IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MO STATE CONFERENCE FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,	
Plaintiffs,	Case No. 25AC-CC06724
v.	
MICHAEL KEHOE, *et al.*,	
Defendants.	

DEFENDANTS' RENEWED OBJECTION TO MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND MOTION TO DISMISS

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INTRODUCTION

Defendants, including the State of Missouri, joined in Plaintiffs' First Amended Petition on September 17, 2025, reiterate their prior opposition and motion to dismiss, and file this renewed opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and motion to dismiss.

Article II, § 1 of the Missouri Constitution "provides for separation of powers among the legislative, executive, and judicial departments." *Giudicy v. Mercy Hospitals East Communities*, 645 S.W.3d 492, 498 (Mo. banc 2022). Under this State's republican system of government, the Governor wields discretionary authority to call special sessions of the General Assembly. Mo. Const. art. IV, § 9. And, the General Assembly, in turn, has the power to "divide the state" into congressional districts. Mo. Const. art. III, § 45.

Plaintiffs seek to scramble that basic design, and to destabilize the "separation of power[s] and limitation of authority . . . vital to the maintenance of our system." *Lake Wauwanoka, Inc. v. Spain*, 622 S.W.2d 309, 311 n.5 (Mo. App. E.D. 1981). Dropping all but their claims levied against the Governor's convening authority, *see* Pls. First Am. Pet., Plaintiffs seek the same temporary and preliminary injunctive relief, except with a reduced scope of allegations and even more tenuous purported links between asserted causes of actions and alleged injuries. Plaintiffs' extraordinary request for a temporary restraining order or preliminary injunctive relief should be rejected.

To start, Plaintiffs' attempts to retroactively disable the General Assembly are nonjusticiable. *First*, Plaintiffs fail to establish taxpayer standing because they are

not challenging any direct expenditure flowing from an allegedly unconstitutional action—but instead bring an unprecedented challenge to the General Assembly's general operating expenditures. *Second*, Plaintiffs' request to enjoin legislation passed during the General Assembly's meeting is barred by Missouri's political question doctrine. *Third*, The Governor has broad discretion to call a special session, and precedent confirms that courts cannot second-guess the manner in which the Governor uses that discretion. *State ex rel. Rice v. Edwards*, 241 S.W. 945, 948 (Mo. banc 1922) ("The matter to be legislated upon at a special session is within the discretion of the Governor.").

Finally, Plaintiffs fail to demonstrate irreparable harm. Plaintiffs will have a full opportunity to contest the General Assembly's proposed federal congressional map. Temporary and preliminary injunctive relief are not warranted. The new federal congressional map will not be used until 2026. Consequently, this Court can adjudicate redistricting claims with expedited merits proceedings—not based on rush requests for emergency relief.

For all these reasons, this Court should *deny* Plaintiffs' motion for a temporary restraining order and preliminary injunction (Pls. Mot. for TRO) in its entirety and dismiss this case.

LEGAL STANDARD

"When considering a motion for a preliminary injunction, a court should weigh 'the movant's probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and the public interest.'" *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (quoting *Pottgen v. Mo. State High Sch. Activities Assoc.*, 30 F.3d 926, 928 (9th Cir. 1994)). "To show entitlement to injunctive relief, a petition must plead facts that show (1) the plaintiff has no adequate remedy at law, and (2) irreparable harm will result if the relief is not granted." *Glenn v. City of Grant City*, 69 S.W.3d 126, 130 (Mo. App. W.D. 2002) (citing *Walker v. Hanke*, 992 S.W.2d 925, 933 (Mo. App. W.D. 1999)). Plaintiffs cannot obtain the "extraordinary" remedy of a preliminary injunction without a "*clear showing*" of entitlement to relief. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting 11 Wright & Miller, Federal Practice and Procedure § 2948, pp. 129–130 (2d ed. 1995)).

When challenging a statute, it is "presumed constitutional and will be found unconstitutional only if 'it clearly and unambiguously contravenes a constitutional provision.'" *State v. Shanklin*, 534 S.W.3d 240, 241–42 (Mo. banc 2017) (quoting *Lopez-Matias v. State*, 504 S.W.3d 716, 718 (Mo. banc 2016)).

ARGUMENT

I. Plaintiffs' claim to incapacitate the legislature cannot succeed.

Plaintiffs cannot show that their arguments have any "likelihood of success on the merits." *Impey v. Clithero*, 553 S.W.3d 344, 354 (Mo. App. W.D. 2018). Plaintiffs' invitation to second-guess the convening of the legislature is doomed—it is not justiciable and fails on the merits. Put simply, the Governor possesses unreviewable discretion to call a special session under article IV, § 9 of the Missouri Constitution.

A. Plaintiffs lack standing to challenge the special session.

Plaintiffs do not have standing to enjoin legislation passed by the General Assembly and assented to by the Governor. "Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action." *Lee's Summit License, LLC v. Office of Administration*, 486 S.W.3d 409, 416 (Mo. App. W.D. 2016) (quoting *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 45–46 (Mo. banc 1989)). Standing includes three irreducible elements: that a plaintiff (1) suffered an injury to a cognizable interest (2) caused by the defendant that (3) a court order would redress. And, the Plaintiffs bear the burden of establishing the existence of these conditions. *See Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011).

They fail that burden. *First*, Plaintiffs cannot establish taxpayer standing, and, *second*, their alleged "[a]dditional irreparable harms," Pls. Mot. for TRO at 12, fall far short of meeting the injury, causation, and redressability requirements.

1. Plaintiffs lack taxpayer standing.

Plaintiffs do not have standing as taxpayers to challenge legislation passed during the special session of the General Assembly. To establish taxpayer standing, "the plaintiff must establish that one of three conditions exists: '(1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality.'" *State ex rel. Mo. Automobile Dealers Ass'n v. Mo. Dept. of Revenue & Its Dir.*, 541 S.W.3d 585, 592 (Mo. App. W.D. 2017) (quoting *Manzara*, 343 S.W.3d at 659)). Here, Plaintiffs can rely only on the first condition—"a direct expenditure of funds. . . ." *See* Pls. Mot. for TRO at 3 ("additional costs attributable to the legislative session is in excess of $25,000. . ."). And, Plaintiffs' foundation for this condition is extremely narrow—and ultimately doomed: Plaintiffs rest their argument on legislators' compensation as their one and only hook for standing. *See* Pls. Pet. at ¶ 83 ("Costs of an extraordinary session are expected to exceed $25,000 per day based upon the per diem and mileage allowances given to the members of the General Assembly.").

Unfortunately for Plaintiffs, "[a] series of cases holds that 'general operating expenses which [an agency] incurs regardless' of the allegedly illegal activity are not 'direct' expenditures, and are insufficient to establish taxpayer standing." *City of Slater v. State*, 494 S.W.3d 580, 587 (Mo. App. W.D. 2016), *abrogated on other grounds*, *Goodman v. Saline Cnty. Comm.*, 2024 WL 1392392 (Mo. App. W.D. Apr. 2, 2024) (quoting *John T. Finley, Inc. v. Mo. Health Facils. Review. Comm.*, 904 S.W.2d 1, 3 (Mo. App. W.D. 1995)). In *City of Slater*, the Western District Court of Appeals explained that "'salaries for staff time of [agency] employees, correspondence and

telephone calls' used to engage in the allegedly unlawful activity are 'not the type of expenditure of public funds which would give standing, as they are general operating expenses which were incurred whether or not the challenged transaction took place.'" *Id.* (quoting *Ours v. City of Rolla*, 965 S.W.2d 343, 346 (Mo. App. S.D. 1998)).

Therefore, Missouri case law forecloses Plaintiffs' claims of taxpayer standing because expenditures for legislators conducting their standard business, such as *per diem* payments, the "general operating expenses" of the General Assembly, *id.*, are not "direct expenditures," *State ex rel. Mo. Automobile Dealers Ass'n*, 541 S.W.3d at 592. Furthermore, permitting taxpayer standing in this circumstance would impose grave public policy consequences moving forward. By Plaintiffs' logic, any time a prospective litigant sought to derail *any* legislative session for *any reason*, that litigant would have standing. That is not the law.

2. Plaintiffs do not allege other injuries sufficient for standing.

Plaintiffs' additional claims of irreparable harm are "speculative" and "hypothetical." *Campbell v. Adecco USA, Inc.*, 561 S.W.3d 116, 123 (Mo. App. W.D. 2018) (quoting *Braitberg v. Charter Communications, Inc.*, 836 F.3d 925, 930 (8th Cir. 2016)). And, a "'speculative or hypothetical risk is insufficient' to allege a concrete injury" for standing. *Id.* Here, Plaintiffs cite vague hypotheticals such as the travel of "interested parties" to Jefferson City to "participate in the legislative process," "uncertainty in the district boundaries" (despite the creation of a *map*), and "undue burden" on legislators. Pls. Mot. for TRO at 12. These unsubstantiated injuries cannot establish standing.

First, alleged, "undue burden" to legislators, even if it existed, is *not* an injury to Plaintiffs; it implicates third parties *and Defendants*. *Second*, "uncertainty" and the speculative travel expenditures of parties seeking to lobby the government are exactly the type of theoretical, self-manufactured "injuries" that are impermissible for standing. And even if Plaintiffs could identify concrete travel or lobbying expenses, they "'cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future that is not certainly impending.'" *Murthy v. Missouri*, 603 U.S. 43, 73 (2024) (quoting *Clapper v. Amnesty International USA*, 568 U.S. 398, 416 (2013)). Plaintiffs' manufactured injuries are patently insufficient as an injury for standing.

B. Plaintiffs' claim is nonjusticiable because it violates Missouri's political question doctrine.

Plaintiffs' suit, requesting the State's judicial branch supervise decisions by the Governor and General Assembly over when the legislature can meet, is not justiciable under Missouri's political question doctrine. Under any healthy separation of powers, "the Governor is the exclusive judge of the facts requiring an extraordinary session of the Legislature." *Newsom v. City of Rainier*, 185 P. 296, 298 (Or. 1919) (citing *Farrelly v. Cole*, 56 P. 492 (Kan. 1899)) (citations omitted) (interpreting the Oregon Constitution's materially identical language to Mo. Const. art. IV, § 9).[1]

[1] *Compare* Mo. Const. art. IV, § 9 ("On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary."), *with* Or. Const. art. V, § 12 ("He may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall

In Missouri, "[t]he political question doctrine establishes a limitation on the authority of the judiciary to resolve issues, decidedly political in nature, that are properly left to the legislature. If a case actually involves the resolution of a political question, the matter is immune from judicial review." *Bennett v. Mallinckrodt, Inc.*, 698 S.W.2d 854, 863–64 (Mo. App. E.D. 1985). Missouri courts have adopted the justiciability guidelines from the U.S. Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962). A court should dismiss as nonjusticiable a case if:

> "[p]rominent on the surface of any case held to involve a political question [there] is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

Bennett, 698 S.W.3d at 864 (quoting *Baker*, 396 U.S. at 217).

Here, Plaintiffs' suit is *exactly* the type of case which should be dismissed as nonjusticiable under *Bennett*. The Missouri Constitution expressly and unambiguously reserves the discretion to the Governor, or three-fourths of the members of each house to call the General Assembly into session. Mo. Const. art. III, § 20(b); art. IV, § 9; Art. III, § 39(7). To challenge this "nonjudicial" discretionary decision exceeds the scope of this Court's—or any court's—jurisdiction. *Bennett*, 698 S.W.3d at 864.

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state to both houses when assembled, the purpose for which they shall have been convened.").

Missouri has a long history of gubernatorial discretion to call special sessions.[2] In fact, this power *preexists* the contemporary Missouri Constitution of 1945, stretching back to the accession of Missouri to the Union in 1821. For example, the Missouri Constitution of 1875 contained materially identical language. *See, e.g.*, *City of St. Louis v. Withaus*, 16 Mo. App. 247, 249 (Mo. App. 1884) ("The state constitution provides (art. V., sect. 9), that the governor may convene the general assembly on extraordinary occasions by proclamation 'wherein he shall state specifically each matter concerning which the action of that body is deemed necessary. . . .'").

Despite that long history, Plaintiffs cite *zero* precedent suggesting the Missouri Constitution allows courts to second-guess the Governor's use of the power to call special sessions. To the contrary, the Missouri Supreme Court has characterized the Governor's power as *completely discretionary*: "The Governor, under the Constitution, can call a special session of the General Assembly. . . . *If he finds the occasion to*

[2] Over two decades from the early 1990s to the late 2010s, the Governor of Missouri called *thirteen* special sessions on a wide range of legislative matters: September 1993 (flood recovery funding); September 1994 (impeachment of the Secretary of State); May 1997 (completing work on the budget after a legislative impasse over abortion funding); September 1997 (economic development, including allocating with funds for historic buildings); September 2001 (prescription drug program for low-income seniors and meatpacking law revisions); June 2003 (revenue raising); September 2003 (raising taxes and revenues for education; nursing home legislation); September 2005 (abortion restrictions; drunk driving restrictions; workers' compensation; prescription drugs at schools; public information availability); August 2007 (economic development); June 2010 (tax incentives for automakers; state pension system); September 2011 (business incentives; natural disaster aid; delay presidential primary; give St. Louis control over its police; teacher-student social media prohibition); December 2013 (tax breaks for Boeing); May 2017 (electricity legislation). The Associated Press, *A historical look at Missouri special legislative sessions*, AP, (May 18, 2017), https://apnews.com/a-historical-look-at-missouri-special-legislative-sessions-39c25ec9c8544673aa5a96f0c0e74a41.

exercise this prerogative, he must 'state specifically each matter concerning which the action of that body (General Assembly) is deemed necessary.'" *State ex rel. Rice*, 241 S.W. at 948 (Mo. banc 1922) (quoting Mo. Const. (1875) art. 5, § 9) (emphasis added). The phrase, "if he finds the occasion to exercise this prerogative," both indicates that the Governor wields discretion to determine when and if he will call a special session. Plaintiffs' illusory requirements constraining the Governor's authority here simply do not exist.

State after State with similar or identical "extraordinary occasion" special session clauses has determined that legal challenges to this discretionary, executive power are nonjusticiable.[3] In interpreting whether the Kansas Governor held complete power to determine an "extraordinary occasion" under the Kansas Constitution, the Kansas Supreme Court ruled that it did not have jurisdiction to review political, discretionary decisions of the Governor and state legislature, such as calling the special session. *Forrelly v. Cole*, 56 P. 492, 497 (Kan. 1899) (contrasting such discretion with the "[m]inisterial acts" that "do not flow from the exercise of discretion" and which are reviewable). In Washington, another State whose constitution features identical "extraordinary occasion" language, its supreme court

[3] *See, e.g.*, *State ex rel. Andrews v. Quam*, 7 N.W.2d 738, 738–9 (N.D. 1943) (holding that the question of what merits an "extraordinary occasion . . . . is to be determined by the governor alone and is not subject to challenge or review by the courts"); *Herzberger v. Kelly*, 7 N.E.2d 865 (Ill. 1937). The *Herzberger* court reviewed the "extraordinary occasion" special session provision of the 1870–1970 Illinois Constitution, and held that "no authority to review the exercise of the discretionary power vested in the Governor by the Constitution was, by that instrument, seated in the judiciary. The only remedy provided for a violation by an executive of his constituted authority is by impeachment." *Id.* at 866–67.

stated that it is the "exclusive province of the governor, under the Constitution, to determine whether an occasion existed of sufficient gravity to require an extra session of the Legislature, and *his conclusion in that regard is not subject to review by the courts*." *State v. Fair*, 76 P. 731, 732 (Wash. 1904) (emphasis added). South Carolina has too. *See McConnell v. Haley*, 711 S.E.2d 886, 887 (S.C. 2011) (citing *Farrelly*, 56 P. 492) (averring that, as in Missouri, "there is no indication in the Constitution as to what constitutes an 'extraordinary occasion' to justify an extra session of the General Assembly, this matter must be left to the discretion of the Governor and this Court may not review that decision").

In the same refrain, the Supreme Court of Georgia commanded that "[t]he Governor is thus invested with extraordinary powers, and in the exercise of such powers and prerogatives neither the legislative nor the judicial department of the government *has any power to call him to account*, nor can they or either of them *review* his action in connection therewith." *Bunger v. State*, 92 S.E. 72, 73 (Ga. 1917). More recently, Idaho reiterated, "'[t]he determination as to whether facts exist as to constitute 'an extraordinary occasion' is for him [the governor] alone to determine. The responsibility and the discretion are his, not to be interfered with by any other co-ordinate branch of the government.'" *Idaho State AFL-CIO v. Leroy*, 718 P.2d 1129, 1133 (Idaho 1986) (quoting *Diefendorf v. Gallet*, 10 P.2d 307, 314–315 (Idaho 1932)).

The weight of authority against Plaintiffs' claim is overwhelming. States across the Union have held that judicial challenges to gubernatorial discretion to

determine "extraordinary occasion[s]" are nonjusticiable political questions. Therefore, this Court should dismiss Plaintiffs' suit.

C. The Governor of Missouri has unreviewable discretion to call for a special session under art. IV, § 9.

Even if the Court somehow deems Plaintiffs' challenge to the special session justiciable, Plaintiffs' claims in Counts I and II fail on the merits.

1. The Governor's authority is well-established under Missouri law.

Since the State's accession to the Union in 1821, the Governor has wielded authority to call special sessions. This includes matters relating to the representation of Missouri voters. For example, in *State ex rel. Rice v. Edwards*, 241 S.W. 945 (Mo. banc 1922), the Governor called a special session to "permit the division of cities of six hundred thousand or over into districts for justices of the peace, by such officers as your body may specify." *Rice*, 241 S.W. at 946. Time and time again, when Missouri courts have considered article IV, § 9 of the Missouri Constitution, or its analogues in prior constitutions harkening back to 1821, they focus upon interpreting the *message* of the Governor to the General Assembly. *See e.g.*, *Lauck v. Reis*, 274 S.W. 827, 831 (Mo. 1925) ("[T]his much having been said regarding the purpose and effect of the special message of the Governor, let us proceed to analyze the particular paragraph of that message above. . . ."). The Missouri Supreme Court has *never* second-guessed the Governor's prerogative to call special sessions.

2. Unilateral, discretionary executive convening authority is well-established under the U.S. constitution.

Article IV, § 9 of the Missouri Constitution consciously follows the U.S. Constitution, where the executive prerogative to convene special legislative sessions has never been doubted. Article II, § 3 of the U.S. Constitution authorizes that the President "may, on extraordinary Occasions, convene both Houses, or either of them. . . ." *Id.* The Supreme Court treats this convening power, housed in Article II (executive powers), as fully discretionary and at the disposal of the President. *See, e.g.*, *Kennedy v. Braidwood Mgmt., Inc.*, 145 S. Ct. 2427, 2769 (2025) (Thomas, J., dissenting) (citations omitted) ("The President 'may, on extraordinary Occasions, convene both Houses' of Congress. That provision means that he can *make* Congress meet. . . ."). Since the foundation of the Republic, when President Washington convened the U.S. Senate under art. II, § 3, he did so "without in any manner disclosing what was the 'extraordinary occasion.' He did so on at least three subsequent occasions, and since his day at least nine other presidents have done the same thing." *State ex rel. Andrews v. Quam*, 7 N.W.2d 738, 739 (N.D. 1943). On the contrary, neither the U.S. Supreme Court nor presidential practice have *ever* intimated that any restrictions upon this power exist within the Constitution or without.

3. Gubernatorial discretion to determine "extraordinary occasions" is well-established across the States.

All fifty States have special sessions, sometimes called "extraordinary" sessions. And Defendants have not found *any case* where *any American court* has enjoined a legislature from meeting.

Other state constitutions generally vest the power to call a special session in the governor's hands, just like in Missouri. Other than Missouri, at least twenty-nine other States use the phrase "extraordinary occasion[s]," [4] authorizing the Governor to

[4] *See* Ala. Const. art. V, title 122 ("The governor may, by proclamation, on extraordinary occasions, convene the legislature at the seat of government. . . ."); Ark. Const. art. VI, § 19 ("The Governor may, by proclamation, on extraordinary occasion, convene the General Assembly at the seat of government. . . ."); Cal. Const. art. IV, § 3(b) ("On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session."); Colo. Const. art. IV, § 9 ("The governor may, on extraordinary occasions convene the general assembly, by proclamation, stating therein the purpose for which it is to assemble. . . ."); Del. Const. art. III, § 16 ("He or she may on extraordinary occasions convene the General Assembly by proclamation. . . ."); Idaho Const. art. 4, § 9 ("The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it. . . ."); Kan. Const. art. I, § 5 ("The governor may, on extraordinary occasions, call the legislature into special session by proclamation. . . ."); Ky. Const. § 80 ("He may, on extraordinary occasions, convene the General Assembly at the seat of government. . . ."); Iowa Const. art. IV, § 11 ("He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened."); Maine Const. art. V, § 13 ("The Governor may, on extraordinary occasions, convene the Legislature; and in case of disagreement between the 2 Houses with respect to the time of adjournment, adjourn them to such time, as the Governor shall think proper, not beyond the day of the next regular session. . . ."); Md. Const. art. II, § 16 ("The Governor shall convene the Legislature, or the Senate alone, on extraordinary occasions. . . ."); Mich. Const. art. V, § 15 ("The governor may convene the legislature on extraordinary occasions."); Minn. Const. art. V, § 4 ("He may on extraordinary occasions convene both houses of the legislature."); N.C. Const. art. III, § 9 ("The Governor shall have power, on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation. . . ."); Neb. Const. art. IV, § 8 ("The Governor may, on extraordinary sessions, convene the Legislature by proclamation, stating therein the purpose for which they are convened. . . ."); Nev. Const. art. V, § 9 ("Except as otherwise provided in Section 2A of Article 4 of this Constitution, the Governor may, on extraordinary occasions, convene the Legislature by Proclamation. . . ."); N.Y. Const. art. IV, § 3 ("The governor shall have power to convene the legislature, or the senate only, on extraordinary occasions."); Ohio Const. art. III, § 8 ("The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called. . . ."); Okla. Const. art. VI, § 7 ("The Governor shall power to convoke the Legislature, or Senate only, on

call for special sessions. And again and again, courts have *refused to place extra-constitutional restrictions* on the governor's prerogative to call special sessions, the same extra-constitutional restrictions the Plaintiffs ask this Court to impose in a sweeping and unprecedented exercise of its equitable powers. For example, the Constitution of Kansas states: "The governor may, on extraordinary occasions, call the legislature into special session by proclamation. . . ." Kan. Const. art. I, § 5. This clause is materially identical to article IV, § 9 of the Missouri Constitution.

Plaintiffs in *Farrelly v. Cole*, 56 P. 492 (Kan. 1899), in almost exactly the same fashion as Plaintiffs here, challenged the validity of a special session called by the governor on grounds that no extraordinary occasion existed and the governor lacked sufficient reason to issue the proclamation. The Kansas Supreme Court was clear in utterly rejecting this challenge:

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extraordinary occasions."); Or. Const. art. V, § 12 ("He may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall state to both houses when assembled, the purpose for which they shall have been convened."); Pa. Const. art. IV, § 12 ("He may, on extraordinary occasions, convene the General Assembly. . . ."); R.I. Const. art. IX, § 7 ("The governor may, on extraordinary occasions convene the general assembly at any town or city in this state. . . ."); S.C. Const. art. IV, § 19 ("The Governor may on extraordinary occasions convene the General Assembly in extra session."); Tenn. Const. art. III, § 9 ("He may, on extraordinary occasions, convene the General Assembly by proclamation, in which he shall state specifically the purposes for which they are to convene. . . ."); Tex. Const. art. IV, § 8 ("The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government. . . ."); W. Va. Const. art. VII, § 7 ("The governor may, on extraordinary convene, at his own instance, the Legislature; but when so convened it shall enter upon no business except that stated in the proclamation by which it was called together."); Wash. Const. art. III, § 7 ("He may, on extraordinary occasions, convene the legislature by proclamation, in which shall be stated the purposes for which the legislature is convened."); Wisc. Const. art. V, § 4 ("He shall have power to convene the legislature on extraordinary occasions. . . ."); Wyo. Const. art. IV, § 4 ("He shall have power to convene the legislature on extraordinary occasions.").

> This is a power the exercise of which the framers of the constitution have seen fit to intrust to the chief executive officer of the state *alone*. As they have not defined what shall be deemed an extraordinary occasion for this purpose, nor referred the settlement of the question to any other department or branch of the government, *the governor must necessarily be himself the judge, or he cannot exercise the power*.

Farrelly v. Cole, 56 P. 492, 498 (Kan. 1899) (emphasis added). Put simply, the Governor of Kansas, like the Governor of Missouri, has ultimate discretion to deem what is an extraordinary occasion, full stop.

As early 1899, the *Farrelly* court recognized that other States with "extraordinary occasion" special session constitutional provisions reached the same conclusion: Colorado, New York, and Rhode Island. *Farrelly*, 56 P. at 498–499 (citing *In re Governor's Proclamation*, 19 Colo. 33, 33 P. 530 (1894); *People ex rel. Carter v. Rice*, 20 N.Y.S. 293 (Gen. Term), *aff'd*, 135 N.Y. 473, 31 N.E. 921 (1892); *In re Legislative Adjournment*, 18 R.I. 824, 27 A. 324 (Mem.) (R.I. 1893)). The Washington Supreme Court adopted *Farrelly*'s reasoning that "[i]t was the *exclusive province* of the governor, under the Constitution, to determine whether an occasion existed of sufficient gravity to require an extra session of the Legislative, and his conclusion in that regard is not subject to review by the courts." *State v. Fair*, 76 P. 731, 732 (Wash. 1904) (citing *Farrelly*, 56 Pac. 492). More recently, the Nebraska Supreme Court held that the Nebraska Constitution (also featuring an "extraordinary occasion" special session clause) "permits the Governor to determine when an extraordinary occasion exists, necessitating convention of a special session of the Nebraska Legislature." *Jaksha v. State*, 385 N.W.2d 922, 927 (Neb. 1986).

As noted *supra*, the *Farrelly* court also ruled that the challenge was *nonjusticiable*. The court explained that it would be "an unseemly and unprecedented proceeding for this court, or any court, to entertain a controversy wherein, by proof obtained from witnesses sworn in the cause, it sought to ascertain judicially whether an extraordinary occasion existed, of sufficient gravity to authorize the governor to convene the legislature in extra session." *Farrelly*, 56 P. at 497. This Court should reject Plaintiffs' invitation to undertake such an inquiry.

4. The Governor had good reasons to call for a special session.

Even if Missouri courts could somehow second-guess a gubernatorial call for a special session, there is no basis to do so here. At least two events justified a special session to draw a new federal congressional map ahead of the 2026 midterm elections.

First, the U.S. Supreme Court is poised to issue a ruling before the 2026 midterm elections that would put Missouri's current federal congressional map in legal jeopardy. When the General Assembly drew the last federal legislative map, the federal Voting Rights Act was widely understood to require state legislatures to intentionally consult racial data to maximize the number of majority-black districts. *See Abbott v. Perez*, 585 U.S. 579, 587 (2018) ("[U]nder certain circumstances, States must draw 'opportunity' districts in which minority groups form 'effective majorit[ies].'") Consistent with that understanding, the General Assembly intentionally provided for a majority-minority district in the Missouri First Congressional District—centering on St. Louis. *See* Census Reporter, *Congressional*

District 1, MO (2023), http://censusreporter.org/profiles/50000US2901-congressional-district-1-mo/.

However, it now appears likely that the U.S. Supreme Court will reverse its prior precedent—and declare the intentional drawing of majority-minority districts unconstitutional under the U.S. Constitution's Equal Protection Clause. Four current Justices have already declared that to be their understanding of federal law. *Allen v. Milligan*, 599 U.S. 1, 79 (2023) (Thomas, J., dissenting) ("Therefore, if complying with a federal statute would require a State to engage in unconstitutional racial discrimination, the proper conclusion is not that the statute excuses the State's discrimination, but that the statute is invalid."). A fifth Justice—Justice Kavanaugh—suggested he has the same view, but that particular litigants in 2022 failed to make the correct argument. *See id.* at 45 (Kavanaugh, J., concurring) ("Justice THOMAS notes, however, that even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future. But Alabama did not raise that temporal argument in this Court. . . ." (citations omitted)). Justice Kavanaugh restated that view again during oral arguments earlier this year in *Louisiana v. Callais*. Transcript of Oral Argument at 10:1-12, *Louisiana v. Callais*, No. 24–109 (U.S. Mar. 24, 2025). And after that argument, the Supreme Court took the unusual step of rescheduling the case for the 2025 Term and explicitly asked for briefing on whether state legislatures violate the U.S. Constitution when they intentionally create federal congressional districts on

the basis of race. Order in Pending Cases, *Louisiana v. Callais*, Nos. 24–109, 24–110 (Aug. 1, 2025). Unsurprisingly, many U.S. Supreme Court observers expect the Justices to answer that question in the affirmative. *See* Erwin Chemerinsky, *The future of voting rights*, SCOTUSblog (Aug. 27, 2025), https://www.scotusblog.com/2025/08/the-future-of-voting-rights/.

If the U.S. Supreme Court prohibits race-based redistricting, then Missouri's current federal congressional map would be legally jeopardized. Failing to act could result in last-minute litigation over the current map in mid-2026—just months before the 2026 midterm elections. *Cf.* Order Granting Stay, *Ardoin v. Robinson*, No. 21-1596 (U.S. June 28, 2022) (acknowledging similar last-minute litigation against Louisiana congressional voting map). Understanding that risk, Governor Kehoe logically asked the General Assembly to get out in front of that risk and draw a new, race-neutral map. If the General Assembly had not done so, it risked mid-2026 litigation over the legality of the current federal congressional map.

Second, Governor Kehoe and the General Assembly could logically seek to redraw Missouri's federal congressional in response to mid-decade redistricting efforts in other States. Although Plaintiffs casually throw around the term "gerrymandering," Pls. Mot. for TRO at 11, the Democratic minority in Missouri has substantially more federal congressional representation than Republican minorities in other States—with Illinois being a particularly notable example that the NAACP

apparently is not bothered by.[5] Now, in recent moves, other States have moved to redistrict mid-decade, with California poised to limit Republicans—who won 38.3% of the vote in the 2024 presidential election—to just likely 7.7% percent of the seats. Associated Press, *California President*, (Nov. 5, 2024), https://apnews.com/projects/election-results-2024/california/?r=0; NBC News, *Democrats release plan to boost party's California House seats in fight for Congress*, (Aug. 15, 2025), https://www.nbcnews.com/politics/2026-election/california-democrats-plan-boost-house-seats-congress-redistricting-rcna225332; *see also* Sarah J. Eckman & L. Paige Whitaker, Cong. Rsch. Serv., Report No. IF13082, Mid-Decade Congressional Redistricting: Key Issues (2025). If Missouri does not respond to such aggressive tactics in other States, the political strength of a majority of Missouri voters will be diluted in Washington D.C. compared to the political strength of majorities in other States.

As the Missouri Supreme Court has recognized, redistricting is—at least in part—an inherently political process whereby majorities seek to ensure they are adequately represented in Washington D.C. *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012) (per curiam) ("[R]edistricting is predominately a political question."). Here, the Governor and General Assembly could logically seek to implement a new federal congressional map in response to California's recent aggressive actions.

[5] Illinois earns an 'F' from the Gerrymandering Project's Redistricting Report Card. Gerrymandering Project, Redistricting Report Card: Illinois 2021 Congressional – Enacted (May 28, 2025), https://gerrymander.princeton.edu/redistricting-report-card/?planId=receAu6OJuYEkxKjG.

II. Plaintiffs identify no irreparable harm.

Finally, Plaintiffs identify no irreparable harm justifying the imposition of temporary or preliminary injunctive relief.

Temporary restraining orders and preliminary injunctions are "extraordinary" remedies. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting 11 Wright & Miller, Federal Practice and Procedure § 2948, pp. 129–130 (2d ed. 1995)). Courts cannot issue them unless the movant "demonstrate[s] 'that irreparable harm will result if the injunction is not granted.'" *McAlister v. Strohmeyer*, 395 S.W.3d 546, 551 (Mo. App. W.D. 2013) (quoting *City of Kansas City v. New York-Kansas Bldg. Assoc., L.P.*, 96 S.W.3d 848, 855 (Mo. App. W.D. 2002)).

Here, Plaintiffs have identified no irreparable harm. They have complained that the General Assembly's special session could create "additional costs attributable to the legislative session," like additional legislator *per diems*. Pls. Mot. for TRO at 12. But those expenses have already been distributed, and injunctive relief will do nothing to limit or recover those costs.

Plaintiffs also speculate that "interested parties" might have to "travel to Jefferson City" to lobby the General Assembly. Pls. Mot. for TRO at 12. Once again, injunctive relief cannot recover any voluntarily-made expenditures that were already made in opposing the map because the legislative session is over.

Finally, Plaintiffs cite more abstract irreparable harms like "harm [to] voting rights," "uncertainty in district boundaries," and "undue burden for legislators." Pls. Mot. for TRO at 12. But Plaintiffs do not need injunctive relief to prevent these harms. There is ample time for litigation over the new federal legislative map. The

new map would not be used until 2026, which means that litigation in the ordinary course can resolve legitimate challenges to the proposed map. Indeed, the ACLU has already filed a lawsuit challenging the new map on compactness and equal-population grounds, *Wise et al. v. State of Missouri et al.*, case no. 2516-CV29597 (filed Sept. 12, 2025)—*i.e.*, the two legitimate state-constitutional grounds to challenge districting maps. Because there is ample time to adjudicate such claims through ordinary litigation, Plaintiffs will suffer no irreparable harm if the Court denies immediate relief.

On the other hand, preliminary injunctive relief would impose profound irreparable harm on the State. If the Court accepted Plaintiffs' request to enjoin legislation passed during the General Assembly's special session, the separation of powers in Missouri would be devastated, and the General Assembly and Governor would have to scramble to determine the legal status of the legislative actions taken during the special session. If the Court enjoined the federal legislative map, such hasty injunctive relief can yield "much harm . . . before the final [merits] decision in the district court." *Abbott v. Perez*, 585 U.S. 579, 595 (2018). In either event, the State would be forced to immediately seek appellate review of any preliminary injunction, imposing burdens on the State and Missouri's appellate courts before any final judgment is issued. Such litigation-related chaos is utterly unwarranted where, again, Plaintiffs can file challenges to the redistricting plan and expeditiously litigate those challenges to final judgment.

CONCLUSION

The Court should deny Plaintiffs' motion. Additionally, the Court should dismiss Counts I and II.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was filed and served electronically on all counsel of record via the Court's e-filing system on October 17, 2025.

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