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No. SC101581

In the
Supreme Court of Missouri

JAKE MAGGARD, and GREGG LOMBARDI,

Respondents,

v.

STATE OF MISSOURI, and DENNY HOSKINS, in his official capacity as Missouri Secretary of State,

Appellants,

PUT MISSOURI FIRST,

Intervenor-Appellant.

Appeal from a Bench Trial by the Circuit Court of Cole County
The Honorable Brian K. Stumpe, No. 25AC-CC09120

BRIEF OF RESPONDENTS

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INTRODUCTION

This appeal addresses whether a referendum campaign can freeze Missouri law before the Secretary—following decades-old statutory procedures—ensures that a referendum petition has (1) sufficient signatures and (2) is legal. §§ 116.120–116.150, RSMo. The straightforward answer is "no."

A referendum campaign cannot freeze laws—duly enacted by the People's representatives—merely by depositing boxes of unverified referendum petitions with the Secretary of State. As this Court held in *Kaesser v. Becker*, "when a solemn legislative act is sought to be set aside, it is our duty to see that the constitutional and statutory requirements have been substantially met by those seeking to refer the act." 243 S.W. 346, 352 (Mo. banc 1922). "[F]ull observance of substantial requirements must be exacted lest the referendum be made the instrument of injustice or oppression by a militant and well–organized opposition, much less in numbers than the required 5 per cent. of the legal voters in two-thirds of the congressional districts." *Id.*

Appellants would rather ignore these constitutional and statutory procedures altogether. In 114 pages of briefing, neither Appellants nor their amici meaningfully address the constitutional language that controls the merits of this case. Article III, Section 52(b) of the Missouri Constitution provides, "Any measure *referred to the people* shall take effect when approved by a majority of the votes cast thereon, and not otherwise." (emphasis added). Appellants never explain *when* or *how* a measure is "referred to the people." Mo. Const. art. III, § 52(b). Yet considering these foundational questions undercuts Appellants' arguments, especially in light of Appellants' concessions in the Circuit Court.

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For example, Appellants claim that a measure is effectively "referred to the people" when citizens *file* unverified referendum petitions with the Secretary of State. App. Br. 34. But at trial, Appellants twice conceded that citizens cannot unilaterally refer legislation to the people; only the "Secretary refers legislation" challenged by a referendum petition. Trial Tr. (Feb. 10, 2026), pp. 72:14–18, 110:4–23, 140:2–6. Indeed, Article III, § 52(a) provides that "[r]eferendum petitions shall be filed with the secretary of state." Citizens file "petitions to refer" with the Secretary, but the "Secretary of State . . . refer[s] [legislation] to a vote of the people." *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 703, 707 (Mo. banc 1952); *see also* Trial Tr. at 140:2–6 (Appellants agreeing with this understanding because "[t]he case law says what it says"). This point alone subverts Appellants' argument because it necessarily means that citizens cannot unilaterally "refer" legislation "to the people" merely by filing a referendum petition with the Secretary of State. Mo. Const. art. III, § 52(b). Rather, intervening action by the Secretary is necessary.

The next questions are *how and when* the Secretary may refer legislation for a referendum vote. The Missouri Constitution is silent on these questions, which is why Missouri statutory law has always supplied those details. Today, Chapter 116, RSMo—enacted in 1980 as an "overhaul of the initiative and referendum process," *Official Manual of the State of Missouri 1981–1982*, at 14 (Kirkpatrick, J.C. & Johnson, K.M. eds., 1982)—controls how and when the Secretary refers legislation for a vote in light of a referendum petition. Applying Chapter 116 here, the Secretary has not yet "referred" House Bill 1 "to the people," Mo. Const. art. III, § 52(b), because "[t]he Secretary of State has not yet issued

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a 'certificate' addressing the sufficiency of 2026-R004[1] under Section 116.150, RSMo." D174, Joint Stip. ¶ 19. Before the Secretary can do so, Chapter 116 lays out detailed procedures he must undertake to verify the legality and sufficiency of referendum petitions. §§ 116.120–116.150, 116.200, RSMo. The Secretary may certify a petition for a referendum vote only "[a]fter" he completes Chapter 116's intensive review process. §§ 116.150.1, 116.200.2. Here, all agree—and the Circuit Court found—that the Secretary has not made a finding of sufficiency under Chapter 116. *See* D238, ¶¶ 7, 15; D174, Joint Stip. ¶ 19. Thus, HB1 is not yet "referred to the people." Mo. Const. art. III, § 52(b).

Since the modern statutory regime was adopted in 1980, every court to consider the question at issue here has agreed that legislation challenged by a referendum petition suspends only *after* the Secretary makes a finding of sufficiency under Chapter 116. *See* D238, pp. 11–17; *Missouri Gen. Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *1 (E.D. Mo. Dec. 8, 2025); *Kaw Transp. Co. v. Whitmer*, No. CV181-778CC, at 2 (Cole Cnty. Cir. Ct. Sept. 29, 1981). For example, in *von Glahn*, another case about the *exact* referendum petition at issue here, the U.S. District Court for the Eastern District of Missouri found that HB1 cannot suspend until the Secretary makes—or a court orders the Secretary to make—a finding of sufficiency under Chapter 116:

> ***After*** the timely submission of a final petition, the Secretary of State must "examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116]" and verify whether there are enough valid signatures to trigger a statewide vote. *Id.* § 116.120. ***If*** the Secretary ***finds*** that the petition satisfies both requirements, *see id.* § 116.150, the challenged law is displaced and will only "take effect when approved by a majority of the votes cast thereon," Mo. Const. art. III, § 52(b).

[1] The referendum petition challenging HB1 "was denominated 2026-R004." D174, ¶ 13.

2025 WL 3514277, at *1 (emphasis added). Although *von Glahn* is directly on point, Appellants' brief fails to mention *von Glahn* even once.

Instead, Appellants rely mostly on dicta from a century ago, especially in *State ex rel. Kemper v. Carter*, 165 S.W. 773, 780–81 (Mo. banc 1914). But *Kemper v. Carter* was decided under markedly different law: a bygone era when the Secretary was prohibited from reviewing the validity of petition signatures, when his duties were "purely ministerial," and when petition circulators were solely responsible for verifying the validity of a petition's signatures, *id.*; § 6749, R.S. (1909), Supp. App. 11. That is not the law today, as Appellants explicitly agreed at trial. *See* Trial Tr., pp. 141:16–23, 143:3–145:4, 148:3–10. Given Appellants' concessions, the Circuit Court expressed "shock" that Appellants believed *Carter* to be binding despite the major changes in the law. *Id.*, p. 144:1–4; *accord Thomson v. Wyoming In-Stream Flow Comm.*, 651 P.2d 778, 785 (Wyo. 1982) (rejecting *Kemper v. Carter* and noting that "since the time frame of *State ex rel. Kemper v. Carter*, *supra*, there has been a reform of the initiative and referendum procedures in [Missouri]. [Missouri] now requires processing of petitions by the secretary of state."). Appellants now repeat that mistake on appeal.

Surveying the law and Appellants' concessions, the Circuit Court's merits holding was undoubtedly correct. But this Court need not even reach the merits because Appellants lack standing and their claims are unripe. Appellants allege a textbook generalized interest—the interest of "every Missouri citizen" in government "that observes the state Constitution." *Missouri Coal. for Env't v. State*, 579 S.W.3d 924, 927 (Mo. banc 2019); *Missouri State Conf. of N.A.A.C.P. v. State*, 730 S.W.3d 550, 561, 563 (Mo. banc. 2026).

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But that "does not invoke standing." *Id*. Also, Appellants claims are unripe because they hinge "on factors that [can]not be known and that [can]not be a part of the record until after the trial court issued its judgment." *Schweich v. Nixon*, 408 S.W.3d 769, 779 (Mo. banc 2013).

Finally, even setting aside standing, ripeness, and the merits, the *Purcell* principle bars a judicial change to Missouri's congressional maps in the middle of the ongoing 2026 elections. *See Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 460 S.W.2d 1, 2–3 (Mo. banc 1970); *Purcell v. Gonzalez*, 549 U.S. 1, 4–7 (2006). Both the U.S. Supreme Court and this Court have held that it is too late for courts to order changes to voting districts during candidate filing. In *Hadley*, for example, this Court held that it was inequitable to change district lines shortly before candidate filing closed. 460 S.W.2d 1 at 2–3 (adopting rule from *Reynolds v. Sims*, 377 U.S. 533, 583 (1964)). And back in December, the U.S. Supreme Court held that *Purcell* barred changes to Texas's congressional map for the 2026 elections during Texas's candidate filing period. *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025). Given that clear precedent, Appellants repeatedly admitted below that *Purcell* would cut against judicial intervention after February 24, 2026, when Missouri's candidate filing period opened. *See* D140, p. 16; Sched. Hearing. Tr. (Jan. 8, 2026), pp. 31:18–32:2, 38:25–39:4; MTD Hearing Tr. (Jan. 20, 2026), pp. 32:14–23, 35:19–36:18; *see also* Trial Tr., p. 81:6–8 ("[W]e submit there is no *Purcell* problem now because we've asked for a resolution by February 24th."). Indeed, that is why Appellants demanded—and the State agreed to—rushed resolution of this action. Trial Tr., pp. 77:4–12. Now, the candidate filing period closed almost two months ago; candidates have raised substantial amounts of

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money and campaigned based on House Bill 1's map. *See Campaign Finance Data: Raising by the numbers*, Fed. Election Comm'n (accessed Apr. 27, 2026).[2] Candidates, election officials, and voters have relied on House Bill 1 being in effect for several months. *See Democratic Nat'l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in grant of stay) ("When an election is close at hand, the rules of the road should be clear and settled."). Under such circumstances, it is far too late for courts to alter the congressional lines for 2026, and this Court should not permit Appellants to flip positions now that their arguments below foreclose relief on appeal.

This Court should affirm.[3]

STATEMENT OF THE FACTS

I. The General Assembly enacts HB1, and People Not Politicians ("PNP") starts a campaign seeking a referendum vote on HB1.

On September 12, 2025, the General Assembly passed House Bill 1, an Act redistricting Missouri's eight federal congressional districts. D174, Joint Stip. ¶¶10–11. HB1 passed with strong majority votes by f the People's elected representatives—21 to 11 in the Senate and 90 to 65 in the House of Representatives. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025); Mo. House J. 37–38 (2d Extra. Sess.,

[2] https://www.fec.gov/data/raising-bythenumbers/?office=H

[3] Intervenor-Respondent's brief also provides two additional bases to affirm: This case involves an impermissible political question, and Appellants seek an improper declaratory judgment. D157, pp.13–17; D214, pp. 3–4; D238, pp. 8–11. Intervenor-Respondent argued these points below, D157, pp.13–17; D214, pp. 3–4, and the Circuit Court agreed with these arguments, D238, pp. 8–11. The State also agrees that these are additional bases to affirm, though—to avoid redundancy—focuses its brief on standing, ripeness, the merits, and the *Purcell* principle.

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103d Gen. Assembly, Sept. 9, 2025). But because of the map's impact on federal congressional elections, large donors and out-of-state interests took notice. *See, e.g.*, D202, Jason Rosenbaum, *Democratic National Committee Will Contribute to Blocking Missouri Congressional Map*, St. Louis Public Radio (Sept. 29, 2025). These donors funneled money to People Not Politicians ("PNP"), an organization established solely to oppose Missouri's new HB1 map. *See id.*; D183, von Glahn Dep. Tr., pp. 8:16–9:16, 54:23–56:25.

To achieve this objective, PNP launched a petition campaign hoping to trigger a referendum on the new HB1 map. *See* von Glahn Dep. Tr., p. 9:9–16; D174, Joint Stip. ¶¶ 13–15. PNP's campaign had two main objectives: First, PNP wanted to prevent the new HB1 map from governing Missouri's congressional elections in the long term, including in the 2028 and 2030 elections. *See* D183, von Glahn Dep. Tr., pp. 9:9–16. Second, as relevant for this case, PNP thought it could suspend the new HB1 map in the short term as to the 2026 election. *See id.*, pp. 31:1–12; D188, Press Release, *People Not Politicians* (Dec. 9, 2025). PNP believed that it could achieve its short-term objective merely by *filing* a petition for a referendum on HB1. *See* D188, Press Release, *People Not Politicians* (Dec. 9, 2025).

II. To obtain dismissal of a federal case, PNP argued that HB1 would remain effective until the Secretary certified PNP's referendum petition or a court ordered him to do so. The federal court agreed.

Knowing PNP's objective, the Missouri General Assembly, the Secretary of State, and the State of Missouri decided to act. On October 15, 2025, they sued PNP in the U.S. District Court for the Eastern District of Missouri. *See* Complaint, ECF Doc. 1, *Missouri Gen. Assembly v. von Glahn*, No. 4:25-cv-1535 (E.D. Mo., Oct. 15, 2025). Among other

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things, the State sought declaratory and injunctive relief establishing that a referendum on a congressional map would violate the U.S. Constitution's Elections Clause, U.S. Const. art. I, § 4, and that the Missouri Constitution does not authorize referenda on congressional maps. *See id.* ¶¶ 1–7, 64–74. To establish standing, the State alleged: "*If* a referendum petition gains enough signatures to qualify for a vote before the people," HB1 could become "frozen pending the public vote" and the General Assembly would suffer the injury of "los[ing] its authority over redistricting pending that public vote." *Id.* ¶ 48 (emphasis added) (citing Mo. Const. art. III, § 52(b)).

In response, PNP moved to dismiss and argued, among other things, that the State lacked standing. *See von Glahn*, 2025 WL 3514277, at *2. The federal district court then held a hearing, and the court paid special attention to the State's alleged injury for purposes of standing. The court questioned the parties extensively about whether PNP could unilaterally suspend the new HB1 map merely by *filing* its referendum petition, or whether the Secretary of State played an intervening role in reviewing the petition for sufficiency. In an early colloquy with the State's counsel, the court asked, "The map would be frozen post certification; is that right?" D203, Tr., pp. 36:1–2. The State candidly admitted the existence of "some uncertainty" on the question, but acknowledged—*even though* it harmed the State's standing argument—that "it is only after final certification of the signatures that the map would be frozen." *Id.*, pp. 36:3–14.

Judge Bluestone then asked PNP for its position on the same question: "[T]he freeze wouldn't occur on the new maps until after the certification. Is that right?" *Id.*, pp. 44:25–45:1. At first, PNP repeatedly suggested that the mere submission of unverified signatures

should freeze HB1, *id.*, pp. 45:2–48:7—precisely the position Appellants take here. But after Judge Bluestone repeatedly suggested that position might cost PNP its federal case, PNP's counsel agreed with Judge Bluestone that "the law would go into effect" even after PNP's submission of the referendum petition. *Id.*, pp. 48:9–50:10. Counsel for the State and Judge Bluestone later confirmed exactly what PNP conceded:

> Mr. Capozzi: It's also still quite unclear to me what the status of the map will be when they ***submit*** their signatures. I think eventually, my friend conceded, that the map stays in effect unless and until they can win a state court challenge ...
>
> The Court: That's where I think everybody wound up. And Mr. Hatfield is nodding his head yes. I do think that's very important. And I think, as we talked about earlier, that the arguments for dismissal will be very flat if that weren't the case. But I do think—I mean, it is ***abundantly clear***, though, from the record that's been developed at this hearing, that that's ***their*** position, right or wrong.

Id., pp. 52:14–53:1 (emphasis added).

In light of PNP's "abundantly clear" concessions, *id.*, the district court granted the motion to dismiss. *von Glahn*, 2025 WL 3514277, at *1. The court's order emphasized, "Critically, PNP concedes that Plaintiff Denny Hoskins has the authority as Secretary of State to reject their petition . . . Moreover, PNP agrees that, absent a successful court challenge, this determination would . . . prevent the displacement of the new map." *Id.* Later in its order, the court again noted PNP's concession that "the new [HB1] map would go into effect." *Id.*, at *4 n.4. The district court also "expressly found that PNP affirmatively waived" any position "to the contrary in future litigation (to say nothing of the ethical ramifications of counsel breaching their duty of candor to this tribunal)." *Id.* Consistent with that concession, Judge Bluestone made clear he agreed that HB1 could not be frozen until *after* the review process established by Chapter 116:

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> ***After*** the timely submission of a final petition, the Secretary of State must "examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116]" and verify whether there are enough valid signatures to trigger a statewide vote. *Id.* § 116.120. ***If*** the Secretary ***finds*** that the petition satisfies both requirements, *see id.* § 116.150, the challenged law is displaced and will only "take effect when approved by a majority of the votes cast thereon," Mo. Const. art. III, § 52(b).

Id. (emphasis added). The court's order therefore left the Secretary with breathing room to verify whether PNP's petition had adequate signatures before making a final decision on whether the referendum complied with the federal and Missouri constitutions. *See id.*, at *2 n.2. And in the interim, the court's order made clear that the State would not be injured because its congressional map would not be frozen. *Id.*, at *3–5.

III. PNP files its referendum petition on December 9, 2025, and demands immediate suspension of HB1—despite PNP's prior representations and the federal district court's order.

PNP filed its referendum petition with the Secretary of State on December 9, 2025—the day after the federal court's order. D174, Joint Stip. ¶ 15. But despite PNP's "abundantly clear" representations in federal court, D203, Tr., pp. 52:14–53:1, PNP switched positions publicly and claimed that its mere filing of the referendum petition unilaterally suspended the HB1 map. A Press Release on PNP's website stated, "HB1 Cannot Take Effect Without a Statewide Vote" and "[o]nce signatures are submitted, HB1 must be paused until Missourians vote on it at the ballot box." D188, p. 1, Press Release, *People Not Politicians* (Dec. 9, 2025). PNP also promised that a lawsuit would be brought if the Secretary did not immediately suspend the HB1 maps. *See id.*, p. 2; D196, p. 3, Jason Rosenbaum, *Missouri's stack of redistricting lawsuits expected to grow over whether new*

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map is in effect, St. Louis Public Radio (Dec. 16, 2025).

Despite PNP's threats of legal action, "HB1 was codified as Sections 128.345, 128.346, 128.348, 128.471, 128.472, 128.473, 128.474, 128.475, 128.476, 128.477, 128.478, and 128.479, RSMo, with an effective date of December 11, 2025." D174, Joint Stip. ¶ 18.

IV. Appellants Maggard and Lombardi filed this case and repudiated PNP's concession in federal court that House Bill 1 would take effect.

Despite PNP's repeated threats to sue, it did not; and it has not intervened in this case. Instead, Appellants Jake Maggard and Gregg Lombardi—two registered voters who signed PNP's referendum petition—filed this lawsuit. D124; D174, Joint Stip. ¶¶ 1, 3–4, 6. Despite the federal court's order and PNP's concessions, Maggard and Lombardi alleged that HB1 must freeze before the Secretary reviews the factual and legal sufficiency of PNP's referendum petition. *See* D124, ¶¶ 15–46.

Appellants, in their own words, are individual voters who object to HB1's "current effectiveness" statewide. D164, p. 9. Both Appellants admitted during their depositions that they are not congressional candidates, and they articulated no particularized application of HB1 to them individually. *See* D182, Lombardi Dep. Tr., p. 15:18–20; D181, Maggard Dep. Tr., pp. 14:23–15:1. Rather, Lombardi admitted during his deposition that he is a plaintiff because he is "a very strong believer in the rule of law," and he "believe[s] that the Missouri Secretary of State is not following the rule of law, and [he] find[s] that highly offensive." D182, Lombardi Dep. Tr., p. 13:2–7.

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V. Appellants demanded expedited resolution by the candidate filing period, which opened on February 24, 2026. The State accommodated this demand.

Appellants demanded expedited resolution before the filing period for congressional candidates opened on February 24, 2026. As Appellants themselves repeatedly argued below, expedited resolution was necessary because the *Purcell* principle would foreclose judicial relief after the candidate filing period closed. *See* D140, p. 16; Sched. Hearing. Tr. (Jan. 8, 2026), pp. 31:18–32:2, 38:25–39:4; MTD Hearing Tr. (Jan. 20, 2026), pp. 32:14–23, 35:19–36:18; *see also* Trial Tr., pp. 77:4–12, 81:6–8. And below, the State accommodated Appellants' urgency at every turn. In less than two months, the State filed and argued a motion to dismiss, conducted extensive written discovery, took four depositions, prepared trial briefs, participated in a bench trial, and submitted proposed post-trial orders. *See, e.g.*, D124; D130; D131; D181; D182; D183; D184; D185; D186; D190; D191; D192; D193; MTD Hearing Tr. (Jan. 20, 2026); Trial Tr. (Feb. 10, 2026).

Appellants filed their lawsuit on December 23, 2025—two days before Christmas. D124. The State's counsel worked over the holidays, and the State moved to dismiss and served discovery before the Circuit Court's first scheduling hearing on January 8, 2026—a much faster timeframe than is required by the rules. *See* D130; D131; Sched. Hearing. Tr. (Jan. 8, 2026), pp. 43:13–18. The shadow of the February 24 candidate filing period was present even at the Circuit Court's very first hearing on January 8. Appellants' counsel even said it was necessary to resolve any *appeal* before February 24, 2026. Sched. Hearing. Tr. (Jan. 8, 2026), pp. 31:18–32:2, 38:25–39:4. Counsel told the court, "[W]e're doing this because we want to make sure the Court has time to make a decision *and that there's time*

for an appellate review before we start to get into the calendar. And the calendar is at the end of date filing period starts February 24th." *Id.*, pp. 31:21–25 (emphasis added). Later, Appellants' counsel also acknowledged that the State did not dispute the importance of February 24th: "[Y]ou also didn't hear from either counsel any dispute about important dates here. February 24th is going to come quicker than we know it. Our goal is to get this case resolved *with time to go up on appeal* well in advance of that deadline." *Id.*, pp. 38:25–39:4 (emphasis added).

Despite their demand for urgency, Appellants did not move for a preliminary injunction until January 14, 2026—over three weeks after they filed this action. *Compare* D124, *with* D139; D140. In their brief supporting the motion, Appellants demanded expedited review by expressly conceding that the *Purcell* principle would foreclose relief when the candidate filing period opened. D140, p. 16. Appellants stated:

> [T]ime is of the essence: The filing period for congressional candidates begins on February 24, 2026, *see* § 115.349(2), RSMo, meaning the contours of Missouri's operative congressional map must be clarified—and Defendants' erroneous interpretation of the referendum laws must be corrected—*as soon as possible*. Otherwise, the People's referendum rights will be subject to another legal impediment: "the *Purcell* principle," which "requires courts to favor the status quo in a legal dispute during the lead-up to an election." MTD 17 (footnote omitted) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)).

Id. (emphasis in original). Notwithstanding this concession about *Purcell*, Appellants later withdrew their motion for preliminary injunction because the parties agreed to a trial date in February 2026. D248.

Also, at a motion-to-dismiss hearing on January 20, 2026, Appellants again invoked *Purcell* and the candidate filing period to support their demand for expedited proceedings.

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See MTD Hearing Tr. (Jan. 20, 2026), pp. 32:14–23, 35:19–36:18. For example, even though neither Appellant is a candidate, D182, Lombardi Dep. Tr., p. 15:18–20; D181, Maggard Dep. Tr., pp. 14:23–15:1, Appellants argued that "individual representative[s] . . . need to know" whether the HB1 map is valid "by February 24 when the filing period begins." MTD Hearing Tr. (Jan. 20, 2026), pp. 35:19–36:1. They explained that "a congressional map has a certain patent tendency to it that it eventually gets locked in. That's why we need to address this as soon as possible." *Id.*, 36:8–11.

Then, at trial, Appellants again discussed *Purcell* in relation to the candidate-filing period. *See* Trial Tr. (Feb. 10, 2026), p. 81:6–8. They explicitly argued: "[W]e submit there is no *Purcell* problem now because we've asked for a resolution by February 24th." *Id.* Even the Circuit Court itself memorialized Appellants' argument on the record, saying: "This whole time we've been arguing or been discussing the need for February 24 to expedited discovery, do all of these things in a rush manner because there's importance of February 24th." *Id.*, p. 77:4–12. In short, throughout the litigation below everyone—Appellants, the State, Intervenor, and the Circuit Court—understood that February 24, 2026 was the critical date by which Appellants needed to secure a favorable judicial order. The State therefore accommodated Appellants' urgency at every step of this case.

VI. Appellants conceded several important points at trial, and the Circuit Court granted judgment for the State on five independent bases.

This case proceeded to a bench trial on February 10, 2026. Because of the need for expedited resolution, the parties did not call any witnesses at trial. Rather, the parties submitted exhibits and deposition transcripts. D231, ¶¶ 3–5; *see* D185–D201; D216–

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D230. These materials were then admitted at trial and referenced by the parties throughout their closing arguments. *See* Trial Tr., pp. 43:6–155:19; D238, ¶ 18.

Contrary to Appellants' characterizations, trial included disputed legal *and* factual issues. For example, Appellants attempted—and failed—to prove through "exhibits" that the Secretary of State is intentionally delaying certification to ensure that the HB1 map stays in effect by the 2026 election. *See* Trial Tr., p. 79:15–23 (Appellants' counsel arguing that "delay is happening here" as shown by "exhibits in the record," including media articles, "which have now been admitted"). The State and the Intervenor vigorously disputed these characterizations, noting that "the Secretary very promptly referred this referendum to the 116 local election districts," and it was unreasonable to suggest "that the local election authorities"—of varying parties—"are dragging their feet" at the Secretary's direction. *Id.*, pp. 99:1–100:1, 136:9–15. Also, as Intervenor-Respondent argued at trial, "[t]here are statutory deadlines to ensure there's not delay," and the Secretary has met every applicable deadline throughout this process. *Id.*, p. 137:5–6.

Next, as to the legal questions, everyone agreed that the central provision at issue is Article III, Section 52(b), which provides for the suspension of legislation when it is "referred to the people." Mo. Const. art. III, § 52(b). In their closing argument, Appellants made two important concessions related to Section 52(b). First, even though Appellants claim that legislation is suspended through a citizen's mere filing of a referendum petition, Appellants simultaneously conceded that citizens cannot unilaterally "refer[]" legislation "to the people." Mo. Const. art. III, § 52(b). Rather, Appellants acknowledged that "*only* the Secretary can refer something to the people. We don't disagree with that. The

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Secretary refers legislation to the people." Trial Tr., p. 72:14–18 (emphasis added). The State, in its closing argument, noted the significance of Appellants' concession:

> The key language in this case is 'referred to the people.' What does it mean for a measure to be referred to the people? Who does the referring? How does the referring happen? When does the referral happen? The State's position is that, a matter can *only* be referred to the people by the Secretary. And Plaintiffs, to their credit, agree with that. My friend—*and he can correct me if I'm wrong*—expressly conceded that it is the Secretary who has to do the referring under this provision.

Id., p. 110:4–17 (emphasis added). In rebuttal, Appellants affirmed that the State understood their concession correctly, adding: "The case law says what it says, and it uses the verb 'refers' with the subject, the Secretary." *Id.*, p. 140:2–6. Thus, all parties agreed citizens cannot unilaterally refer legislation; the Secretary's referral is an essential step before a measure is "referred to the people." Mo. Const. art. III, § 52(b).

Second, Appellants' conceded that their leading case, *Kemper v. Carter*, was "[u]doubtedly" decided during an era when Missouri's referendum procedure was different—not just because of a new state constitution in 1945 but also because Chapter 116, RSMo, "was enacted in the interim." Trial Tr. at 141:16–23. Indeed, the Circuit Court expressed "shock" that Appellants believed *Kemper v. Carter* to be on point given the substantial differences between the then-existing statute and the modern Chapter 116. *Id.*, pp. 143:3–145:3. In particular, the Court faulted Appellants for not disclosing that, at the time of *Kemper v. Carter*, petition circulators could *self-certify* the validity of signatures whereas, today, the Secretary must check the validity of signatures. *Id.*, pp. 143:21–145:3.

Also, for the first time in their rebuttal argument, Appellants suggested that Chapter 116 would be unconstitutional if—as its text suggests—it postpones certification (and thus

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referral) to the end of the statutory review process for signatures. As Appellants' counsel put it below: "[I]f [Chapter 116] was interpreted in a way that allows suspension — the delayed suspension, we have a big constitutional problem." *Id.*, p. 151:22–25.

A month-and-a-half later, the Circuit Court granted judgment to the State and Intervenor-Respondent. D238, p. 18. The court's order started by making several important factual findings. First, the court found that "[t]he Secretary of State has not yet issued a certificate addressing the sufficiency of Referendum Petition 2026-R004 under Section 116.150, RSMo." D238, ¶ 7. Likewise, the court found that "[t]he sufficiency of Referendum Petition 2026-R004 has not been determined by the Secretary of State." *Id.*, ¶ 15. Finally, the court found that "Plaintiffs offered no evidence regarding taxpayer standing or standing as the proponent of the referendum petition." *Id.*, ¶ 9.

The court then offered five separate and independently sufficient bases for its judgment. *Id.*, pp. 3–18. *First*, the court held that Appellants lack standing because they assert only a generalized grievance. *Id.*, pp. 3–6. This holding flowed from the court's factual finding that "Plaintiffs offered no evidence regarding taxpayer standing or standing as the proponent of the referendum petition." *Id.*, ¶ 9. Relying on this Court's *Missouri Coalition for Environment* opinion, 579 S.W.3d at 927, the Circuit Court emphasized that "Plaintiffs have failed to demonstrate that they suffer a personal injury distinct from the public at large" and a "plaintiff's interest must be affected more distinctly and directly than the interest of the public generally." *Id.*, p. 6. The court emphasized that "every Missouri citizen has an abstract interest in the proper administration of referendum procedures, and finds that such generalized grievances shared equally by all citizens cannot confer standing

on individual plaintiffs." *Id.*

Second, the court held that Appellants failed to establish ripeness. *Id.*, pp. 6–8. At trial, even Appellants acknowledged that if a referendum petition is "legally insufficient, that means that the measure was never properly referred to the people." Trial Tr., pp. 58:23–59:2. Thus, the court explained that "[t]he entire premise of Plaintiffs' case rests on whether the submitted petitions are legally sufficient—a determination the Secretary has not yet made." D238, p. 7. The court continued, "[U]ntil the Secretary makes a sufficiency determination, there is no way of knowing whether the referendum [petition] has any legal effect. Plaintiffs' claims at hand are dependent on factors that cannot be known and that cannot be part of the record until after the Secretary's determination." *Id.*, p. 8. The court also emphasized that, in *Schweich v. Nixon*, 408 S.W.3d at 779, "the Missouri Supreme Court held that claims dependent on factors that could not be known and that could not be part of the record until after the court issued its judgment were not ripe." D238, p. 7.

Third, the court held that Appellants' claims raised an impermissible political question, and "[q]uestions, in their nature political, … can never be made in [a] court." *Id.*, pp. 8–10 (quoting *Marbury v. Madison*, 5 U.S. 137, 170 (1803)). The court found that, before certification of a referendum petition, the Constitution and the General Assembly's statutes vest the Secretary alone with authority to opine on the sufficiency of a referendum petition. *Id.* (citing Mo. Const. art. IV, § 14); Mo. Const. art. III, § 52(a); §§ 116.150, 116.200, RSMo. Thus, "[m]aking a threshold determination of whether a referendum has suspended legislation before the executive has made a sufficiency determination would constitute an independent resolution of a political question. . . . [A]n independent resolution

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would necessarily reflect a lack of respect for the roles assigned to the legislative and executive branches under Missouri's constitutional structure." D238, pp. 9–10.

Fourth, the court found that Appellants sought an improper declaratory judgment. *Id.*, pp. 10–11. The court explained that "[t]he lack of an adequate remedy at law is a prerequisite to relief via declaratory judgment." *Id.*, p. 10 (citing *City of Kansas City v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014)). But here, the law already creates an adequate remedy for Appellants through § 116.200, RSMo, which "establishes procedures for judicial review of the Secretary's certification decisions." *Id.*

Finally, the court addressed the merits, concluding that "HB1 is not suspended by the mere submission of Referendum Petition 2026-R004." *Id.*, pp. 11–18. The court's analysis started with the text of the relevant constitutional provisions: Article III, Sections 52(a) and 52(b). *Id.*, pp. 11–12. The court emphasized that "[t]he constitutional signature threshold would be rendered meaningless if automatic suspension occurred based on mere physical delivery of petition boxes, regardless of actual signature sufficiency." *Id.*, p. 12. The Court also sensibly noted that "[w]ithout verification requirements, any group could suspend legislation merely by submitting boxes of invalid signatures, signatures of unregistered voters, forged names, or other fraudulent submissions." *Id.*, p. 15. "Clearly," the court continued, "the framers of Missouri's Constitution could not have intended such an easily exploited system that would allow bad-faith actors to paralyze the legislative process." *Id.*

The court also emphasized that "[t]he verification and certification process is not a mere administrative formality to be completed after suspension has already occurred; it is

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the substantive mechanism by which legal sufficiency is established under the Constitution, thereby triggering suspension." *Id.* The court noted that even under the 1914 *Kemper v. Carter* opinion—where "sufficiency was assumed because it was not contested"—only a "legal and sufficient" referendum petition could suspend state law. *Id.*, pp. 12, 15 (citing 165 S.W. at 779). The Circuit Court also noted that, as Appellants' conceded at trial, Missouri's referendum procedure changed in 1980 when "the General Assembly created a verification process and vested it in the Secretary of State." *Id.*, p. 13.

The Circuit Court also emphasized this Court's holding in *Kaesser v. Becker*, which exalted the importance of close adherence to "constitutional and statutory requirements . . . by those seeking to refer" legislation. *Id.*, p. 16 (quoting *Kaesser*, 243 S.W. at 352). The Circuit Court then concluded, "Until the Secretary issues a sufficiency determination—and until any judicial review of that determination is complete under Section 116.200—HB 1 remains effective under Article III, Section 31 of the Missouri Constitution." *Id.*, p. 17. "Plaintiffs' interpretation that automatic suspension occurs upon mere submission of a referendum petition conflicts with the plain text of the Missouri Constitution, the statutory framework of Chapter 116, and controlling Missouri precedent." *Id.* The Court then entered judgment on each of the five, independent bases. *Id.*, p. 18.

Appellants appealed almost immediately. D239. To accommodate Appellants, the Circuit Court, "[o]n its own motion," "shorten[ed] the 30-day period provided for in Rule 75.01." D246. The Court also converted its judgment into an "immediately appealable" final judgment under Rule 81.045. *Id.*

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STANDARD OF REVIEW

Appellants claim that this Court must review every question on appeal *de novo*. *See* App. Br. 22, 27, 30, 32, 34. But that is inaccurate. Just last month, this Court confirmed that, although it "'reviews the issue of standing *de novo*,'" "'[w]hen there is contested evidence, this Court will affirm the circuit court's factual findings unless there is no substantial evidence to support the finding or the finding is against the weight of the evidence.'" *Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 560 (first quoting *Missouri Coal. for Env't*, 579 S.W.3d at 926; then quoting *Faatz v. Ashcroft*, 685 S.W.3d 388, 400 (Mo. banc 2024)).

This case also implicates the constitutional validity of HB1 and Chapter 116, RSMo. The Circuit Court's legal conclusions about "a statute's constitutional validity" are reviewed *de novo*. *E.N. v. Kehoe*, 726 S.W.3d 679, 685 (Mo. banc 2026). But "[t]his Court presumes statutes constitutional and will find otherwise only if the statute 'clearly contravene[s] a constitutional provision.' The burden of proof is on the party challenging the statute's constitutional validity." *Id.* (quoting *St. Louis Cnty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 712 (Mo. banc 2011)).

Finally, this Court must defer to all the Circuit Court's factual findings and must resolve all factual disputes in favor of the State and Intervenor-Respondents. "In reviewing a court-tried case, this Court accepts all evidence and inferences therefrom in the light most favorable to the prevailing party and disregards all contrary evidence. Great deference must be given to the circuit court's resolution of conflicts in evidence." *Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 560 (cleaned up). Rule 73.01(c) also clarifies that "[a]ll

fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached." Mo. Sup. Ct. R. 73.01(c). Thus, even where the Circuit Court did not make a specific factual finding, this Court must view any disputed evidence in the light most favorable to the State and Intervenor-Respondents. *Id.*; *see also Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 560 ("[T]his Court accepts all evidence and inferences therefrom in the light most favorable to the prevailing party …").

ARGUMENT

The Court should affirm for six reasons, each sufficient on its own to support the Circuit Court's judgment. *First*, Appellants lack standing because they assert only a generalized interest in constitutional governance. *Second*, Appellants' claims are unripe because they can only speculate about the sufficiency of PNP's referendum petition. *Third*, on the merits, Appellants brush aside the Missouri Constitution, Missouri law, and applicable precedent. Only Respondents offer a coherent understanding of these authorities. Indeed, even Appellants conceded below that citizens cannot unilaterally "refer[]" legislation "to the people." Mo. Const. art. III, § 52(b). Only the Secretary can refer legislation for a vote, and Chapter 116 prohibits the Secretary from making that referral until he reviews PNP's referendum petitions for legality and sufficiency. *See* §§ 116.120–116.150, 116.200, RSMo. *Fourth*, the *Purcell* principle forecloses judicial intervention now that the candidate-filing period has closed. Appellants understand this, as shown by their admissions to the Circuit Court below. *Fifth*, this case is not justiciable because Appellants seek a ruling on a political question. *Sixth*, Appellants seek an

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improper declaratory judgment. The Court should affirm if it agrees with any of these six points.

I. Appellants lack standing because they assert only generalized grievances. (Response to Point Relied On I)

A "mere difference of opinion or disagreement or argument on a legal question affords inadequate ground for invoking the judicial power." *City of Joplin v. Jasper Cnty.*, 161 S.W.2d 411, 413 (Mo. Div. 2 1942) (citation omitted). Rather, courts can hear actions only by plaintiffs who have standing. *Id.* "Standing requires that a party have a personal stake arising from a threatened or actual injury." *Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 561 (quoting *Schweich*, 408 S.W.3d at 774). And "[t]he generalized interest of all citizens in constitutional governance does not invoke standing." *Missouri Coal. for Env't*, 579 S.W.3d at 927 (internal quotation omitted); *accord Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 563.

Here, the Circuit Court found that Appellants are asserting only a generalized grievance. D238, pp. 4–6. The court also found, as a factual matter, that "Plaintiffs offered no evidence regarding taxpayer standing or standing as the proponent of the referendum petition." *Id.*, ¶ 9. These holdings are correct.

Even a casual look at Appellants' Petition makes clear that they assert only generalized injuries. D124. Appellants merely claimed that they and "the People" of Missouri are injured by HB1's "current effectiveness" across Missouri "notwithstanding the submission of the signed petitions." D164, pp. 4–5, 7–9; D124. And when asked during his deposition why he agreed to be a plaintiff in this lawsuit, Appellant Lombardi

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all but admitted this point, stating that he is "a very strong believer in the rule of law," and he "believe[s] that the Missouri Secretary of State is not following the rule of law, and [he] find[s] that highly offensive." D182, Lombardi Dep. Tr., p. 13:2–7. Lombardi continued, "[W]hen I feel that something is wrong, being done wrong, I want to stand up and stand against the thing that I feel is being done wrong." *Id.*, p. 13:22–24.

It is hard to imagine a more quintessential generalized grievance. Indeed, this alleged injury is nearly identical to the asserted injury that this Court found insufficient in *Missouri Coalition for the Environment*, 579 S.W.3d at 927. Here, as there, the "generalized interest of all citizens in constitutional governance" is insufficient for standing. *Id.* (internal quotation omitted); *see also Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 561, 563.

The U.S. Supreme Court's decision in *Gill v. Whitford*, 585 U.S. 48 (2018), is instructive. There, "Wisconsin voters" challenged Wisconsin's redistricting plan. *Id.* at 55. The plaintiffs identified themselves as "supporters of the … Democratic Party," and they substantively challenged the statewide map—claiming that it unfairly diminished their voting power. *Id.* The Supreme Court held that the plaintiffs lacked standing because they failed to demonstrate a particularized injury. *Id.*, at 65–69. The Court emphasized that a "plaintiff who complains of gerrymandering, but who does not live in a gerrymandered district, 'assert[s] only a generalized grievance against governmental conduct of which he or she does not approve.'" *Id.*, at 66 (citation omitted). In *Gill*, "not a single plaintiff sought to prove that he or she lives in a cracked or packed district." *Id.*, at 69. Instead, they relied on assertions of a "statewide injury" shared by all voters—an improperly

generalized interest insufficient for standing. *Id.*

So too here: Appellants offer only a "theory of statewide injury" not particularized to them. *Id.*; *see* App. Br. 24. Like the U.S. Supreme Court, this Court "is not responsible for vindicating generalized partisan preferences." *Gill*, 585 U.S. at 72. As in *Gill*, this Court should reject Appellants' standing.

Appellees make a few arguments in response—but each lacks merit. *First*, Appellants insist that HB1's statewide efficacy harms their individual referendum rights under Article III, Sections 49, 52(a), and 52(b). App. Br. 23–25. But even assuming Appellants are right on the merits, their supposed injury is shared with all registered Missouri voters. *Cf. Missouri Coal. for Env't*, 579 S.W.3d at 927. That injury is thus no different than the *Gill* plaintiffs' asserted interest in a lawful congressional map. 585 U.S. at 69. What's more, both this Court and the U.S. Supreme Court recently reaffirmed that voters do not have standing to challenge election rules merely because they plan to vote in an upcoming election. *See Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 561–62; *Bost v. Illinois State Bd. of Elections*, 146 S. Ct. 513, 520 (2026).

Second, Appellants cite *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016), which noted in dicta that "[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance." App. Br. 24. But Appellants leave out the very next sentence. *Spokeo* continues, "The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm." *Spokeo*, 578 U.S. at 339 n.7. Of course, *Spokeo* is correct. But in a mass tort, each Plaintiff suffers a concrete (and often physical) injury to "'a pecuniary or

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personal interest directly at issue.'" *Missouri Coal. for Env't*, 579 S.W.3d at 926 (quoting *Schweich*, 408 S.W.3d at 775). That is nothing like the "generalized interest of all citizens in constitutional governance," which Appellants invoke here. *Id.*, at 927. That is why this Court and the U.S. Supreme Court have repeatedly rejected the argument that all registered voters automatically have standing to challenge laws and legislative maps that govern elections they will vote in. *See Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 561–62; *Gill*, 585 U.S. at 64–72; *Bost*, 146 S. Ct. at 520. The same is true here.

Third, Appellants rely on this Court's *merits* holdings in *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 489 (Mo. banc 2022), and *State ex rel. Moore v. Toberman*, 250 S.W.2d 701 (Mo. banc 1952)—claiming HB1's efficacy during the Secretary's review process is diluting their referendum rights "to the point of vitiation." App. Br. 24. But standing is separate from the merits. *See Byrne & Jones Enters., Inc. v. Monroe City R-1 Sch. Dist.*, 493 S.W.3d 847, 853 n.5 (Mo. banc 2016) (holding that the lower court "erroneously conflated the issue of standing with deciding the merits"). And *No Bans* and *Toberman* never held that average residents suffer a particularized injury to their referendum rights simply because the Secretary needs time to verify the validity of referendum petition.

To the contrary, *No Bans*'s reasoning *supports* the State's argument about generalized injuries. Specifically, in footnote 9, this Court invoked the "capable of repetition, yet evading review" exception to mootness to find that the case was justiciable. 638 S.W.3d at 489–90 n.9. The Court in *No Bans* explained that this was proper because the plaintiffs brought their challenge "at the earliest possible moment," which was when

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"time constraints on circulation imposed by sections 116.180 and 116.334.2" first "*affect[ed]*" plaintiffs Baker and the ACLU. *Id.* (emphasis added). And the plaintiffs' challenge became "moot once the deadline to submit signatures to the Secretary came to pass"—because the challenged statutes no longer regulated the plaintiffs specifically. *Id.* Thus, *No Bans* supports the State's point that every plaintiff must establish a particularized interest to have standing. Appellants cannot challenge a statute simply by contesting its statewide "effectiveness." *Contra* D164, p.9.

Fourth, Appellees hint—but do not actually argue—that they suffered a particularized because they are "signatories" to PNP's referendum petition. App. Br. 25–26. But the Circuit Court rightly rejected this theory. D238, p. 5. Missouri law *does allow* signatories—or any other registered voter—to sue over referendum-related decisions, but only *after* the Secretary makes a certification decision. *See* § 116.200.1, RSMo; *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 580 (1992) (Kennedy, J., concurring in part) (recognizing litigants are more likely to have standing where legislature authorizes it). Appellants' lawsuit is, frankly, an attempt to circumvent that statutory rule.

When litigants wish to challenge the handling of referenda outside that statutory framework, only a petition's "proponent"—like PNP—would have standing because it "has a greater interest in the initiative petition than someone" who is merely "a political supporter and signer of the initiative petitions." *Allred v. Carnahan*, 372 S.W.3d 477, 484 (Mo. App. W.D. 2012). "This is because a proponent or sponsor will likely have been responsible for drafting the initiative petition, causing it to be filed with the Secretary of State, expending time and money in support of it and the like." *Id.*; *see also Prentzler v.*

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Carnahan, 366 S.W.3d 557, 563 (Mo. App. W.D. 2012). Comparatively, signatories "are not ensured the right to have their signatures counted," and "[n]othing prevents the proponents or petitioners of an initiative petition from withdrawing the initiative petition before the submission deadline." *Prentzler*, 366 S.W.3d at 563. A signatory's "alleged interest in having their signature[] counted" is thus "remote and attenuated." *Id.* Consequently, Missouri courts have found that, unlike a referendum's proponent, a referendum's signatories and supporters lack a particularized interest in litigation about a referendum. *Id.*; *Allred*, 372 S.W.3d at 484.

Of course, PNP is not a plaintiff in this case. And the Circuit Court found that "Plaintiffs offered no evidence regarding . . . standing as the proponent of the referendum petition." D238, ¶ 9. This is undoubtedly correct, especially because Appellants Maggard and Lombardi both repeatedly disclaimed any connection to PNP—the proponent of the referendum petition challenging HB1. D182, Lombardi Dep. Tr., pp. 19:13–21:1, 26:9–21; D181, Maggard Dep. Tr., pp. 15:2–25, 23:23–24:8. Especially viewing the evidence in the light most favorable to the prevailing party, this Court should find that Appellants failed to allege any particularized application of HB1 to themselves. *See Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 561.

* * *

One final point bears emphasis: It is easy to imagine *other* parties—with particularized injuries—who could have brought this lawsuit instead of Appellants. For example, the U.S. Supreme Court recently acknowledged that *candidates* have particularized interests in the rules governing elections because "a candidate's interest

differs in kind" from the public's "'general interest'" in lawfully conducted elections. *Bost*, 146 S. Ct. at 520 (quoting *Lance v. Coffman*, 549 U.S. 437, 440 (2007)). But Appellants are not candidates, and no candidate has sued.

Appellants also offer no explanation as to why *they* are bringing this lawsuit instead of PNP—the referendum's organizer that promised this lawsuit would be brought.[4] The State acknowledged below during motion-to-dismiss arguments that PNP would have a stronger case for standing than Appellants. D131, pp. 23–24; MTD Hearing Tr. (Jan. 20, 2026), p. 11:19–21. Even though some of PNP's lawyers attended that hearing, PNP never tried to intervene.

Absent any reasonable explanation, it seems obvious why Appellants are bringing this case—and are forced to assert only a textbook generalized grievance about HB1's "current effectiveness." D164, p. 9. The referendum's actual organizer, PNP, is estopped from challenging HB1's current effectiveness. *See von Glahn*, 2025 WL 3514277, at *4 n.4 ("PNP affirmatively waived these points, precluding any argument to the contrary in future litigation."). Appellants' decision to sue without PNP, however, comes at a legal cost to their case. It means that the parties with arguably particularized injuries were absent from this case below. *See Allred*, 372 S.W.3d at 484 (A "political supporter" of an initiative petition does not have a particularized interest, while the "proponent" of the petition has a "greater interest."); *Prentzler*, 366 S.W.3d at 563 (same). And although PNP now appears as an *amicus*, *see* PNP Amicus Br. (filed Apr. 10, 2026), PNP cannot ride the coattails of

[4] *See, e.g.*, D196, Jason Rosenbaum, *Missouri's stack of redistricting lawsuits expected to grow over whether new map is in effect*, St. Louis Public Radio (Dec. 16, 2025).

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two individual voters who themselves lack standing. *See City of Kansas City v. Kindle*, 446 S.W.2d 807, 818 (Mo. Div. 1 1969) ("An amicus curiae is not a party and cannot assume the functions of a party, an attorney for a party, or even a partisan.") (internal quotation omitted). This Court should not bend standing rules—and especially not in a case where obvious alternative litigants with more direct interests were conspicuously absent below.

II. Appellants' claims are unripe because they depend on factors yet unknown—namely the legality and sufficiency of PNP's referendum petition. (Response to Point Relied On II)

In any event, Appellants' claims are also unripe. The Circuit Court explained that "the entire premise of Plaintiffs' case rests on whether the submitted petitions are legally sufficient," but "until the Secretary makes a sufficiency determination, there is no way of knowing whether the referendum has any legal effect." D238, pp. 7–8. The court continued that "Plaintiffs' claims at hand are dependent on factors that cannot be known and that cannot be part of the record until after the Secretary's determination." *Id.*, p. 8. The Circuit Court was correct, especially under *Schweich*, 408 S.W.3d at 779.

Appellants think the Circuit Court erred because they "do not seek a ruling on Secretary Hoskins's certification process. . . . Instead, Appellants seek a declaration that HB1 is currently suspended—regardless of the status of Secretary Hoskins's review." App. Br. 28 (emphasis omitted). But this argument misses the point. The point is that HB1's suspension *depends* on the sufficiency of PNP's referendum petition, but no court can know the answer to that question until the Secretary completes his review process. *See* §§ 116.150, 116.200.1, RSMo.

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Critically, Appellants agree that "[i]f a referendum petition was not legally sufficient when submitted," then any suspension is "wrongful" because the law "was *not* constitutionally 'referred to the people.'" App. Br. 47 n.11 (emphasis in original). Of course, Appellants *must* concede this reality under longstanding law. *See, e.g.*, *Toberman*, 250 S.W.2d at 703, 707 (affirming the circuit court's holding that "[t]he filing of petitions for referendum prior to April 24, 1952, which said petitions have been proved to be legally insufficient, did not suspend the effective date of Senate Bill 267"); *Kaesser*, 243 S.W. at 352.

But this reality creates a critical problem for Appellants' claims: Courts have no way of knowing until after the Secretary's certification decision whether a referendum petition is legally sufficient. Sections 116.120 and 116.150, RSMo, require the Secretary to first decide whether a referendum petition is legally sufficient. Until then, courts cannot review that question. It is only "*[a]fter* the secretary of state certifies a petition as sufficient or insufficient" that courts may adjudicate the legal sufficiency of a referendum petition. § 116.200.1 (emphasis added); *Missourians to Protect the Initiative Process v. Blunt* ("*MPIP*"), 799 S.W.2d 824, 828–29 (Mo. banc 1990) (This issue becomes "ripe for judicial determination when the Secretary of State makes a decision to submit, or refuse to submit, an initiative issue to the voters.").

Schweich is instructive. There, the Missouri Governor had "announced that . . . he was going to withhold, in FY 2012, . . . $300,000 from the [State] Auditor's FY 2012 office budget." 408 S.W.3d at 772. Just before FY 2012, the State Auditor sued the Governor, challenging the Governor's authority to withhold this appropriation. *Id.* But this Court

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dismissed the State Auditor's claim as unripe. *Id.*, at 779.

This Court acknowledged that the State Auditor would eventually have "standing to contest the withholding of $300,000 from his own office budget," but it held that the State Auditor's claim was unripe "[u]ntil FY 2012 ended without payment of the $300,000 at issue." *Id.* (emphasis added). The Court explained that Article IV, Section 27 of the Missouri Constitution "expressly allows the Governor to 'control the rate at which any appropriation is expended during the period of the appropriation by allotment or other means.'" *Id.* And "[u]ntil FY 2012 ended without payment of the $300,000 at issue, it could not be known whether the Governor merely was exercising his constitutional authority to control the rate of appropriation of these funds or whether they were being withheld or spent beyond their appropriation entirely." *Id.* The Court explained that it could not grant relief on the State Auditor's claims because "the Governor's authority is dependent on factors that could not be known and that could not be a part of the record until after the trial court issued its judgment." *Id.*

So too here. Appellants admit, as they must, that PNP's referendum petition cannot suspend HB1 if it is legally insufficient. App. Br. 47 n.11; *Toberman*, 250 S.W.2d at 703, 707; *Kaesser*, 243 S.W. at 352. Yet Chapter 116 currently vests the Secretary of State with exclusive authority to determine the legal sufficiency of PNP's referendum petition. §§ 116.120–116.150, RSMo. And courts can only review those findings *after* the Secretary's certification decision. § 116.200.1. Thus, HB1's suspension depends "on factors that could not be known and that could not be a part of the record until after the trial court issued its judgment." *Schweich*, 408 S.W.3d at 779.

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Appellants object that "[e]ven if [they] ultimately have the opportunity to cast ballots on the HB1 referendum, that vote *could* be meaningless if HB1 has already been in effect and Missouri voters are forced to elect members of Congress from new districts while simultaneously approving or rejecting that new map." App. Br. 25 (emphasis added). Appellants also rely heavily on extra-record "preliminary" signature counts, which they falsely claim "have already confirmed that the HB1 referendum received sufficient valid signatures to qualify for the November ballot." *Id.*, at 26. Thus, according to Appellants, "[i]t is *possible* (if not probable) that, without this Court's intervention, Appellants and other Missourians will vote on whether to approve or reject HB1 at the very same time they elect member of Congress from districts drawn by that legislation." *Id.* (emphasis added).

This argument is legally and factually baseless. First, as a legal matter, Appellants' argument hinges on speculation that the HB1 map will still be in effect by the 2026 election. But as the Circuit Court noted below, the Secretary could suspend HB1 if he certifies the referendum petition in accordance with Chapter 116. D238, pp. 7–8; D131, p. 16. Appellants' speculation to the contrary is just that—"speculation" that "is insufficient to establish a threatened or actual injury." *Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 563 (citing *Missouri Coal. for Env't*, 579 S.W.3d at 927).

Appellants' argument is also unfounded factually. It depends on their misguided belief that the Secretary is intentionally delaying certification so that Missourians will vote on the HB1 map even as they elect congressional candidates in 2026. *See* App. Br. 25. This argument is facially erroneous because Chapter 116 obligates the Secretary to make a certification decision about the sufficiency PNP's referendum petition "not later than 5:00

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p.m. on the thirteenth Tuesday prior to the general election." § 116.150.3, RSMo. That deadline has not come yet, so Appellants' claim of improper delay is baseless.

Additionally, the Secretary's alleged delay was litigated—as a factual dispute—in the Circuit Court. The parties offered evidence and advanced argument about this issue, Trial Tr., pp. 79:15–23, 99:1–100:1, 136:9–15, 137:5–6, and the Circuit Court ruled for the State and Intervenor-Respondent. Even absent a specific factual finding about delay, this Court must construe the available evidence in the light most favorable to the Circuit Court's judgment. *See* Mo. Sup. Ct. R. 73.01(c) ("All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.").

Unable to overcome the facts below, Appellants now try to establish justiciability through new evidence on appeal. They cite "Preliminary Petition Signature County Reports" published on the Missouri Secretary of State's website.[5] App. Br. 16–17. Appellants claim that these reports "have already confirmed that the HB1 referendum received sufficient valid signatures to qualify for the November ballot." *Id.*, at 26. However, these Preliminary Reports do establish a ripe injury to Appellants' referendum rights for at least three reasons.

First, N.A.A.C.P. holds that "Appellants bear the burden to establish they have

[5] As an aside, the fact that the Secretary is not intentionally delaying processing of the referendum is bolstered by the fact that he is releasing ongoing preliminary reports about the processing of signatures. Nothing obligated the Secretary to release these tallies for public view. The fact that he voluntarily released information about his ongoing review process suggests that Appellants are wrong that the Secretary and Missouri's 116 local election authorities are intentionally delaying to undermine the referendum process. Instead, they are working expeditiously, ensuring that the Secretary will make his certification decision by the Chapter 116's deadline. § 116.150.3, RSMo.

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standing based on the evidence or record before the circuit court." *Missouri State Conf. of N.A.A.C.P.*, 730 S.W.3d at 560. Appellants' new evidence on appeal is therefore irrelevant to the standing and ripeness questions.

Second, § 116.200.1 allows courts to review the sufficiency of a referendum petition's signatures only "*[a]fter* the secretary of state certifies a petition as sufficient or insufficient." § 116.200.1, RSMo (emphasis added). Thus, at this stage, Appellants cannot urge this Court to peek into the Secretary's ongoing review process under Chapter 116.[6]

Third, even if the Court could consider these reports, the reports emphasize many times that they are *preliminary*. *See Preliminary Petition Signature County Reports*, Mo. Sec'y of State (Mar. 26, 2026), http://bit.ly/4bUCxdo; *Preliminary Petition Signature County Reports*, Mo. Sec'y of State (Apr. 10, 2026), https://bit.ly/4twbQmw. Both reports state, in bold, "[T]he figures contained in this report do not represent final counts and remain subject to change as the review process continues. . . . This report is provided for informational purposes only and should not be interpreted as a final determination regarding petition validity or certification." *See Preliminary Petition Signature County Reports*, Mo. Sec'y of State (Mar. 26, 2026), http://bit.ly/4bUCxdo; *Preliminary Petition Signature County Reports*, Mo. Sec'y of State (Apr. 10, 2026), https://bit.ly/4twbQmw. Indeed, local election authorities are still engaged in an ongoing review of the signatures on PNP's referendum petitions. Among other things, local election officials must check

[6] In light of *N.A.A.C.P.*, 730 S.W.3d at 560, and § 116.200.1, the State objects to Appellants' request that this Court take judicial notice of the Secretary's "Preliminary Reports." App. Br. 17 n.2.

the signatures for duplicates. 15 C.S.R. § 30-15.020(2). Once they finish their review, they must send the signatures to the Secretary for his review, along with memoranda about irregularities and duplicate signatures that they observed. *Id.*, § 30-15.020(2)–(4). And once the signatures are sent to the Secretary for review, the Secretary retains discretion to conduct his own, independent review and to exclude any signatures that "are, in his opinion, forged or fraudulent." § 116.140. And, even if the Secretary finds that PNP's referendum petition have garnered enough valid signatures, the Secretary will also need to judge the legal sufficiency of the referendum petition before reaching a certification decision. § 116.120.1, RSMo. Thus, Appellants severely misunderstand Chapter 116 by claiming that these preliminary reports "have already confirmed that the HB1 referendum received sufficient valid signatures to qualify for the November ballot." App. Br. 16–17, 26. Chapter 116's review process is still ongoing.

* * *

In relying on the preliminary reports about signature verification, Appellants confirm an unavoidable reality undermining their appeal: Their whole lawsuit depends on the assumption that PNP's referendum is legally sufficient, yet the facts did not, and do not, exist to show whether that assumption is correct. Only the Secretary's certification decision will provide the necessary facts to confirm whether Plaintiffs have a ripe claim or not. Yet those facts "could not be known" and "could not be a part of the record until after the trial court issued its judgment." *Schweich*, 408 S.W.3d at 779. That is why § 116.200 only allows individuals like Maggard and Lombardi to sue *after* the Secretary makes a certification decision. *See* § 116.200.1, RSMo; *MPIP*, 799 S.W.2d at 828–29. The Court

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should enforce that statute rather than entertain Appellants' premature claims.

III. On the merits, Appellants make no sense of Article III, Section 52(b) and Chapter 116, RSMo. (Response to Point Relied On V)

In any event, Appellants are wrong on the merits. Article III, § 52(b) did not require immediate suspension of HB1 when PNP filed its unverified referendum petition. In arguing that depositing a pile of unverified signatures freezes a duly enacted state law, Appellants remarkably ignore the relevant constitutional text. To wit, 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*." Mo. Const. art. III, § 52(b) (emphasis added). Thus, a law suspends when it is "referred to the people." *Id.*

Appellants' argument fails because laws challenged by citizen-led referendum petitions are "referred to the people" only when they are filed with the Secretary of State *and* the Secretary certifies the petition for factual and legal sufficiency. *See* Mo. Const. art. III, § 52(a); §§ 116.120–116.150, 116.200, RSMo. Indeed, until the Secretary verifies that a referendum petition is factually and legally sufficient, Missouri law *bars* the Secretary from referring it for a vote of the people. *See* §§ 116.120–116.150, 116.200, RSMo. Thus, unless this Court is prepared to invalidate Missouri's statutory system for verifying referendum petitions, it must affirm the Circuit Court's judgment.

A. Text, precedent, and common sense all establish that the mere filing of a referendum petition does not suspend Missouri law.

Appellants' position makes little sense. They contend that an unverified referendum petition suspends the General Assembly's statute at the moment it is filed—regardless of whether the petition has adequate signatures and is deemed legal. But neither text,

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precedent, nor common sense support this approach.

Text. Start first with the text of the 1945 Missouri Constitution. Article III, Section 52(b) provides, "Any measure *referred to the people* shall take effect when approved by a majority of the votes cast thereon, and not otherwise." Mo. Const. art. III, § 52(b) (emphasis added). The question for this case, then, is *how* and *when* measures are "referred to the people." *Id.*

The answer starts with Article III, Section 52(a), which provides that "[a] referendum may be ordered" (1) "by the general assembly" directly "or" (2) "by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state." While the General Assembly can refer a measure directly, a citizen-led petition includes an intervening step: "Referendum petitions shall be filed with the secretary of state." Mo. Const. art. III, § 52(a). Once a petition is filed with the Secretary, the Secretary is then tasked with referring the measure to the people for a vote. *See id.*; Mo. Const. art. III, § 52(b).

Notably, this Court's decision in *Toberman*, 250 S.W.2d 701—an authority on which Appellants heavily rely—explicitly contemplates the Secretary "referring" measures for a vote of the people. Citizens cannot refer measures themselves. The *Toberman* opinion discusses the Secretary "referring" a challenged measure to the people many times. *See, e.g.*, *id.*, at 702–03 ("[The Secretary] officially declared he intended to take the constitutional and statutory procedures *to refer* Senate Bill 267 for approval or rejection by the people"; "On May 3, 1952, interveners filed in the Circuit Court of Cole County, Missouri, a suit for injunction praying that *the Secretary of State be enjoined from referring*

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Senate Bill 267"; "[A sufficient number of valid signatures] authorizes *the Secretary of State to refer* Senate Bill 267 *to a vote of the people* at the general election to be held November 4, 1952, if said bill is otherwise referable." (emphasis added)). The *Toberman* opinion also repeatedly characterizes citizen-led petitions as "petitions *to* refer"—meaning that citizens "petition" the Secretary "to refer" legislation, but the Secretary himself refers a measure for a vote. *See id.*, at 703, 706 (emphasis added); *cf. MPIP*, 799 S.W.2d at 828 ("[T]he Secretary of State makes [the] decision to submit, or refuse to submit, an initiative issue to the voters.").

In light of the constitutional text and the *Toberman* opinion, even Appellants have conceded that citizens cannot unilaterally refer legislation to the people. Trial Tr., pp. 72:14–18, 110:4–23, 140:2–6. Rather, in Appellants' words, "*only* the Secretary can refer something to the people. . . . The case law says what it says, and it uses the verb 'refers' with the subject, the Secretary." *Id.*, pp. 72:14–18, 140:2–6 (emphasis added). Thus, under the Constitution, citizens necessarily cannot "refer[]" legislation "to the people" merely by unilaterally filing an unverified referendum petition with the Secretary.

Although everyone agrees that the Constitution contemplates the Secretary referring measures to the people, the Constitution is silent about *what* the Secretary must do before he refers a measure. *See* Mo. Const. art. III, §§ 52(a), 52(b). The Constitution also never addresses *when* the Secretary must refer a measure for a vote. *See* Mo. Const. art. III, §§ 52(a), 52(b). Instead, Missouri statutory law has always supplied those details. Today's controlling law on this subject, §§ 116.120–116.150 and 116.200, was first enacted by the General Assembly in 1980. These statutes require the Secretary to thoroughly review each

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referendum petition to ensure it contains enough signatures and is otherwise legal; and they allow the Secretary to certify petitions for a vote only after completing the mandatory review process. Indeed, these statutes give the Secretary a specific deadline by which to finish this task: "The secretary of state shall issue a certificate pursuant to [§ 116.150] not later than 5:00 p.m. on the thirteenth Tuesday prior to the general election." § 116.150.3. In 2026, that deadline is on August 4. *Id.*

Chapter 116 allows for substantial time to review referendum petitions because substantial time is needed to do so. Section 116.120.1 provides that "[w]hen an initiative or referendum petition is submitted to the secretary of state, he or she shall examine the petition to determine whether it complies with the Constitution of Missouri and with" Chapter 116 of Missouri's Revised Statutes. § 116.120.1. This involves a thorough review process to ensure that the petition's signatures are valid. §§ 116.120–116.140. The Secretary typically requests help from local election authorities during this process, §§ 116.120–116.130, though the Secretary still holds the ultimate responsibility to ensure that each signature is not "forged or fraudulent," § 116.140. Then, "[a]fter the secretary of state makes a determination on the sufficiency of the petition and if the secretary of state finds it sufficient, the secretary of state shall issue a certificate setting forth that the petition … compl[ies] with the Constitution of Missouri and with" Missouri law. § 116.150.1. Alternatively, "[i]f the secretary of state finds the petition insufficient, the secretary of state shall issue a certificate stating the reason for the insufficiency." § 116.150.2. The Secretary may *not* refer a referendum to voters if the referendum petition is legally insufficient. *See id.* Additionally, if the Secretary mistakenly certifies an

"insufficient" petition, a court of competent jurisdiction "*shall* enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot." § 116.200.2 (emphasis added).

Appellants ignore the text of these provisions altogether. They claim that "the sufficiency of a referendum petition must be *assumed* until certification by the Secretary of State." *See* App. Br. 44 (emphasis added). They ignore that Chapter 116 bars referral for a vote until the Secretary completes his review process. *See* §§ 116.120–116.150, 116.200. And they presume that the Secretary may "*un*suspend[]" the HB1 map upon any "final determination of insufficiency" by the Secretary as to PNP's referendum petition. App. Br. 47 (emphasis in original).

But Appellants' assumptions make no sense of Article III, Section 52(b). Indeed, once a measure is "referred to the people," Article III, Section 52(b) explicitly says the measure cannot go back into effect until a referendum vote. Article III, Section 52(b) states, "Any measure *referred to the people* shall take effect when approved by a majority of the votes cast thereon, and *not otherwise*." (emphasis added). In other words, once a matter is referred, the Secretary cannot later "un-refer" and "un-suspend" a law through a certificate of insufficiency § 116.150.2. Of course, if § 116.150.2 allowed the Secretary to unilaterally "un-suspend" Missouri law after referral, it would be unconstitutional under Article III, § 52(b). The plain text of Article III, § 52(b) contemplates only one referral, and once that referral occurs, the Secretary cannot "un-suspend" and "un-refer" a law of the General Assembly. The logical end of Appellants' reading thus conflicts with Article III, Section 52(b) itself.

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Trying to address this problem, Appellants invent a bizarre legal fiction to get around the constitutional text. App. Br. 47 n.11. Appellants explain: "If a referendum petition was not legally sufficient when submitted, then the legislation initially suspended as an operation of law was not constitutionally 'referred to the people'—and therefore its wrongful suspension can be undone by the Secretary of State." *Id.*, at 47 n.11 (emphasis omitted). Appellants continue: "The Secretary of State's post-suspension review and verification process, including certification under Section 116.150, RSMo, operates as a review nunc pro tunc, confirming (or disconfirming) whether legislation was actually referred to voters consistent with constitutional requirements." *Id.*, at 47.

This atextual legal fiction does not fit with the text of Article III, § 52(b), which establishes that legislation does not suspend *until* it is "referred to the people." It is also unmoored from the text of Chapter 116, which requires the Secretary to review for a referendum petition for sufficiency *before* he certifies a measure for a referendum vote. *See* §§ 116.120–116.150, RSMo.

Appellants' legal fiction also produces absurd results. Missouri law is either in effect, or it is not because it is "referred to the people"—Article III, Section 52(b) and Chapter 116 recognize no space in between. But in Appellants' preferred world, laws will be *retroactively* deemed to *have been* in effect if a Secretary subsequently concludes a referendum petition is insufficient. App. Br. 47 n.11. That means that Missourians could have their conduct retroactively subject to valid legislation that was never—according to the fiction—actually "referred to the people" under Article III, § 52(b). Appellants' failure to address such implications reveals that they have not grappled with "the blast radius of

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their legal theory." *Moore v. United States*, 602 U.S. 572, 592 (2024). Rather than embark down that odd road, the Court should stick with the plain text of Article III, Section 52(b): "Any measure *referred to the people* shall take effect when approved by a majority of the votes cast thereon, *and not otherwise*." Secretaries of State cannot "un-suspend" legislation, contrary to Appellants' argument. App. Br. 47.

Precedent. Appellants' legal theory also clashes with precedent. Since Chapter 116 was enacted in 1980, only three courts have addressed the questions at issue here under Article III, § 52(b) and Chapter 116. Every one of those precedents support the State, not Appellants. The first is, of course, Circuit Court's decision itself. D238. The second is *Missouri General Assembly v. von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277 (E.D. Mo. Dec. 8, 2025)—a dispute about the exact referendum at issue here. In *von Glahn*, the court resolved *if* and *when* PNP's referendum petition would suspend HB1. Applying Article III, Section 52(b) and Chapter 116, the court held that HB1 would not suspend until the Secretary completed his review under Chapter 116. The court explained:

> ***After*** the timely submission of a final petition, the Secretary of State must 'examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116]' and verify whether there are enough valid signatures to trigger a statewide vote. *Id.* § 116.120. ***If*** the Secretary ***finds*** that the petition satisfies both requirements, *see id.* § 116.150, the challenged law is displaced and will only 'take effect when approved by a majority of the votes cast thereon,' Mo. Const. art. III, § 52(b).

von Glahn, 2025 WL 3514277, at *1 (emphasis added) (alteration original). Here, the Circuit Court found, as a factual matter, that "[t]he sufficiency of Referendum Petition 2026-R004 has not been determined by the Secretary of State," and "[t]he Secretary of State has not yet issued a certificate addressing the sufficiency of Referendum Petition

2026-R004 under Section 116.150, RSMo." D238, ¶¶ 7, 15. Thus, under the *von Glahn* decision, HB1 remains valid and enforceable.

The third precedent is another Cole County Circuit Court decision, *Kaw Transport Co. v. Whitmer*, No. CV181-778CC (Cole Cnty. Cir. Ct. Sept. 29, 1981)—which was admittedly decided in a different procedural posture than this case. There, the Secretary of State had made a finding of legal sufficiency under § 116.120, and private plaintiffs sued to force a suspended law to go back into effect. *Id.* Still, *Kaw Transport* usefully comments on whether the Secretary must make a finding of legal sufficiency under Chapter 116 before a referendum petition can suspend state law. This Court answered affirmatively, finding it "reasonable" to stay the "effective date" of the "legislation in question" because "the Secretary of State ha[d] complied with the criteria set forth in Section 116.120" and the Secretary "found that the [referendum] petitions in question complied with the Constitution of the State of Missouri and with the provisions of Section 116." *Id.*, at 2.

To be sure, the *Kaw Transport* opinion is wrong to the extent that it suggests the Secretary can refer a law to the people—and suspend the law—without a formal certification decision. *See id.* The text of Chapter 116 does not contemplate a determination of legal sufficiency aside from certification. *See* §§ 116.120–116.150, 116.200. But even if this Court agrees with *Kaw Transport* completely, that would still inure to the State's benefit. Contrary to Appellants' claims, *Kaw Transport* indisputably acknowledges that the Secretary's finding of legal sufficiency under Chapter 116 plays some role in the analysis. *Id.*, at 2. So even if a formal certification decision is unnecessary, the Secretary must make *some* finding of legal sufficiency before the matter is referred to

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the people—triggering suspension. *Id.*

Here, the Circuit Court found that the Secretary has made no finding of legal sufficiency under Chapter 116—unlike the Secretary in *Kaw Transport*. D238, ¶¶ 7, 15. This is well within the Secretary's discretion. Nothing in the Missouri Constitution or Chapter 116 requires the Secretary to make a preliminary finding of legal sufficiency. Rather, § 116.150 merely speaks to a timeline for *certification*. Thus, the Secretary *at least* has discretion to refrain from making a legal sufficiency determination until certification. Indeed, when a statute is "defined in a manner that gives discretion" to "the secretary of state," courts must defer to the Secretary's discretionary authority—recognizing that "elections have consequences." *Brown v. Carnahan*, 370 S.W.3d 637, 669 (Mo. banc 2012) (Fischer, J., concurring); *see also id.*, at 669–70 (Fischer, J., concurring) ("Judicial intervention is not an appropriate substitute for the give and take of the political process.") (quoting *State ex rel. Humane Soc'y of Mo. v. Beetem*, 317 S.W.3d 669, 674 (Mo. App. W.D. 2010)).

Precedent about Chapter 116's application to the initiative process also supports the State's understanding. For example, in *Ketcham v. Blunt*, 847 S.W.2d 824 (Mo. App. W.D. 1992), the Western District Court of Appeals emphasized that, "'The validity of the signatures is the heart of the ultimate determination' of the sufficiency of an initiative petition for the ballot," and "[t]he virtual purpose of chapter 116 is to vouchsafe the integrity of that process." *Id.* (quoting *United Lab. Comm. of Missouri v. Kirkpatrick*, 572 S.W.2d 449, 455 (Mo. banc 1978)). Under Chapter 116, "[i]t is the secretary of state who is charged with the ultimate administrative determination as to whether the petition

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complies with the Constitution of Missouri and with the statutes." *Id.* (citing §§ 116.120.1, 116.150, RSMo). The Western District continued, "*If* the signatures are present, the initiative is sufficient, and the people have the right to put the proposition on the ballot." *Id.* (emphasis added) (discussing §§ 116.120, 116.150, 116.200, RSMo). Applying Chapter 116 to review of referendum petitions, *see* §§ 116.120, 116.150, 116.200, it becomes clear that a measure is only "referred to the people" for a vote upon a finding of a sufficient referendum petition by the Secretary, Mo. Const. art. III, § 52(b).

Precedent from other states also supports the State's position. *See, e.g.*, *Barnes v. State ex rel. Pinkney*, 204 A.2d 787, 793 (Md. 1964); *Thomson v. Wyoming In-Stream Flow Comm.*, 651 P.2d 778, 785–86 (Wyo. 1982); *see also State v. Allen*, 625 P.2d 844, 846 (Alaska 1981) ("[T]he filing of a referendum petition does not suspend the effect or operation of the act referred." (quoting *Walters v. Cease*, 388 P.2d 263, 268 (Alaska 1964)); *State v. Howard*, 248 P. 44, 45–46 (Nev. 1926) ("The people make their own Constitution, and, when they have not seen fit to provide that the filing of a referendum petition shall suspend the operation of a law, we are not authorized to read such a provision into the Constitution."). These precedents also illustrate why Appellants are wrong that unverified suspension of legislation is the only way to give "meaning and effect to every facet of the referendum process." App. Br. 39. Other States uphold referendum rights even without automatic suspension upon filing. *See Barnes*, 204 A.2d at 793; *Allen*, 625 P.2d at 846; *Howard*, 248 P. at 45–46.

The Maryland Court of Appeal's decision in *Barnes* usefully illustrates the practice

in other jurisdictions.[7] In *Barnes*, Maryland citizens filed a referendum petition seeking review of a public accommodations law. 204 A.2d at 788. After proponents filed their referendum petition, a restaurant owner challenged the public accommodations law's ongoing validity, "contend[ing] that the law was suspended by petitions for a referendum." *Id.*, at 788–89. Like Appellants here, the challenger argued that, regardless of the petition's ultimate validity, "the filing of the petition of itself suspended the law, unless and until it was judicially determined that the valid signatures on the petitions were insufficient." *Id.* at 793. The Maryland Court of Appeals rejected that argument. *Id.* The court emphasized that the Maryland Secretary of State is "the official designated in the Constitution to receive a referendum petition," and an act subject to a referendum becomes "suspended" only when "the Secretary of State has accepted the referendum petition as valid." *Id.*

Importantly, *Barnes* understood this outcome to be mandated by a Maryland statute even though the Maryland Constitution was silent about *what* the Secretary must review when he receives a petition. *See id.*, at 790–93 ("If the Secretary had applied only the Constitutional limitations and not those contained in Section 169, each petition, upon its face, would have sufficed."). The court also rejected the restaurant owner's attempts to characterize the statute's provisions as "only directory" and not "mandatory." *Id.*, at 792–93. The court explained that "[i]f the provisions of the [statute] were only directory, laws enacted by the Legislature could be suspended, even if the Secretary of State had found that the referendum petition lacked the necessary number of valid signatures." *Id.*, at 793.

[7] At the time of *Barnes*, the Maryland Court of Appeals was Maryland's highest court.

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Of course, such an outcome would have produced an absurd result. Thus, the court rejected the restaurant owner's challenge. *Id.* This Court should hold likewise here.

Common sense. Appellants' contrary position—that an unverified petition's *filing* suspends state law—borders on the absurd. It circumvents Chapter 116, which requires the Secretary to guard against fraud through a careful review of referendum petitions. *See* §§ 116.120–116.150, RSMo. As in *Barnes*, the logical implication of Appellants' position is that *even* a completely fraudulent referendum petition would initially suspend state law through its mere filing. 204 A.2d at 793. In Appellants' world, anybody—even a foreign government—could submit 300,000 fraudulent signatures, and a duly enacted Missouri law would nonetheless suspend without any action by the Secretary.

Appellants' vision clashes directly with this Court's precedents. As this Court noted in *Kaesser*, "[W]hen a solemn legislative act is sought to be set aside, it is our duty to see that the constitutional and statutory requirements have been substantially met by those seeking to refer the act." *Kaesser*, 243 S.W. at 352. "[F]ull observance of substantial requirements must be exacted lest the referendum be made the instrument of injustice or oppression by a militant and well–organized opposition, much less in numbers than the required 5 per cent. of the legal voters in two–thirds of the congressional districts." *Id.*

Indeed, it is Appellants who advance an inherently undemocratic position. They seek to suspend a law enacted overwhelmingly by the People's elected representatives through the mere filing of unverified referendum petitions. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025) (HB1 passed 21 to 11 in the Senate); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025) (HB1 passed 90

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to 65 in the House of Representatives).

Maryland's highest court has also recognized the absurdity of this outcome. *Barnes*, 204 A.2d at 791. As in Missouri, Maryland gives a small minority of citizens the ability to freeze a law supported by the people's elected representatives. *See id.*, at 789 (quoting Md. Const., art. XVI). But Maryland's highest court rejects a political minority's ability to unilaterally suspend state law through unverified referendum petitions. *See id.*, at 791. The court has emphasized that basic procedures ensuring integrity "safeguard the [referendum] privilege which the Constitution grants," and "[t]hey facilitate checking of the petitions by interested persons to ensure that only qualified persons have signed." *Id.*, at 791. Likewise, the Arizona Supreme Court has emphasized the importance of requiring "referendum proponents to strictly comply with all constitutional and statutory requirements." *Feldmeier v. Watson*, 123 P.3d 180, 183 (Ariz. 2005). "The referendum power is subject to this exacting standard *because* it permits a minority to hold up the effective date of legislation which may well represent the wishes of the majority." *Id.* (emphasis added).

The potential for fraudulent or otherwise invalid signatures is not a mere hypothetical. With prior referendum petitions, a substantial percentage of submitted signatures have not been valid—for one reason or another. Error rates vary, but can easily be in the 30–40 percent range. *See* D204–D209, Supp. App. 15–26. Sometimes, they can be even higher. For example, with ballot petition 2022-059, the error rate for signatures from Congressional District 1 was a 64.9 percent—meaning the Secretary could verify only 35.1 percent of the signatures as valid. *See* D204, Supp. App. 16. As another example, for

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ballot petition 2018-048, the error rate for Congressional District 5 was a whopping 69.8 percent—meaning the Secretary could verify only 30.2 percent of the signatures as valid. *See* D205, Supp. App. 18. Thus, no one can know with certainty whether a referendum contains enough valid signatures until the statutory review process finishes.

Ballot petition fraud has also been a problem throughout Missouri history. In 2014, during the Kander administration, several circulators drafted and submitted fraudulent referendum petition signatures—producing about 300 petitions with falsified signatures. *See, e.g.*, *State v. Williams*, Case No. 15BA-CR01112-01; *State v. Hayes*, Case No. 15BA-CR01115-01; *State v. Coker*, Case No. 15BA-CR01114-01; *State v. Jones*, Case No. 15BA-CR01654-01; *see also* D210. Likewise, in 1978, just before the General Assembly enacted Chapter 116, two Judges of this Court documented "facts conclusively demonstrat[ing]" "actual" ballot petition "fraud" that "went directly to and caused the acceptance of invalid petitions by deceiving the Secretary of State into believing the petitions were valid." *United Lab. Comm. of Mo. v. Kirkpatrick*, 572 S.W.2d 449, 464 (Mo. banc 1978) (Bardgett, J., dissenting) (joined by Simeone, J.). They emphasized that, "without that fraud the petitions would have been rejected and not accepted for filing," and "[e]ach move was calculated to produce the desired result an acceptance of invalid petitions by the Secretary of State." *Id.* This Court also upheld a conviction for ballot petition fraud in 1943. *See State v. Burns*, 172 S.W.2d 259, 262 (Mo. banc 1943). And in 1922, this Court upheld a finding that a referendum petition was invalid because of "at least" *sixteen* instances of ballot petition fraud—all detailed in this Court's opinion. *See Kaesser*, 243 S.W. at 348–49.

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In light of this history, this Court should proceed with caution and reject Appellants' implausible reading of Chapter 116 and Article III, Sections 52(a) and 52(b). The Court should not allow unverified signatures to enable "a minority to hold up the effective date of legislation which may well represent the wishes of the majority." *Feldmeier*, 123 P.3d at 183. Instead, "full observance of substantial requirements must be exacted lest the referendum be made the instrument of injustice or oppression by a militant and well–organized opposition, much less in numbers than the required 5 per cent. of the legal voters in two–thirds of the congressional districts." *Kaesser*, 243 S.W. at 352.

B. Appellants' and *amicus* PNP's counterarguments fails.

Appellants and *amicus* PNP advance two main counterarguments, but both fail for the reasons explained below.

1. Appellants misunderstand precedent and ignore the General Assembly's reforms to referendum procedures through Chapter 116.

Appellants boldly claim that immediate suspension aligns with "a century of precedent." App. Br. 34. But no Missouri court has ever adopted Appellants' approach. In arguing otherwise, Appellants rip statements out of context from precedents that long predate Missouri's current statutory scheme for processing referenda. *See State ex rel. Kemper v. Carter*, 165 S.W. 773 (Mo. banc 1914); *State ex rel. Barrett v. Dallmeyer*, 245 S.W. 1066 (Mo. banc 1922); *State ex rel. Moore v. Toberman*, 250 S.W.2d 701 (Mo. banc 1952). Appellants also fail to grapple with any of the nuances in these older opinions. Nor do they consider how changes in the law limit the applicability of these cases.

First, *Kemper v. Carter* and *Dallmeyer* provide no support to Appellants. Both cases

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were decided under Article IV, Section 57, which was added as an amendment to the Missouri Constitution of 1875. At the time of *Kemper v. Carter* and *Dallmeyer*, Missouri law provided the Secretary very little authority to review the legal sufficiency of referendum petitions. *See* §§ 6748–6756, R.S. (1909), Supp. App. 8–14. For example, the Secretary did not independently verify the validity of signatures on a petition. *See* § 6749, R.S. (1909), Supp. App. 11. Instead, "the person who circulated" the petition verified its authenticity simply by signing an "affidavit." *Id.* Surveying this law, *Kemper v. Carter* explained that "[t]he duties of the Secretary of State as to filing a referendum petition and dealing therewith are with us purely ministerial," and his duty to verify that a petition had enough signatures "manifestly" "involve[d] more of arithmetic than . . . discretion." 165 S.W. at 780. The Court continued that, under the law at that time, the Secretary "must file the [referendum] petition as presented to him, and leave to the courts the determination of questions of latent fraud, forgery, and hermetic illegality." *Id.*, at 781.

Thus, in referring to suspension through "the mere lodging of a timely, legal, and sufficient referendum petition," *id.* at 779, *Kemper v. Carter* contemplated a system where circulators had *already* "self-certified" the petition signatures. Trial Tr. pp., 143:3–145:4. Appellants expressly agreed with this at trial. *Id.* They also expressly agreed that "had [the referendum circulators] not self-certified," the mere lodging of the referendum petition would "*not* have been" "sufficient." *Id.*, pp. 144:24–145:4 (emphasis added). And again, at the time of *Kemper v. Carter*, the Secretary had only a ministerial role in this process—he merely counted signatures, and only courts could determine "questions of latent fraud, forgery, and hermetic illegality." 165 S.W. at 781.

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Of course, this is not the law today. Nowadays, the Secretary *must* review petitions for fraud and courts *cannot* intervene until the Secretary certifies—or declines to certify—the referendum for a vote. *See* §§ 116.120–116.150, 116.200, RSMo. That is why at trial, Appellants expressly conceded that the law has "[u]ndoubtedly" changed since *Kemper v. Carter*—prompting the Circuit Court's "shock" that Appellants' briefs failed to notify the Court of these changes in the law while making *Kemper v. Carter* the center of their case. *See* Trial Tr. at 141:16–23, 143:3–145:4.[8]

The Wyoming Supreme Court reached the same conclusion about how to read *Kemper v. Carter*. That court distinguished *Kemper v. Carter* because, unlike Missouri law in 1914, Wyoming law requires "the Secretary to do much more than just count the signatures" and "depend on the verifications" of others before certifying a referendum petition. *See Thomson*, 651 P.2d at 785 (discussing *Kemper v. Carter*, 165 S.W. at 780–81). The Wyoming Supreme Court also noted that Missouri's enactment of Chapter 116 partially abrogated *Kemper v. Carter*: "[S]ince the time frame of *State ex rel. Kemper v. Carter*, supra, there has been a reform of the initiative and referendum procedures in

[8] Now, for the first time on appeal, Appellants claim that "*Kemper* is not subject to subsequent legislative revision; instead, referendum-related enactments must be reconciled with *Kemper* and the constitutional right it safeguarded." App. Br. 45. But the *Kemper* opinion is not the Missouri Constitution itself. And while the opinion holds—as a constitutional matter—that sufficient referendum petitions suspend state law, 165 S.W. at 780, the opinion relies on Missouri *statutes* in analyzing the Secretary's role related to *how* and *when* sufficiency is determined, *id.*, at 780–81 (citing §§ 6748–6754, R.S. (1909)). Also, even Appellants agreed below that, under the law at the time, "had [the referendum circulators] not self-certified," the mere lodging of the referendum petition would "*not* have been" "sufficient." Trial Tr., pp. 144:24–145:4 (emphasis added). So while the Constitution, of course, creates a right to a referendum through the filing of sufficient petitions, *how* and *when* sufficiency is determined has changed over time.

[Missouri]. [Missouri] now requires processing of petitions by the secretary of state." *Id.*, at 785. Then, after declining to apply *Kemper v. Carter*, the Wyoming Supreme Court held that "the specific statutory review requirements placed on the Secretary show an intent on the part of the legislature that those seeking to exercise the right of initiative in this state must, *as a condition precedent*, comply with the conditions prescribed." *Id.*, at 785–86 (emphasis added). Chapter 116 requires this Court to hold likewise here.

Additionally, even setting aside Chapter 116's abrogation of *Kemper v. Carter*, *Kemper* itself emphasized that only a "legal, sufficient, and timely" petition could suspend "acts of the Legislature." 165 S.W. at 779. Further, *Kemper v. Carter* explicitly stated, "We are not saying that the Secretary of State must file a referendum petition upon which either there is not enough congressional districts represented by the signers thereon, or not enough signers from such or any of such districts." *Id.*, at 781. Thus, even when the Secretary's authority was "purely ministerial" a century ago, *id.*, at 780, this Court agreed that an insufficient petition cannot suspend state law. This Court also emphasized that the Secretary may not approve a legally insufficient referendum petition. *Id.*, at 781. Appellants ignore these nuances. *See* App. Br. 35–38, 40–45.

Dallmeyer is even further afield than *Kemper v. Carter*. *See* 245 S.W. at 1067–68. The opinion itself is cursory and does not address the Secretary of State's role in processing referendum petitions. The opinion also does not interpret the 1875 Constitution or applicable statutes. *Dallmeyer* held that "the operation of a statute may be deferred by the invocation of a referendum," but the Court's lone explanation for this holding was to analogize to the fact that "the Legislature" retains authority to "enact a law to take effect

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upon the happening of a future event or contingency." *Id.*, at 1068. That does not address, however, *when* suspension occurs under Article III, § 52(b) of the 1945 Constitution, nor does it address *what* the Secretary must do under Chapter 116 before he refers a referendum petition to the people.

Appellants' invocation of *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, is equally unavailing. Unlike Appellants' other cases, *Toberman* was at least decided under Article III, § 52(a) of the Missouri Constitution of 1945. But *Toberman* was not decided under Chapter 116, which now requires exhaustive review of referendum petitions by the Secretary. For example, in 1952, Missouri law still provided that "the person who circulated" a petition was responsible for verifying the validity of the signatures they submitted. § 126.040, RSMo (1949), Supp. App. 5–6.

That said, *Toberman* explicitly affirms that the filing of a legally insufficient referendum petition *does not* suspend the effective date of a statute. Appellants claim that *Toberman* involved a "congressional map." App. Br. 36 (emphasis omitted). But this is misleading. *Toberman* involved an *unsuccessful* referendum campaign that tried to challenge a congressional map. The Secretary of State initially accepted the campaign's petition as "legally sufficient," and he "officially declared he intended to take the constitutional and statutory procedures to refer Senate Bill 267 for approval or rejection by the people." *Toberman*, 250 S.W.2d at 702. However, the Secretary later determined that the referendum petition lacked enough signatures to warrant referral. *Id.* In a subsequent lawsuit, this Court affirmed the lower court's judgment that "[t]he *filing of petitions* for referendum prior to April 24, 1952, which said petitions have been proved to be legally

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insufficient, *did not suspend* the effective date of Senate Bill 267." *Id.*, at 703, 707 (emphasis added).

Appellants brush aside all these details, and they focus on an isolated quotation in the *Toberman* opinion. App. Br. 36–37. But in the section of the opinion that Appellants cite, this Court was interpreting the phrase "ninety days after the final adjournment of the session of the general assembly" in Article III, § 52(a). *See Toberman*, 250 S.W.2d at 705–06. While § 52(a) requires submission of a referendum petition within that timeframe, its text does not provide for the suspension of legislation immediately upon filing of a referendum petition. The *Toberman* Court's reasoning implicitly assumes that the Secretary could quickly refer a measure to the people—because that was consistent with the Secretary's limited review at that time. *See* § 126.040, RSMo (1949), Supp. App. 5–6. But the Court's opinion repeatedly characterized the Secretary—*not* citizens filing petitions—as "referring" measures "to the people," *Toberman*, 250 S.W.2d at 702–03, 706.[9] Also, *Toberman* affirms a holding that "[t]he *filing of petitions* for referendum prior to April 24, 1952, which said petitions have been proved to be legally insufficient, *did not suspend* the effective date of Senate Bill 267." *Id.*, at 703 (emphasis added). Thus, *Toberman* supports the State, not Appellants.

[9] This point is significant because legislation challenged by a referendum petition suspends when it is "referred to the people." Mo. Const. art. III, § 52(b). And while § 52(a) provides citizens ninety days to file a referendum petition, it never says that General Assembly's legislation cannot go into effect on the ninetieth day if an unverified referendum petition is on file with the Secretary. Rather, § 52(a) merely provides that "[r]eferendum petitions shall be filed with the secretary of state," and the Secretary is the one who then "refer[s]" legislation "to the people." Mo. Const. art. III, § 52(b).

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Critically, the manner in which the Secretary would refer referenda to the people changed dramatically in 1980, when the General Assembly enacted §§ 116.120–116.150 and 116.200. This legislation is pivotal to the Court's analysis here because it expanded the Secretary's review duties. *Compare* § 126.040, RSMo (1949), Supp. App. 5–6, *with* §§ 116.120–116.150, RSMo. Chapter 116 thus addresses the questions on which Article III, Sections 52 is silent: *what* the Secretary must do with a referendum petition, and *when* the Secretary must refer a measure.

Former Secretary of State James Kirkpatrick "proposed" §§ 116.120–116.150 and 116.200, and the General Assembly enacted these statutes in 1980. *See Official Manual of the State of Missouri 1981–1982*, at 14 (Kirkpatrick, J.C. & Johnson, K.M. eds., 1982). The Secretary's office characterized these important reforms as an "overhaul of the initiative and referendum process." *Id.* In light of these reforms, the Secretary's review of referendum petitions is no longer ministerial.[10] *Compare Kemper v. Carter*, 165 S.W. at

[10] Without any citation to authority, Appellants claim that "Secretary Hoskins's certification [decision] is *now essentially a ministerial act* akin to his predecessor's role in *Kemper*" because of local election authorities' preliminary findings about signature validity. App. Br. 43. But the Court cannot consider these extra-record preliminary findings. *Supra* 43 n.6. In any event, Appellants' argument is legally baseless. One wonders what even constitutes an "essentially ministerial" act. App. Br. 43. Appellants never explain and provide no citation illuminating this term. *See id.* Also, the Secretary's extensive review authority under Chapter 116 is anything but "ministerial." §§ 116.120–116.150, RSMo. Even *after* local election authorities return their findings, Chapter 116 will obligate the Secretary to "examine the petition to determine whether it complies with the Constitution of Missouri and with" Chapter 116. § 116.120.1. Also, § 116.140 provides that, "*Notwithstanding certifications from election authorities* under section 116.130, the secretary of state shall have authority not to count signatures on initiative or referendum petitions which are, in his opinion, forged or fraudulent signatures." § 116.140 (emphasis added).

780, *with* §§ 116.120–116.150, RSMo; *Thomson*, 651 P.2d at 785. The Secretary is now obligated to analyze the legal sufficiency and validity of a referendum petition, and courts can become involved only after the Secretary completes his review process. *Compare Kemper v. Carter*, 165 S.W. at 780–81, *with* §§ 116.120–116.150, 116.200, RSMo. Further, Chapter 116 bars the Secretary from referring a measure for a vote of the people until he finishes his review. *See* §§ 116.150.1, 116.200.2, RSMo ("If the court decides the petition is insufficient, the court shall enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot.").

Again, Appellants cannot cite a single case after the enactment of Chapter 116 that supports their position. Instead, all available precedent supports the State. *See von Glahn*, 2025 WL 3514277; *Kaw Transport*, No. CV181-778C.[11] Lacking any judicial authority, Appellants cite two news articles claiming that Secretary Jay Ashcroft understood the mere submission of a referendum petition in 2017 to suspend Missouri's right-to-work law. App. Br. 14–15 (citing D227; D228). But these articles contain no direct quotations from the Secretary, and they contain no explanation of the Secretary's reasoning. Further, even if these articles fairly summarized Secretary Ashcroft's position, Secretary Ashcroft is not the chief legal officer of Missouri. Here, Secretary Hoskins has reasonably relied on the

[11] Appellants cite *Stickler v. Ashcroft*, 539 S.W.3d 702 (Mo. App. W.D. 2017). Yet *Stickler* was a case about the sufficiency of a ballot title, and *Stickler* did not comment on the question at issue here. *Id.*, at 712–13. If anything, *Stickler* supports the State by stating that "*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 (emphasis added) (alteration original).

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legal opinion of the Attorney General and on the directly-applicable *von Glahn* opinion in assessing his review obligations, which precede referral of PNP's referendum to voters. *See von Glahn*, 2025 WL 3514277, at *1; §§ 116.120–116.150, 116.200, RSMo.

Also, Appellants' assertion that Secretary James Kirkpatrick agreed with their position in the 1980s is wrong. App. Br. 14–15. To justify their claim, Appellants latch on to *one* line of *one* news article—written by a non-lawyer in 2017—and the line in the article is ambiguous at best. The article says that, in 2017:

> The secretary of state's office provided . . . an electronic image of a 1982 newspaper story which reported that then Secretary of State James Kirkpatrick had determined the truck law was suspended *after petition signatures were filed*.

D228, pp. 2–3 (emphasis added). Appellants hang their entire claim about Secretary Kirkpatrick's understanding on those final five words of the sentence. But even assuming those words are true, that does not answer whether Secretary Kirkpatrick also made a finding of sufficiency under Chapter 116 before he "determined" that "the truck law was suspended." *Id.* *Kaw Transport*, a case about the suspension of the truck law, suggests that Secretary Kirkpatrick *did* make such a finding. No. CV181-778CC, (slip op.) at 2. Indeed, *Kaw Transport* relied on the Secretary's "examination of the referendum petition," and the court deemed it "reasonable" to stay the "effective date" of the "legislation in question" because "the Secretary of State ha[d] complied with the criteria set forth in Section 116.120." *Id.* The Court added that the Secretary "found that the [referendum] petitions in question complied with the Constitution of the State of Missouri and with the provisions of Section 116." *Id.* Also, even without *Kaw*, Appellants' news article is not credible. *See* D228. It is based on at least three levels of hearsay, and it was authored

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nearly forty years after the declarant's initial statement. *See id.* The Court should disregard it altogether. Thus, none of Appellants' appeals to "practice" by previous Secretaries of State suggest that this Court should disregard the plain text of Missouri law, the Constitution, and all relevant judicial precedent.[12]

Finally, Appellants resort to Oregon precedent, noting that *Kemper v. Carter* also discussed Oregon authorities. App. Br. 47–48. But as discussed at length above, the 1914 *Kemper* opinion has limited applicability today in light of Chapter 116's enactment and Chapter 116's interaction with Article III, § 52(b) of the 1945 Constitution. In any event, Appellants' fail to cite even *one* Oregon case pre-dating *Kemper v. Carter*. *See* App. Br. 47–48. Rather, every case post-dates *Kemper*, and *Kemper* itself did not purport to adopt every Oregon precedent that came after the *Kemper* decision. Also, Oregon's referendum provision has been amended three times since *Kemper v. Carter*, and today's version looks nothing like it did in 1906. *Compare* Or. Const. art. IV, § 1 (2000), *with* Or. Const. art. IV, § 1A (1906). Oregon's referendum provision also contains no language stating that suspension occurs when legislation is "referred to the people." *Compare* Or. Const. art. IV, § 1 (2000), *with* Mo. Const. art. III, § 52(b). Further, for every out-of-state case cited

[12] Appellants also claim that, as recently as 2025, the Secretary supposedly agreed with their position. App. Br. 37. But that is false. Appellants cite a declaration from the Secretary of State's office stating that "if [the referendum organizers] succeed in collecting the necessary signatures, the Missouri Constitution will prevent the new map from taking effect until a referendum occurs." Decl. ¶ 20, ECF Doc. 3-1, *Mo. Gen. Assembly v. von Glahn*, No. 4:25-cv-01535-ZMB (E.D. Mo. Oct. 15, 2025). But this does not comment on whether suspension occurs before or after the Secretary's certification decision. And Judge Bluestone asked the Secretary to clarify this point at the preliminary-injunction hearing. D203, Tr., pp. 36:1–2. In response, the Secretary's counsel expressly stated, "[I]t is only after final certification of the signatures that the map would be frozen." *Id.*, pp. 36:3–14.

by Appellants, Respondents have more out-of-state authorities proving that referendum rights can be upheld even if legislation does not suspend immediately upon filing of an unverified referendum petition. *See, e.g.*, *Barnes*, 204 A.2d at 791–93; *Allen*, 625 P.2d at 846 ("[T]he filing of a referendum petition does not suspend the effect or operation of the act referred." (internal quotation omitted)); *Howard*, 248 P. at 45–46 ("The people make their own Constitution, and, when they have not seen fit to provide that the filing of a referendum petition shall suspend the operation of a law, we are not authorized to read such a provision into the Constitution."). Thus, Appellants' retreat to out-of-state precedent does not justify their position. Rather, out-of-state precedent reveals the flaw in Appellants' conclusory claims that "the sufficiency of a referendum petition *must be* assumed until certification by the Secretary of State." App. Br. 44 (emphasis added). The plain text of the Missouri Constitution and Missouri law provides otherwise. *See* Mo. Const. art. III, §§ 52(a)–52(b); §§ 116.120–116.150, 116.200, RSMo.

2. *Amicus* PNP is estopped from offering legal argument supporting Appellants. In any event, PNP is wrong on the merits. Chapter 116 does not create a presumption of validity; it bars such a presumption.

Although People Not Politicians was conspicuously absent below, it now submits an *amicus* brief on appeal. *See* PNP *Amicus* Br. (filed April 10, 2026). PNP identifies itself as "the committee supporting the campaign for the referendum petition at issue in this litigation." *Id.*, at 6. PNP supposedly views this case as "existential" for Missouri. *Id.*, at 33. One wonders, then, why Appellants sued instead of PNP, and why it did not intervene below. There should be no mystery about this question: PNP is estopped from arguing that HB1 suspended upon the mere filing of PNP's referendum petition. The Court

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should therefore disregard PNP's *amicus* brief altogether. *See Kindle*, 446 S.W.2d at 818 ("An amicus curiae . . . cannot assume the functions of a party, an attorney for a party, or even a partisan.").

Courts judicially estop parties "from deliberately changing positions according to the exigencies of the moment." *Vacca v. Mo. Dep't of Lab. & Indus. Rels.*, 575 S.W.3d 223, 232 (Mo. banc 2019) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001)). This Court applies the judicial-estoppel doctrine "flexibl[y]" to "preserve the integrity of the courts." *Id.*, at 235. Here, the need for judicial estoppel is clear in light of *Missouri General Assembly v. von Glahn*. *See supra* at 15–18. There, to obtain dismissal of a federal case, PNP told a federal district court that HB1 would not suspend until *after* the Secretary certified PNP's referendum petition or a court ordered the Secretary to do so. *Id.* Judge Bluestone noted on the record that this concession was "abundantly clear." D203, Tr., pp. 52:14–53:1. And, in light of PNP's "abundantly clear" concessions, *id.*, the federal court granted PNP's motion to dismiss. *See von Glahn*, 2025 WL 3514277. The court outlined the exact procedure that PNP now opposes in its *amicus* brief. *See id.*, at *1 (***After*** the timely submission of a final petition, the Secretary of State must 'examine the petition . . .' ***If*** the Secretary ***finds*** that the petition satisfies [Chapter 116], the challenged law is displaced . . . ") (citing Mo. Const. art. III, § 52(b); §§ 116.120, 116.150, RSMo) (emphasis added). Later in its order, the court again noted PNP's concession that "the new [HB1] map would go into effect." *Id.*, at *4 n.4. The district court also "expressly found that PNP affirmatively waived" any position "to the contrary in future litigation (to say nothing of the ethical ramifications of counsel breaching their duty of candor to this tribunal)." *Id.*

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Given Judge Bluestone's express finding about PNP's affirmative waiver, *id.*, this Court should refuse to consider the arguments that PNP now advances in its *amicus* brief. The Court should not allow PNP to circumvent estoppel as an *amicus*.

Estoppel aside, PNP offers only one argument that Appellants did not advance. PNP claims that Chapter 116, RSMo, creates a presumption of validity for every unverified referendum petition. PNP *Amicus* Br. at 17–20. However, to support this claim, PNP relies heavily on precedent from before Chapter 116 was enacted in 1980. PNP relies most heavily on *Kaesser v. Becker*—a 1922 case where this Court upheld judicial findings that sixteen signatures on a referendum petition were fraudulent. 243 S.W. at 349, 352. Of course, at that time, Missouri law allowed petition circulators to self-certify the validity of signatures through affidavits and the Secretary could not question those certifications. *Kemper v. Carter*, 165 S.W. at 780–81. Thus, *Kaesser*—in affirming a finding that petition signatures were fraudulent—explained that a circulator's affidavit creates only a "presumption" of validity. 243 S.W. at 350. Citing *Kemper* and Missouri law, *Kaesser* explained that "[e]ach petition, . . . supported by the *statutory* affidavit of the circulator thereof and filed in the office of the secretary of state, is prima facie proof of the genuineness of such signatures." *Id.* (citing *Kemper*, 165 S.W. 773; § 5907, R.S. (1919)). Thus, "when the circulator of a referendum petition makes the statutory affidavit thereto, the law accepts as true the statements made therein until the contrary is shown." *Id.*

Yet, as detailed at length above, the General Assembly's enactment of Chapter 116 in 1980 changed this statutory scheme. Although Chapter 116 still includes an affidavit requirement for petition circulators, § 116.030, RSMo, nothing in Chapter 116 creates a

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presumption of validity. Instead, Chapter 116's text *requires* the Secretary to conduct an independent review before certification. §§ 116.120–116.150, RSMo. And since Chapter 116's enactment, Missouri courts, the Wyoming Supreme Court, and *even* Appellants themselves have agreed that Chapter 116 now requires an independent review by the Secretary. *See, e.g.*, Trial Tr. at 141:16–23, 143:3–145:4; *von Glahn*, 2025 WL 3514277, at *1 ("After the timely submission of a final petition, the Secretary of State must "examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116]" and verify whether there are enough valid signatures to trigger a statewide vote." (quoting § 116.120, RSMo)); *Thomson*, 651 P.2d at 785 ("[S]ince the time frame of *State ex rel. Kemper v. Carter*, *supra*, there has been a reform of the initiative and referendum procedures in [Missouri]. [Missouri] now requires processing of petitions by the secretary of state."). Nowadays, the Secretary cannot immediately certify referendum petitions, without any independent review under Chapter 116, on the presumption that all of a petition's signatures are valid. *See* §§ 116.120–116.150, RSMo. Indeed, if the Secretary did so, and certified an insufficient referendum petition, Missouri law provides that courts "shall enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot." § 116.200.2, RSMo.

Despite Chapter 116's text, modern precedent, and Appellants' concessions, PNP tries to cite a few cases for the proposition that Chapter 116 nonetheless presumes the validity of all unverified referendum petitions. First, PNP cites *Union Electric Co. v. Kirkpatrick*, 678 S.W.2d 402 (Mo. banc 1984), for the broad proposition that Missouri's "basic statutory structure [for processing referendum petitions] has remained the same for

more than a century." PNP *Amicus* Br. 17 n.5 (citing 678 S.W.2d at 407–08). But PNP does not cite this Court's majority opinion for that proposition. Rather, PNP cites the Western District's *reversed* opinion, which was attached as an appendix to the *dissent*. *See* 678 S.W.2d at 406–08 (Appendix to Billings, J., dissenting). And of course, the dissent and reversed opinion were wrong for all the reasons explained above. Rather, Chapter 116 was a legislative "overhaul of the initiative and referendum process." *See Official Manual of the State of Missouri 1981–1982*, at 14 (Kirkpatrick, J.C. & Johnson, K.M. eds., 1982).

Next, PNP isolates a quotation from *Ketcham v. Blunt*, 847 S.W.2d at 832, for the proposition that circulator affidavits create an automatic presumption of validity under Chapter 116. PNP *Amicus* Br. But *Ketcham* simply held that the Secretary could rely on a local election authority's finding of validity, together with a circulator's affidavit, even if the local election authority failed to attach proper markings to petition pages pursuant to 15 C.S.R. § 30-15.020. *See Ketcham*, 847 S.W.2d at 831–32. The *Ketcham* opinion also contains language strongly supporting the State:

> The virtual purpose of chapter 116 is to vouchsafe the integrity of that process. "The validity of the signatures is the heart of the ultimate determination" of the sufficiency of an initiative petition for the ballot. *It is the secretary of state who is charged* with the ultimate administrative determination as to whether the petition complies with the Constitution of Missouri and with the statutes. … It is that the initiative petition is *sufficient* or *insufficien*t that the secretary of state certifies …

Id., at 830–31 (quoting *United Labor Comm.*, 572 S.W.2d at 455; citing §§ 116.120, 116.150, RSMo) (emphasis added). Thus, *Ketcham* does not support PNP's argument—but reaffirms that Secretary Hoskins has discretion to carefully assess whether PNP's signatures are sufficient.

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Finally, PNP cites *Bradshaw v. Ashcroft*, 559 S.W.3d 79 (Mo. App. W.D. 2018). PNP *Amicus* Br. 19. However, *Bradshaw* simply rejected a plaintiff's argument that the Secretary must "disregard" facially compliant affidavits because the Secretary is independently "required to confirm that the circulators' affidavits and the notary attestations were truthful." *Bradshaw*, 559 S.W.3d at 88. *Bradshaw* noted the obvious point that "Chapter 116 does not impose this obligation on the secretary of state." *Id.* Of course, Chapter 116 does not require the Secretary to individually investigate every circulator and notary to confirm that their affidavits are truthful. *See* §§ 116.120–116.150, RSMo. But that also does not mean that Secretaries of State must presume the validity of all unverified referendum petitions. Rather, Chapter 116 requires the Secretary's review before certification, and the Secretary holds "authority not to count signatures on initiative or referendum petitions which are, in his opinion, forged or fraudulent signatures." *Bradshaw*, 559 S.W.3d at 86. The Secretary and local election authorities must also conduct independent review to exclude duplicated signatures and signatures by individuals who are not registered voters. 15 C.S.R. § 30-15.020. Nothing in *Bradshaw*'s holding changes this procedure, which must precede the Secretary's finding of sufficiency. *See* § 116.150.1, RSMo.

Also, *even* if PNP is correct that Chapter 116 includes a presumption of validity for referendum petitions (it does not), that would not relieve the Secretary of his review obligations under Chapter 116—which precede referral and suspension. *See* §§ 116.120–116.150, RSMo. An amorphous "presumption of validity" would not change the fact that § 116.150 allows the Secretary to certify a measure only "*[a]fter* the secretary of state

makes a determination on the sufficiency of the petition" through Chapter 116 review. (emphasis added). Here, the Circuit Court found that the Secretary has not made a certification decision or a finding of legal sufficiency Chapter 116. D238, ¶¶ 7¸15. Thus PNP's presumption-of-validity argument makes no difference even if it is correct.

IV. Appellants waived their constitutional challenge to Chapter 116, RSMo, and their challenge fails in any event. (Response to Point Relied On V)

At trial, Appellants all but conceded that the plain text of Chapter 116 forecloses their legal theory. Trial Tr., p. 143:3–145:4, 148:4–6. Thus, Appellants also lodge a boilerplate constitutional challenge to Chapter 116 itself. App. Br. 46. Appellants claim that "if the State is correct and Section 116.150 or 116.130, RSMo—or *any* provision of Chapter 116—permits the Secretary of State to delay suspension . . . until the issuance of a certificate of sufficiency . . . , then the statute conflicts with Article III, Sections 49, 52(a), and 52(b) of the Missouri Constitution (at least as applied to the facts here) and is unconstitutional." App. Br. 46 (emphasis in original). This last-ditch constitutional challenge fails for several reasons.

First, Appellants' waived any constitutional challenge. "To properly raise a constitutional issue," Appellants needed to "(1) raise the question at the first available opportunity; (2) specifically designate the constitutional provision alleged to have been violated . . . ; (3) state the facts showing the violation; and (4) preserve the constitutional question *throughout* for appellate review." *C.S. v. Mo. Dep't of Soc. Servs.*, 491 S.W.3d 636, 649 n.12 (Mo. App. W.D. 2016) (emphasis added) (quoting *In re A.R.*, 330 S.W.3d 858, 864–65 (Mo. App. W.D. 2011)). However, Appellants failed to meaningfully advance

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their constitutional challenge at trial. They mentioned a constitutional challenge to "Section 116.150 or 116.130, RSMo" only in a one-sentence footnote of their pretrial brief. *See* D212, p. 10 n.3. And the footnote never mentioned the relevant standards of review for constitutional challenges. *See id.* This kind of conclusory constitutional challenge—raised only in a one-sentence footnote—preserved nothing for appellate review. *See Glickert v. Loop Trolley Transp. Dev. Dist.*, 792 F.3d 876, 883 (8th Cir. 2015) (constitutional challenge raised in a footnote could not preserve issue for review).

Also, at trial, Appellants never mentioned their constitutional challenge during their closing argument, and they raised it for the first time in rebuttal after the State noted that they failed to preserve the issue. *See* Trial Tr., pp. 122:15–123:4, 139:1–14. Appellants therefore failed to "preserve the constitutional question *throughout* for appellate review." *C.S.*, 491 S.W.3d at 649 (emphasis added). Indeed, a constitutional challenge discussed for the first time in a rebuttal argument preserves nothing for review. *See Jackson Cnty. v. Stamps*, 708 S.W.3d 911, 917 (Mo. App. W.D. 2025) ("[T]he record before us does not reflect any constitutional challenge was raised until Stamps's closing argument. We therefore find that Stamps waived his constitutional claims by not raising them in a timely manner.").

Appellants also have now waived their constitutional challenge on appeal. They discuss their challenge in two sentences of their argument. *See* App. Br. 46. As in the trial court, Appellants fail to even mention the relevant standard of review. *See id.* They vaguely challenge "Section 116.150 or 116.130, RSMo—or *any* provision of Chapter 116—[that] permits the Secretary of State to delay suspension of legislation." *Id.*

(emphasis in original). At the very least, Appellants' broad references to "*any* provision of Chapter 116" preserves nothing for review. *See C.S.*, 491 S.W.3d at 649.

Second, even if Appellants preserved their challenge, Appellants' conclusory constitutional arguments fail to satisfy their heavy burden. "This Court presumes statutes constitutional and will find otherwise only if the statute clearly contravenes a constitutional provision. The burden of proof is on the party challenging the statute's constitutional validity." *E.N. v. Kehoe*, 726 S.W.3d at 685 (cleaned up). "Challengers, not the State, have the burden of rebutting this presumption and demonstrating the reasons their claim merits the relief requested." *No Bans*, 638 S.W.3d at 494–95 (Powell, J., dissenting).

Appellants claim that Chapter 116 is unconstitutional to the extent that it "permits the Secretary of State to delay suspension of legislation subject to a referendum petition until the issuance of a certificate of sufficiency and thus allow the bill to go into effect." App. Br. 46. But this ignores the text of Article III, Sections 49, 52(a), and 52(b). None of these provisions establishes a timeline for the Secretary's referral of a measure to the people. Unsurprisingly, no court has held that the Missouri Constitution itself imposes a time limit on the Secretary's certification. Rather, courts have always looked to Missouri statutes to fill in the details. This was clearly the courts' approaches in *von Glahn*, 2025 WL 3514277, at *1, and in *Kaw Transport*, No. CV181-778C, which both viewed a finding of legal sufficiency under Chapter 116 as a prerequisite to suspension under Article III, Section 52(b). Furthermore, even under Article IV, Section 57 of the Missouri Constitution of 1875, courts looked to Missouri statutes to fill in the details about the nature of the Secretary's review authority. For example, the 1914 *Kemper v. Carter* opinion explicitly

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relied on Missouri statutes in holding that the Secretary's duties are ministerial. *See Kemper v. Carter*, 165 S.W. at 780–81; *see also Thomson*, 651 P.2d at 785 ("[S]ince the time frame of *State ex rel. Kemper v. Carter*, supra, there has been a reform of the initiative and referendum procedures in [Missouri]. [Missouri] now requires processing of petitions by the secretary of state."). Appellants provide no textual or precedential basis to depart from *von Glahn*, *Kaw Transport*, and *Kemper v. Carter*, which unflinchingly relied on Missouri statutes to supply details where the Missouri Constitution is silent.

The *Barnes* decision also illustrates this point. There, the challenger questioned the constitutionality of Maryland's statutory procedures for verifying the validity of referendum petitions. 204 A.2d at 789–90. The court acknowledged that "[i]f the Secretary had applied only the Constitutional limitations and not those contained in [the challenged statute], each [referendum] petition, upon its face, would have sufficed." *Id.*, at 790. But despite this burden, the court nonetheless rejected the constitutional challenge. *Id.*, at 791–92. The court explained that these gap-filling statutes "safeguard the [referendum] privilege which the Constitution grants." *Id.*, at 791. For example, the statutory requirements "that the residence of each signer and the precinct or district in which he is a registered voter must be appended to his signature are only proper means to endeavor to assure that the provisions of the Constitution as to who may sign referendum petitions are met." *Id.* (collecting cases upholding "[s]imilar provisions . . . as reasonable").

Likewise here, Chapter 116 guards the integrity of the referendum process itself. Also, §§ 116.130 and 116.150 preserve the right of referendum by allowing adequate time for the Secretary's review. "The General Assembly is permitted to enact 'reasonable

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implementations' of the referendum process." *No Bans*, 638 S.W.3d at 487 (internal quotation omitted); *accord id.*, at 494 (Powell, J., dissenting) ("[T]he legislature has the power to enact reasonable, practical regulations to address the realities of implementing a constitutional right."). And the Missouri Constitution's silence on a timeline for referral does not cut against the validity of §§ 116.130, 116.150, or any other provision in Chapter 116. *See* Mo. Const. art. III, §§ 49, 52(a), and 52(b).

Third, Appellants' atextual constitutional challenge also suffers from an obvious defect: If the Missouri Constitution creates a timeline, then what timeline does the Constitution create? Appellants' brief is unclear on this point. They seem to imply that §§ 116.130 and 116.150 are unconstitutional to the extent that they "allow" a referred law "to go into effect." App. Br. 46. But this makes little sense for two reasons. For one, Appellants improperly assume that §§ 116.130 and 116.150 apply in the context of a referred law. They do not. Article III, Section 52(b) provides for suspension only when a measure is "referred to the people," and the Secretary holds referral authority in the context of a citizen-led initiative petition. *See* Mo. Const. art. III, § 52(a) ("Referendum petitions shall be filed with the Secretary of State . . ."); *Toberman*, 250 S.W.2d at 702–03 (The Secretary to hold referral authority after citizens submit "petitions to refer."). Sections 116.130 and 116.150 address the Secretary's duties *before* referral, so they cannot be invalidated by a constitutional provision that provides for suspension only *after* referral. Appellants' argument ignores this constitutionally mandatory sequence altogether.

Additionally, Appellants' position is practically untenable because it would require the Secretary to instantly comply with Chapter 116's review process upon filing of a

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referendum petition. This is impossible. Appellants ignore that Article III, Section 29 provides that a statute "shall take effect" "ninety days after the adjournment of the session . . . at which it was enacted." Yet that is also the precise timeline for submitting a referendum petition under Article III, Section 52(a). If Appellants believe that their referendum right invalidates the timelines allowed in Chapter 116, then that means that the Secretary and local election authorities must fulfill their Chapter 116 duties almost instantly upon the filing of a referendum petition. Indeed, Appellants challenge §§ 116.150 and 116.130 to the extent that they permit "the Secretary of State to delay suspension of legislation subject to a referendum petition until the issuance of a certificate of sufficiency and thus allow the bill to go into effect." App. Br. 46. Thus, if Appellants' constitutional challenge succeeds, the Secretary will still hold all his review duties under §§ 116.120, 116.130, 116.140, and 116.150, and he will be vested with the impossible task of reviewing and referring submitted initiative petitions almost instantly.

The Missouri Constitution does not require this. The Court should reject Appellants' atextual reading of the Missouri Constitution, and allow Missouri statutory law to fill in the gaps in the referendum process—just as it always has.

V. The *Purcell* principle bars judicial intervention, especially several weeks after the closing of the candidate filing period.

The *Purcell* principle provides another independently sufficient basis to affirm. *See Purcell v. Gonzalez*, 549 U.S. 1, 5–6 (2006). The *Purcell* principle is an equitable rule that generally bars courts from "enjoin[ing] a state's elections laws in the period close to an election." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring); *see*

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State ex rel. Ellis v. Creech, 259 S.W.2d 372, 374 (Mo. banc 1953) (holding that injunctive relief is discretionary and is "to be exercised in accordance with well settled equitable principles'"). This rule implements "a basic tenet of election law: When an election is close it hand, the rules of the road should be clear and settled." *Wisconsin State Legislature*, 141 S. Ct. at 31 (Kavanaugh, J., concurring).

Notably, this Court already adopted the *Purcell* principle in *Hadley v. Junior College District of Metropolitan Kansas City*: "In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles." *Hadley*, 460 S.W.2d at 2 (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)). Thus, this Court must consider the *Purcell* principle here.[13]

The *Purcell* principle forecloses relief, especially because the filing period for congressional candidates opened on February 24, 2026, and closed on March 31, 2026. § 115.349, RSMo. This Court's *Hadley* opinion requires this result. There, the U.S. Supreme Court had just reversed a decision of this Court and held that Missouri's apportionment of districts to elect trustees of junior colleges was unconstitutional under the Fourteenth Amendment. *See* 460 S.W.2d at 2 (citing *Hadley v. Junior Coll. Dist. of*

[13] Of course, this rule was not called the "*Purcell* principle" when *Hadley* was decided. But the U.S. Supreme Court's *Purcell* doctrine and this Court's *Hadley* decision both relied on the U.S. Supreme Court's decision in *Reynolds v. Sims*, which recognized that courts should not alter a congressional map shortly before an election—even where a *final judgment* found the map unlawful. *See Hadley*, 460 S.W.2d at 2 (discussing *Reynolds v. Sims*, 377 U.S. at 585); *American Encore v. Fontes*, 152 F.4th 1097, 1121 (9th Cir. 2025) (recognizing *Reynolds* as part of the *Purcell* line of cases).

Metro. Kansas City, Mo., 397 U.S. 50 (1970)). Yet the U.S. Supreme Court rendered its decision on February 25, 1970, and the last day for candidates to register for the trustee election was March 7, 1970. *Id.* at 2–3. This Court applied the *Purcell* principle despite the Supreme Court's decision, concluding "that it would be wholly inequitable and impracticable to attempt at this late date to apply the principles enunciated in the decision of February 25, 1970." *Id.* at 3.

Also, last December, the U.S. Supreme Court applied *Purcell during* the candidate filing period in Texas—thus locking in Texas's congressional map for the 2026 elections regardless of the map's legality. *See Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025). This is an *a fortiori* case because Appellants seek judicial intervention almost two months *after* Missouri's candidate filing period *closed*. *See* § 115.349, RSMo. Thus, it is too late for courts to alter Missouri's map for the 2026 elections. *See Hadley*, 460 S.W.2d at 2–3; *Abbott v. LULAC*, 146 S. Ct. at 419; *see also Robinson v. Callais*, 144 S. Ct. 1171 (2024) (applying the *Purcell* principle to stay a federal district court's injunction against a congressional map two months before the candidate-qualifying period even *opened*).

A judicial order to change Missouri's congressional map for the ongoing 2026 elections would inflict chaos on candidates, election officials, and the public. *See Hadley*, 460 S.W.2d at 2–3; *Abbott v. LULAC*, 146 S. Ct. at 419; *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring) ("An injunction is an equitable remedy, and such relief may be inequitable if it is issued shortly before an election, when candidates, election officials, and voters have relied on the rules in place at that time."). Since early December, when the State gave notice that HB1 was in effect and would presumptively govern

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elections in 2026, candidates have built their campaigns around that map. Candidates have been campaigning and fundraising based on HB1's significantly changed borders. For example, in Congressional District 5—the district most altered by HB1—there is a highly competitive primary election in which three candidates have collectively raised nearly $1.5 million for their campaigns. *See Campaign Finance Data: Raising by the numbers*, Fed. Election Comm'n (accessed Apr. 27, 2026).[14]

A judicial order changing the district lines for 2026 would result in candidates being on the ballot for districts they do not even live in, scramble ongoing competitive campaigns, and likely waste the substantial resources that have been raised and expended based on the current districts. *Purcell* exists to avoid precisely these types of harms—which is why this Court and many other state courts, not just federal courts, apply the *Purcell* principle. *See, e.g.*, *Hadley*, 460 S.W.2d at 3; *New PA Project Educ. Fund v. Schmidt*, 327 A.3d 188, 189 (Pa. 2024) ("Call it what you will — laches, the *Purcell* principle, or common sense — the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.") (internal quotation omitted); *State ex rel. Ohio Democratic Party v. LaRose*, 257 N.E.3d 130, 137 (Ohio 2024) ("*Purcell* also stands for the commonsense principle that judges—novices in election administration—should not meddle in elections at the last minute, . . . because when they do, they are more likely to do more harm than good." (cleaned up)); *Moore v. Lee*, 644 S.W.3d 59, 65–66 (Tenn. 2022); *League of United Latin Am. Citizens of Iowa v. Pate*, 950 N.W.2d 204, 215–16

[14] https://www.fec.gov/data/raising-bythenumbers/?office=H

(Iowa 2020); *All. for Retired Americans v. Sec'y of State*, 240 A.3d 45, 49–50 (Maine 2020); *Liddy v. Lamone*, 919 A.2d 1276, 1287–1291 (Md. 2007); *Chi. Bar Ass'n v. White*, 898 N.E.2d 1101, 1107–08 (Ill. App. Ct. 2008); *Fay v. Merrill*, 256 A.3d 622, 637–38 & n. 21 (Conn. 2021).

For their part, Appellants never directly dispute that *Purcell* applies. *See* App. Br. 54–56. Rather, Appellants admit that they "repeatedly urged expedition before the Circuit Court to avoid the State's attempted use of the *Purcell* doctrine as a barrier to relief." *Id.*, at 56. Indeed, at every step of the proceedings below, Appellants all-but conceded that *Purcell* would foreclose relief after the candidate filing period *opened* on February 24—much less closed on March 31:

- **Jan. 8, 2026:** Appellants' counsel told the Circuit Court, "[W]e're doing this because we want to make sure the Court has time to make a decision *and that there's time for an appellate review* before we start to get into the calendar. And the calendar is at the end of date filing period starts February 24th." Sched. Hearing. Tr. (Jan. 8, 2026), pp. 31:18–32:2 (emphasis added).
- **Jan. 8, 2026:** Appellants' counsel also told the Circuit Court: "[Y]ou also didn't hear from either counsel any dispute about important dates here. February 24th is going to come quicker than we know it. Our goal is to get this case resolved *with time to go up on appeal* well in advance of that deadline." Sched. Hearing. Tr. (Jan. 8, 2026), pp. 38:25–39:4 (emphasis added).
- **Jan. 14, 2026:** In Appellants' motion for preliminary injunction, which they later withdrew, D248, Appellants emphasized: "[T]ime is of the essence: The filing

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period for congressional candidates begins on February 24, 2026, *see* § 115.349(2), RSMo, meaning the contours of Missouri's operative congressional map must be clarified—and Defendants' erroneous interpretation of the referendum laws must be corrected—*as soon as possible*. Otherwise, the People's referendum rights will be subject to another legal impediment: "the *Purcell* principle," which "requires courts to favor the status quo in a legal dispute during the lead-up to an election." MTD 17 (footnote omitted) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam))." D140, p. 16.

- **Jan. 20, 2026:** Appellants told the Circuit Court: "[T]hey need to know by February 24 when the filing period begins. You can only file and run in one congressional district at a time, I believe. So they need to know and then voters need to know where they live as well. But I want to underscore something, Your Honor . . . a congressional map has a certain patent tendency to it that eventually it gets locked in. That's why we need to address this as soon as possible." MTD Hearing Tr. (Jan. 20, 2026), pp. 35:19–36:18.
- **Feb. 10, 2026:** At trial, Appellants argued: "[W]e submit there is no *Purcell* problem now because we've asked for a resolution by February 24th." Trial Tr. (Feb. 10, 2026), p. 81:6–8.

In their brief, Appellants now claim that "there is no evidence in the record that it is too late for this Court or any other to rule on HB1's suspension—because the State did not adduce any." App. Br. 54 (emphasis omitted). But that ignores the laundry list of Appellants' concessions above—which Appellants made in a conscious effort to obtain

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expedited review. This Court should not allow Appellants to flip positions on appeal. Also, Appellants expressly acknowledged below that "the drop dead date . . . for when Missouri's congressional map has to be in place" is "a question for the Secretary of State and election officials." MTD Hearing Tr. (Jan. 20, 2026), pp. 32:14–20. The Secretary is a party to this litigation, and he agrees with this Court and the U.S. Supreme Court that altering an election map *after* the candidate-filing period is too late. *See Hadley*, 460 S.W.2d at 2–3; *Abbott v. LULAC*, 146 S. Ct. at 419. The brief of *amicus* Brianna Lennon, a Boone County election official, also illustrates why judicial intervention now is too late under *Purcell*. As Ms. Lennon acknowledges, "Last minute changes in how elections are administered can themselves cause confusion and chaos that allows election mis- and dis-information to metastasize." Lennon *Amicus* Br. at 16.[15]

Appellants also claim that the State's *Purcell* argument "is difficult to reconcile with the positions that it took before the Circuit Court." App. Br. 55. In particular, Appellants note that the Secretary has (correctly) said that he would certify PNP's referendum petition if it is sufficient. *Id.* But the State's positions are perfectly consistent. The State explained below that *Purcell* prevents only late *judicial* changes to election laws. D211, p. 14 n.6.

[15] To be sure, Ms. Lennon submitted her brief in support Appellants, not the State. *See* Lennon *Amicus* Br. She highlights the danger of last minute changes to claim that "[d]elaying certification of [PNP's] referendum petition will have serious practical consequences for election administration." *Id.*, at 11. But judicial intervention declaring HB1 immediately suspended *until* the Secretary makes his certification decision under § 116.150 is not guaranteed to prevent last minute changes. Of course, if PNP's referendum turns out to be legally or factually insufficient, then the eventual "unsuspen[sion]" of HB1 would simply change Missouri's congressional map *back* to the HB1 map. App. Br. 47. Thus, the prudential concerns that Ms. Lennon raises actually counsel against judicial intervention. *See Purcell*, 549 U.S. at 5–6.

Whereas the *political branches* can make last-minute changes to election rules (as the General Assembly did in 2022, when it made *minor* updates to an existing congressional map, for example), courts have consistently held that *judges* must "avoid[] late, judicially imposed changes" to "election laws and procedures," *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring); *Wisconsin State Legislature*, 141 S. Ct. at 29–30 (Gorsuch, J., concurring) (acknowledging political branches can make last-minute changes but distinguishing courts). Indeed, "the *Purcell* principle" only "concerns late judicial tinkering." *Malliotakis*, 146 S. Ct. at 811 (Alito, J., concurring) (cleaned up).

A final point bears emphasis. This Court's decision in *Hadley*—and the U.S. Supreme Court's recent application of *Purcell* in *Abbott v. LULAC*—confirms that litigants are *not* entitled to an effective litigation window to challenge election rules. *See Hadley*, 460 S.W.2d at 2–3; *Abbott v. LULAC*, 146 S. Ct. at 419. Even so, it bears noting that litigants here had ample time to challenge HB1 before the State started invoking *Purcell*. The State has defended a host of lawsuits against HB1 since early September 2025. Yet the State did not start invoking *Purcell* until it became clear that judicial decisions would come during the candidate filing period—a factual circumstance directly on point with this Court's decision in *Hadley*, 460 S.W.2d at 2–3, and the U.S. Supreme Court's decision in *Abbott v. LULAC*, 146 S. Ct. at 419.

Thus, even in this case, Appellants had nearly three months to obtain relief before the State started invoking *Purcell*. Appellants waited to file this case for two weeks after HB1 went into effect. *See* D174, ¶ 18; D124. Then, after they filed on December 23, 2025, Appellants waited three more weeks to move for a preliminary injunction on January 14,

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2026—which was *five weeks* after HB1 went into effect. D140. Appellants later withdrew their motion for a preliminary injunction after the Circuit Court set a February 2026 trial date. D248. Finally, even after the candidate filing period closed, Appellants did not ask this Court for an injunction pending appeal. Also, despite threats of an immediate lawsuit by PNP (the referendum's proponent), D188; D196, PNP remained notably silent throughout this litigation in the Circuit Court. PNP only first submitted an amicus brief in this appeal on April 10, 2026. And to date, nearly *five months* after HB1 went into effect, PNP has still not sued in this own name.

Also, the State has accommodated Appellants' request for urgency at every step. After receiving Appellants' Petition on December 23, the State worked over the holidays, moved to dismiss, and served written discovery before the Circuit Court's first scheduling hearing—far less time than that allowed by the rules. *See* D130; D131; Sched. Hearing. Tr. (Jan. 8, 2026), pp. 43:13–18. Then, in a one-month timeframe, the State argued its motion to dismiss, completed four depositions, pursued written discovery, authored trial briefing, and participated in a trial on February 10, 2026. *See* D181; D182; D183; D184; D185; D186; D190; D191; D192; D193; MTD Hearing Tr. (Jan. 20, 2026); Trial Tr. (Feb. 10, 2026). To the extent that anyone is responsible for delay, it is Appellants, not the State.

Under such circumstances, it would be extraordinarily inequitable to give injunctive relief to Appellants—at the expense of candidates, election officials, and all Missourians. *See Hadley*, 460 S.W.2d at 2–3; *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (applying the *Purcell* principle, noting "that the plaintiffs themselves did not see the need to ask for [preliminary injunctive] relief"). The

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Court should apply the *Purcell* principle and affirm.

* * *

Throughout their arguments, Appellants and PNP consistently ask this Court to cut corners to aid their political opposition to HB1. In their eyes, procedural and statutory rules should yield to ensure Appellants and PNP achieve their political objectives. *See* App. Br. 22–30, 46; PNP *Amicus* Br. At its core, their theory seems to be that the Secretary should have forecasted—and this Court should also just forecast—that PNP will have enough signatures to trigger a referendum, and to use that forecast to displace a congressional map duly enacted by the people's elected representatives. This is necessary, Appellants suggest, to avoid the "possible" risk of Missourians simultaneously voting for members of Congress while also voting on the HB1 map. App. Br. 26.

But the Secretary has good reasons for insisting on carefully following normal statutory rules in processing this referendum. If the Secretary had immediately implemented the repealed congressional map when PNP filed its referendum petition, consider what would have happened if the State subsequently found that petition to be insufficient. Practical realities may have forced the Secretary to use a map *repealed* by the people's elected representatives. In that circumstance, a small minority of Missourians would have succeeded in forcing their will on the 2026 elections—despite a large majority of elected representatives passing the HB1 map. *See* Mo. Senate J. 25–26 (2d Extra. Sess., 103d Gen. Assembly, Sept. 12, 2025) (HB1 passed 21 to 11 in the Senate); Mo. House J. 37–38 (2d Extra. Sess., 103d Gen. Assembly, Sept. 9, 2025) (HB1 passed 90 to 65 in the House of Representatives). Given the potential for that extraordinarily unjust and anti-

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democratic outcome, the Secretary is acting prudently in carefully sticking to statutory procedures for processing the referendum.

In politically sensitive cases like this, it is *especially* important for this Court to carefully enforce normal statutory and procedural rules. After all, courts "must be wary of plaintiffs who seek to transform" the courts "into 'weapons of political warfare' that will deliver victories that eluded them 'in the political arena.'" *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (quotation omitted). And with respect to referenda in particular, courts must rigorously enforce constitutional and statutory limits and not mandate the premature freezing of duly enacted laws—"lest the referendum be made the instrument of injustice or oppression" by political minorities. *Kaesser*, 243 S.W. at 352. Nothing in Missouri's Constitution's text requires this rash outcome, which would only serve to erode trust in direct democracy. *See* Mo. Const. art. III, §§ 49, 52(a), 52(b).

CONCLUSION

This Court should affirm.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 25,575 words, excluding tables, the cover, the signature, and certificates; complies with Missouri Supreme Court Rule 84.06(b); includes the information required by Rule 55.03; and includes information on how the brief was served on the opposing party. The State has submitted an unopposed motion for a small extension of the word count.

/s/ Louis J. Capozzi III

CERTIFICATE OF SERVICE

I hereby certify that, on April 28, 2026, a true and correct copy of the above was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case.

/s/ J. Michael Patton

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