact . . . as

may be," Article III, § 3(b)(3) specifically defines "compactness" by reference to certain shapes:

> Subject to the requirements of subdivisions (1) and (2) of this subsection, districts shall be composed of contiguous territory as compact as may be. Areas which meet only at the points of adjoining corners are not contiguous. In general, compact districts are those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries.

While Article III, § 3(b)(3) defines "compactness" in terms of certain shapes, Article III, § 45 does not. This difference in wording is significant. As a general proposition, "'[c]onstitutional 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.'" *Robust Mo. Dispensary 3, LLC v. St. Louis Cnty.*, 721 S.W.3d 135, 138-39 (Mo. 2025) (quoting *Pestka v. State*, 493 S.W.3d 405, 408-09 (Mo. 2016)). With respect to statutes, "the legislature's use of different terms in different statutory provisions is presumed to be intentional and for a particular purpose." *Woody v. Clark*, 725 S.W.3d 638, 643 (Mo. App. W.D. 2025) (quoting *Jefferson ex rel. Jefferson v. Mo. Baptist Med. Ctr.*, 447 S.W.3d 701, 708 (Mo. App. E.D. 2014)); *see also*, *e.g.*, *Peoples v. Med. Protective Co.*, 584 S.W.3d 339, 345 (Mo. App. W.D. 2019). Given the different wording of the constitutional provisions, the reference to shapes to define compactness in Article III, § 3(b)(3) does not alter *Pearson*'s holding that – for purposes of Article III, § 45 – compactness does <u>not</u> "refer[ ] solely to physical shape or size," but instead refers to "closely united territory." 367 S.W.3d at 48.

An examination of HB 1 and HB 2909, as well as the maps illustrating the congressional districts established by both bills, cannot support a determination whether or not the districts created by HB 1 are "more compact" than the districts defined in HB 2909. On the contrary, it would require examination of a substantial body of geographical, demographic, and statistical information to determine the relative compactness of the districts established by the two pieces of legislation. For reasons explained above in § II.A, it would be inappropriate to rely on such extrinsic information to determine the fairness and sufficiency of the Secretary's summary statement.

In its judgment, the circuit court found that Political Consultant's "testimony was unhelpful to the Court" to establish whether or not the districts created by HB 1 were "more compact" than the districts defined by HB 2909. We generally defer to such assessments by a factfinder of the probative value of evidence. But our conclusion that "more compact" does not fairly describe HB 1 is not based on a determination whether HB 1's districts are, *in fact*, more or less compact than those in HB 2909. Instead, we conclude that, in asserting that HB 1's districts are "more compact" than those in HB 2909, the Secretary went beyond his statutory duty to summarize the measure, and improperly characterized the measure in a way which could only be supported by extrinsic information and analysis. This is a *legal* issue on which we owe no deference to the circuit court, not a *factual* question.

The statement that the districts created by HB 1 are "more compact" than those created by its predecessor does not fairly describe the legislation, and the circuit court erred by retaining that language in the summary statement.

Conclusion

Rule 84.14 authorizes this Court to "give such judgment as the [circuit] court ought to give"; the Rule also directs that, "[u]nless justice otherwise requires, the court shall dispose finally of the case." Accordingly, we certify the following summary statement to the Secretary of State for Referendum Petition 2026-R004:

> Do the people of the state of Missouri approve the act of the General Assembly entitled "House Bill No. 1 (2025 Second Extraordinary Session)," which repeals Missouri's existing congressional plan, and replaces it with new congressional boundaries that keep more counties intact?



Alok Ahuja, Judge

All concur.