

No. 26A304

IN THE
Supreme Court of the United States

DENNY HOSKINS, in his official capacity as Missouri Secretary of State,

Applicant,

v.

RICHARD VON GLAHN,

Respondent.

**BRIEF OF *AMICI CURIAE* CAMPAIGN LEGAL CENTER, AMERICAN
CIVIL LIBERTIES UNION OF MISSOURI FOUNDATION, AND AMERICAN
CIVIL LIBERTIES UNION FOUNDATION IN SUPPORT OF RESPONDENT**

Gillian R. Wilcox
Jason Orr
Jonathan D. Schmid
Kristin M. Mulvey
ACLU OF MISSOURI FOUNDATION
406 W. 34th Street, Suite 420
Kansas City, MO 64111

Ming Cheung
Cecillia D. Wang
Sophia Lin Lakin
Dayton Campbell-Harris
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004

Mark P. Gaber
Counsel of Record
Aseem Mulji
Simone Leeper
Benjamin Phillips
Isaac DeSanto
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2000
mgaber@campaignlegalcenter.org

Annabelle E. Harless
CAMPAIGN LEGAL CENTER
55 W. Monroe Street, Suite 1925
Chicago, IL 60603

Counsel for Amici

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INTERESTS OF AMICI CURIAE¹

Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization dedicated to securing free and fair elections for all voters. CLC regularly litigates before this Court and state high courts on voting rights and redistricting matters, including as counsel for parties or *amici curiae* in *Watson v. Republican National Committee*, 146 S. Ct. 2165 (2026), *Moore v. Harper*, 600 U.S. 1 (2023), *Rucho v. Common Cause*, 588 U.S. 684 (2019), *Gill v. Whitford*, 585 U.S. 48 (2018), and *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015).

The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan organization with more than 1.7 million members, founded in 1920 and dedicated to the principles of liberty and equality enshrined in the Constitution. In support of those principles, the ACLU has appeared before this Court as counsel or *amicus curiae* in numerous cases involving electoral democracy or redistricting, including *Smith v. Allright*, 321 U.S. 649 (1944), *Reynolds v. Sims*, 377 U.S. 533 (1964), *Thornburg v. Gingles*, 478 U.S. 30 (1986), *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), *Department of Commerce v. New York*, 588 U.S. 752 (2019), *Allen v. Milligan*, 599 U.S. 1 (2023), and *Moore v. Harper*, 600 U.S. 1 (2023). The ACLU has an interest in promoting free and fair elections and fair districting, including specifically in Missouri, having served as counsel in *Wise v.*

¹ No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Missouri, 732 S.W.3d 827 (Mo. 2026), and *Missouri State Conf. of the Nat’l Ass’n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924 (8th Cir. 2018); both cases sought to address the harmful impacts of the challenged districts on minority voters in Missouri.

The American Civil Liberties Union of Missouri (“ACLU-MO”) is the statewide affiliate of the ACLU, with over 20,000 members and a longstanding interest in and history of protecting the constitutional rights of all Missourians. Through direct representation or on behalf of *amicus curiae*, the ACLU-MO regularly engages in litigation to protect rights related to voting, including the right to referendum. These cases include, but are not limited to *Maggard v. State*, 733 S.W.3d 411 (Mo. 2026); *State v. League of Women Voters of Missouri*, 730 S.W.3d 591 (Mo. 2026); *Missouri State Conf. of the Nat’l Ass’n for the Advancement of Colored People v. State*, 730 S.W.3d 550 (Mo. 2026); *Coleman v. Ashcroft*, 696 S.W.3d 347 (Mo. 2024); *State ex rel. Fitz-James v. Bailey*, 670 S.W.3d 1 (Mo. 2023); and *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484 (Mo. 2022).

CLC, ACLU, and ACLU-MO participated as *amici curiae* in the proceedings below and in *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. 2026), and were counsel for the plaintiffs in *Wise v. State*, 732 S.W.3d 827 (Mo. 2026). Each has an interest in ensuring Missouri voters the opportunity to vote in lawful congressional districts and in the sound interpretation of the federal Elections Clause.

SUMMARY OF ARGUMENT

The Secretary's application should be denied. The only federal election crisis would be if this Court grants the application and permits an illegal election to be held using unlawful districts.

First, the Missouri Supreme Court did not offend the bounds of ordinary judicial review in reading “any act” in the Missouri Constitution to include laws enacting congressional maps. Its decision is consistent with over a century of precedent from this Court holding that the Elections Clause permits redistricting legislation to be subjected to referenda. Instead, it is the Secretary's requested relief that would violate the Elections Clause and federal law. The Elections Clause grants initial power over congressional redistricting to the state lawmaking process—including initiatives and referenda where applicable—and gives Congress superseding power over the subject. Granting a stay would violate both elements. It would displace the map arising from Missouri's lawmaking process—the 2022 map—with one the Missouri Supreme Court unanimously held “is not the law and has never been the law.” App.12a n.8. And it would contravene 2 U.S.C. § 2c, an Elections Clause statute requiring that Representatives be elected “only” from the districts established “by law” of the states—words chosen specifically because some states, like Missouri, subject congressional maps to initiatives and referenda.

Second, the Secretary's unclean hands preclude relief. He and the state Attorney General, who has represented him in this case, openly and loudly proclaimed their strategy of maximum delay. “Delay works in our favor,” the Attorney

General said on talk radio in January. App.739a. Surprised to learn the Missouri Supreme Court unanimously refused to be an instrument of that strategy, they now ask this Court to put their ploy back on track. This Court, like the state court, should play no part in that scheme.

Third, Purcell does not apply to the state court’s enforcement of its own state constitution. In any event, the Missouri Supreme Court weighed the equities and found the Secretary to blame for his purposeful delay strategy. This Court has no power to disrupt that decision, and to do so would offend *Purcell*. Missouri election officials are already taking steps to comply with the state court decision. The bipartisan co-directors of the Jackson County Elections Board—the county most affected by the map changes and the second-most populated in the state—have publicly announced they can and will comply with the Missouri Supreme Court’s order.²

This Court should decline the Secretary’s invitation to create a federal constitutional violation and become the lynchpin of his plan to subject Missourians to an unlawful general election.

ARGUMENT

I. The Secretary asks this Court to bless, not prevent, an Elections Clause violation.

The Secretary presents his application as necessary to prevent an Elections Clause violation by the Missouri Supreme Court. Appl. at 17-23. But if anyone has

² Kacen Bayless, ‘We will be ready.’ *Jackson County says it will comply with Supreme Court map ruling*, Kansas City Star (Sep. 4, 2026), <https://perma.cc/27P8-D9QQ>.

violated the Elections Clause here, it is not the state supreme court. It is the Secretary.

The Elections Clause provides that the times, places, and manner of congressional elections “shall be prescribed in each State by the Legislature thereof,” subject to Congress’s superseding authority to “at any time by Law make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1. For over a century, this Court has held that “the Legislature” does not mean the state’s representative assembly alone but its lawmaking power exercised through whatever methods the state constitution prescribes, including the executive veto and referendum. *Moore v. Harper*, 600 U.S. 1, 23-26 (2023).

The Missouri Supreme Court respected this allocation of authority. The Missouri Constitution subjects “any act of the general assembly” to referendum. Mo. Const. art. III, § 49. And an act referred to the people by collection of sufficient signatures, *id.* § 52(a), takes effect once approved by voters at the next general election (or special election if the General Assembly calls one), “and not otherwise,” *id.* § 52(b). Reading this language by its plain terms, the court held that HB 1 is subject to referendum, meaning it cannot take effect unless and until voter approval, and it ordered the Secretary to act accordingly. App.7a-13a. This is the “ordinary exercise of state judicial review” *Moore* safeguards to enforce “ordinary constraints on lawmaking in the state constitution.” 600 U.S. at 22, 29-30.

The Secretary—an executive branch official in whom the Elections Clause vests nothing—now asks this Court to stay the judgment so that he can keep using

his preferred congressional map, which, as a matter of Missouri law, “is not the law and has never been the law.” App.12a n.8. Granting his request would offend both parts of the Elections Clause. It would allow a state executive officer to unilaterally halt part of the legislative process on HB 1 and administer elections under a map the State’s legislative process, as constitutionally prescribed, did not produce. And it would defy Congress’s exercise of its Elections Clause authority to mandate that Representatives “be elected *only* from districts” “established *by law*,” 2 U.S.C. § 2c (emphases added)—words Congress carefully chose for the very purpose of accommodating states that subject congressional maps to referenda. The Court should decline the Secretary’s invitation to take part in these violations.

A. The Missouri Supreme Court did not violate the Elections Clause.

The Missouri Supreme Court’s judgment raises no Elections Clause concern. The Elections Clause “does not insulate state legislatures from the ordinary exercise of state judicial review” for violations of state constitutional constraints on lawmaking. *Moore*, 600 U.S. at 22. And state courts transgress the Clause only where they exceed “the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures.” *Id.* at 36. Here, the Missouri Supreme Court did nothing of the kind. As it expressly stated, “[t]he only issue” before it was “whether the Missouri Constitution authorizes the referendum petition as a matter of law.” App.1a. It answered that question with typical tools of constitutional construction—by reading Article III, Section 49’s plain text applying the referendum to “*any* act,” finding no enumerated exception applicable, comparing Section 49 with

other provisions that *do* exempt commission-drawn state legislative plans from referenda, and applying its own precedents recognizing congressional redistricting as a legislative act subject to referendum. App.8a-10a. A state court that has construed its constitution according to its text, structure, and precedent has simply done what courts do and arrogated nothing.

The Secretary complains that the Missouri Supreme Court did not accept his theory that the Elections Clause preempts application of Missouri’s referendum procedures to congressional redistricting. Appl. at 20-21. No wonder: it would have required reading over a century of precedent to mean the opposite of what it says. In *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916)—a case on all fours with this one—this Court upheld a state referendum on a congressional redistricting against an Elections Clause challenge. Ohioans had reserved legislative authority “to approve or disapprove by popular vote any law enacted by the General Assembly,” and they used it to reject a mid-decade congressional map. *Id.* at 566. A proponent of the map argued that the referendum was not part of the state legislative power, and, if it was, its application to congressional districting violated the Elections Clause. *Id.* at 566-67. This Court rejected both contentions. First, it deemed “conclusive” the state supreme court’s holding that the referendum was part of the state’s legislative power. *Id.* at 567-68. Second, it dismissed as “plainly without substance” any suggestion that including the referendum within the legislative power for redistricting purposes “is

repugnant to [the Elections Clause].” *Id.* at 568-69.³

Hildebrant has been repeatedly reaffirmed. *Smiley v. Holm* extended its reasoning to the executive veto. 285 U.S. 355, 367 (1932). *Arizona State Legislature v. Arizona Independent Redistricting Commission* (“AIRC”) crystallized the rule: congressional redistricting is “a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking, which may include the referendum and the Governor’s veto.” 576 U.S. 787, 808-09 (2015). And *Moore* reaffirmed the entire line. 600 U.S. at 25-26.

The Secretary’s central theme, and his sole effort to distinguish *Hildebrant*, is that a petition signed by roughly 3.3% of Missouri voters will prevent HB 1 from taking effect before the statewide vote. Appl. at 3, 21. But the Ohio referendum sustained in *Hildebrant* worked exactly the same way. After the Ohio General Assembly enacted its mid-decade map in May 1915, voters gathered the constitutionally required signatures—6% of electors—thereby suspending the act pending referendum, and in the next general election they rejected it. *See State ex rel. Davis v. Hildebrant*, 114 N.E. 55, 57 (Ohio 1916). For six months, in other words, a congressional map was suspended by petition, before any statewide vote, on the signatures of a fraction of Ohio’s electorate. This is the standard referendum design Congress rewrote its redistricting statute in 1911 specifically to accommodate. *See id.*; *AIRC*, 576 U.S. at 809; *infra* Part I.B.

³ Intervenor-Respondents claim *Hildebrant* only evaluated compliance with the Guarantee Clause. RNC Br. at 25-26. Incorrect. *Hildebrant* expressly evaluated—and dismissed—the claim that the referendum was “repugnant to § 4 of article 1 of the Constitution.” 241 U.S. at 569.

The Secretary also claims that the referendum petition’s interim effect is “anti-democratic” and promotes minority rule. Appl. at 2-3, 22. But the petition itself decides nothing; it just sends HB 1 to *all* Missouri voters to decide at the next available election whether it becomes law. That is the antithesis of minority rule. Compare the executive veto, which lets *one* person prevent a congressional map from becoming law. If a veto by a single official is consistent with the Elections Clause—as no party disputes—so is a veto by the electorate at large, and so is a petition that merely defers a map’s effective date until that electorate has spoken. Nor does the petition “impose” a map the petitioners “prefer[].” Appl. at 15, 23. It leaves in place the map the General Assembly itself enacted in 2022 under the current census, which was used in the last two congressional elections and contains the only districts that are Missouri law. App.12a n.8.

If the Secretary believes the referendum should have been held before the midterms, he has only his own delay to blame, *infra* Part II, along with the General Assembly’s decision not to order a special election, *see* Mo. Const. art. III, § 52(b). And if the Secretary believes the referendum is just too accessible or slow, the remedy is to persuade his fellow Missourians to amend their constitution.⁴ The Elections Clause, for its part, vests authority in the state constitution’s lawmaking procedure as presently prescribed, including the referendum petition. *Moore*, 600 U.S. at 25-26.

⁴ One month ago—on the same day the Secretary issued his certificate of insufficiency—roughly 80% of Missouri voters, and a majority in all eight congressional districts, rejected Amendment 4, a General Assembly-referred measure that would have required citizen-initiated constitutional amendments to win a majority in every congressional district. *See* Rudi Keller, *Missouri voters reject income tax phaseout, initiative petition changes*, Mo. Independent (Aug. 4, 2026), <https://missouriindependent.com/2026/08/04/missouri-voters-reject-income-tax-phaseout-initiative-petition-changes/>.

Finally, Intervenor-Respondents claim the Missouri Supreme Court contravened the Elections Clause by not applying a “clear statement” rule. They contend that because the Elections Clause names “the Legislature,” a State may not “displace” a representative assembly’s redistricting authority without a clear statement, and Missouri’s application of referenda to “any act” is not clear enough. RNC Br. at 18-28. But no such rule exists. Neither *Hildebrant* nor *Smiley* required redistricting-specific authorization; the general referendum and veto powers sufficed. The “rule” also rests on a false premise. Every clear-statement doctrine Intervenor-Respondents invoke, *see* RNC Br. at 19-23, protects one branch of government from intrusion by another. Here, the referendum and General Assembly are both “part of the legislative power” in which the Elections Clause vests authority, so the rule would lack operation here. *Hildebrant*, 241 U.S. at 569; *Moore*, 600 U.S. at 25-26. In any event, the Missouri Supreme Court held that Section 49’s “any act” language plainly subjects congressional redistricting to referendum, App.7a, 10a, and it is “the ultimate expositor[] of state law,” *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). Whatever clarity Intervenor-Respondents’ rule would require, the Missouri Constitution supplies it.

In short, the Missouri Supreme Court did what courts do in reaching the result a century of this Court’s precedent requires. It committed no Elections Clause violation for this Court to correct.

B. The Secretary asks this Court to effectuate his own violation of the Election Clause.

The actual Elections Clause problem here is the Secretary’s. A stay would

authorize his intrusion on both Missouri’s lawmaking power and Congress’s superseding authority under the Elections Clause.

1. A stay would allow an executive officer to displace “the Legislature.”

The Elections Clause, as discussed, vests initial authority over congressional elections in the State’s legislative power, including referenda. The Secretary is an executive branch official with no part in the legislative process. Mo. Const. art. IV, §§ 12, 14. He has no vote on a bill, no veto over it, and no say on which congressional map Missouri’s lawmakers adopt. *See id.* § 14. In Missouri, the Governor “is a factor in legislation.” *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 704 (Mo. 1952). And the People are “constitutionally reserved a share of the legislative power” via initiative and referendum. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 489 (Mo. 2022). Neither is true of the Secretary. His role is to administer laws, not participate in making them.⁵

The Secretary has certain limited responsibilities in administering referenda following the General Assembly’s and Governor’s work in the lawmaking process—*e.g.*, receiving the petition, verifying signatures, and certifying whether it complies with the state constitution and law. *See* Mo. Rev. Stat. §§ 116.120.1, 116.130, 116.150, 116.332. But he cannot impede referenda under the state constitution, which

⁵ The Secretary may find this distinction hard to keep in view. Not long ago, Secretary Hoskins was State Senator Hoskins. And in 2022, he fervently lobbied his colleagues to adopt a 7-1 congressional map he called “vitally important given the close partisan margins in Congress.” *Senator Denny Hoskins Capitol Report Week of Jan. 24, 2022*, EINPressWire (Jan. 27, 2022), <https://perma.cc/U9T7-B4TX>. The General Assembly enacted the 2022 map instead. Having failed to secure a 7-1 map as a legislator, the Secretary cannot secure it now as an executive officer over the objection of the people whose vote the state constitution requires.

identifies the referendum right as fundamental. *See No Bans on Choice*, 638 S.W.3d at 492. Nor does the Elections Clause allow the Secretary to arrogate to himself the power to decide whether a bill subject to referendum becomes law or takes effect without voters' say-so.

But that authority is precisely what the Secretary has claimed for himself here. He held the referendum petition in limbo for eight months, administered HB 1 in the interim as though it were law, declared the petition insufficient on a legal theory he purported to believe from day one and that the Missouri Supreme Court has now unanimously rejected, and now asks this Court to freeze the effect of his efforts in place for the midterm election. App.12a n.8. A stay would ratify this intrusion and allow the Secretary to administer congressional elections under a map other than the one Missouri's constitutionally prescribed legislative process has produced. *That* violates the Elections Clause.

2. A stay would defy Congress's mandate that Representatives be elected "only" from districts "established by law."

Congress has exercised its superseding Elections Clause authority to affirm the power of citizens to reject congressional redistricting maps by referendum. It did so by requiring that Representatives be elected "only" from districts "established by law." 2 U.S.C. § 2c. A stay would permit the Secretary to administer a map that violates this authority.

As this Court explained in *AIRC*, from 1862 through 1901, the apportionment acts required redistricting by "the legislature" of each State. 576 U.S. at 809. In 1911, "focus[ing] on the fact that several States had supplemented the representative

legislature mode of lawmaking with a direct lawmaking role for the people” through initiative and referendum, Congress struck that language and instead used the phrase “redistricted *in the manner provided by the laws thereof.*” *Id.* (emphasis in original). In *Hildebrant*, this Court relied on this history (recent memory at the time) to dismiss the Elections Clause challenge to Ohio’s referendum:

[W]e think it is clear that Congress . . . insert[ed] a clause plainly intended to provide that where, by the state Constitution and laws, the referendum was treated as part of the legislative power, the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law.

241 U.S. at 568.

The phrase “by the laws thereof” survives in the current version of 2 U.S.C. § 2a(c), and in 1967 Congress went further in enacting 2 U.S.C. § 2c: “[i]n each State . . . there shall be established *by law* a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected *only* from districts so established.” 2 U.S.C. § 2c (emphasis added). In *Branch v. Smith*, this Court rejected as “implausib[le]” the notion that “by law” refers solely to acts of the state legislature when it affirmed the ability of state and federal courts to impose congressional maps. 538 U.S. 254, 271-72 (2003).

Section 2c prohibits what the Secretary asks this Court to compel. Under Missouri law, HB 1 is not the “law.” It will “take effect when approved by a majority of the votes cast [in the general election], *and not otherwise.*” Mo. Const. art. III, § 52(b) (emphasis added). The only districts “established by law” in Missouri are the 2022 districts. *Id.* Congress created no exceptions disapproving of certain referendum

frameworks when it enacted Section 2c.⁶ Instead, it provided that whatever the lawmaking process of a state, “*only*” a congressional map compliant with it can be used to elect Representatives. A stay permitting the November election to proceed under HB 1 would therefore require Missouri to elect Representatives from districts *not* established by law contrary to Section 2c. This Court should not join the Secretary’s effort to violate the Elections Clause and federal law.

II. The Secretary has unclean hands and cannot seek equitable relief.

The Secretary had a plan: delay. Missouri’s Attorney General, who filed the “emergency” application on the Secretary’s behalf, said as much on talk radio in January of this year: “[a]s long as the status quo is the new map, delay works in our favor.” App.739a. Despite knowing the inevitable consequences, the Secretary plunged ahead, committed to subverting Missouri’s constitutional order and counting on the courts to uphold his scheme. But the Missouri Supreme Court unanimously rejected the Secretary’s efforts, and now he asks to invoke this Court’s equitable jurisdiction to put his plan back on track.

A stay is a remedy subject to the “equitable maxim” that “he who comes into equity must come with clean hands.” *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945); *see also Rose v. Raffensperger*, 143 S. Ct. 58, 59 (2022) (Mem). This long-standing principle “closes the doors of a court of equity to one

⁶ The Secretary entirely ignores Section 2c in his application. Even if there were something to his argument that Missouri’s referendum process runs afoul of “the Legislature” portion of the Elections Clause (there is not), Congress has stepped in to not only bless but *require* that congressional maps be adopted in accordance with the laws of the states. That includes Missouri’s referendum law, even if the Secretary dislikes its particulars. He asks this Court to override Congress’s Elections Clause power—to use federal judicial authority to violate federal law. That it cannot do.

tainted with inequitableness or bad faith.” *Precision Instrument Mfg. Co.*, 324 U.S. at 814. The doctrine “proscribes equitable relief” when an applicant has acted in bad faith in “immediate and necessary relation to the equity that he seeks.” *Henderson v. United States*, 575 U.S. 622, 625 n.1 (2015). Where a government actor seeks equitable relief with unclean hands, “the reasons for applying [the maxim] are even more persuasive.” *Olmstead v. United States*, 277 U.S. 438, 483 (1928) (Brandeis, J., dissenting). “If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.” *Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021).

Here, the Secretary, a government actor, asks this Court for relief from a situation he created by his months-long campaign—openly admitted—of intentional delay. He claims there is a “federal-election-administration disaster unfolding in Missouri,” Appl. at 1, because the Missouri Supreme Court refused to be part of his scheme. This Court should similarly refuse to aid a litigant with a “predicament” that is “of his own making.” *Reed v. Allen*, 286 U.S. 191, 198 (1932).

This stay application is the final step of a plan the Secretary set in motion last December. Following the General Assembly’s passage of a new mid-decade redistricting bill in the September 2025 special session, the people invoked the fundamental referendum right and began gathering signatures. The Secretary understood that if sufficient signatures were gathered, the new map would not go into effect. A federal court told him so on December 8, 2025, observing that if the referendum petition is sufficient, “the new map will be frozen until after the

referendum.” *Missouri Gen. Assembly v. Von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *2 (E.D. Mo. Dec. 8, 2025).

The next day, on December 9, 2025, organizers submitted to the Secretary more than 300,000 signatures in support of the referendum petition. App.2a-3a. This triggered a legal obligation for the Secretary to evaluate the petition and signatures and issue a certificate of sufficiency or insufficiency. App.3a. Faced with this duty, the Secretary announced his intention: “I’m going to do everything I can to protect Gov. (Mike) Kehoe’s Missouri First Map,” also known as HB 1.⁷ The Secretary also revealed that the state Attorney General had provided a roadmap of how to achieve his goal, telling the media the day after the signatures were submitted that, “[t]he Attorney General’s Office just came out with an opinion that says that the referendum does not go into effect until the signatures have been certified by the Secretary of State’s office.”⁸ The way forward for the Secretary was clear: delay certification. And he announced this strategy too, proclaiming that his review of the submitted signatures would be “slow and steady.”⁹

While the Secretary delayed confirmation of the sufficiency of the submitted signatures, he revealed that issuance of a certificate of insufficiency was predetermined on entirely unrelated grounds: his misguided belief that the referendum was unconstitutional. *See Missouri Gen. Assembly*, 2025 WL 3514277, at

⁷ David A. Lieb & Hannah Schoenbaum, *Opponents of Trump-backed redistricting in Missouri submit a petition to force a public vote*, PBS News (Dec. 9, 2025), <https://perma.cc/9SXV-CAS4>.

⁸ Alisa Nelson, *When Does Missouri’s New Congressional Map Take Effect? That Depends on Who You Ask*, MissouriNet (Dec. 10, 2025), <https://perma.cc/F8KU-2DXV>.

⁹ Lieb, *supra* note 7.

*2 n.2 (noting the Secretary’s “stated belief that the petition is constitutionally deficient” and his “expectation” to issue a certificate of insufficiency on that basis).¹⁰ But rather than issue the certificate and face timely judicial review, the Secretary continued to wait. As the Attorney General explained in a talk radio interview, “[a]s long as the status quo is the new maps, delay works in our favor.” App.739a.

Pleased with the status quo, the Secretary continued to delay. But the Missouri Supreme Court made clear in May of this year what the ultimate consequences would be: if the “December 9 referendum petition filing is ultimately determined to be sufficient,” as a matter of law, the new map “did not take effect” and was instead “referred to the people as of December 9,” taking effect only if approved by a majority of voters in the next election. *Maggard v. State*, 733 S.W.3d 411, 420 (Mo. 2026). Such a pronouncement might have made the Secretary speed up his sufficiency determination to avoid problems later, but instead he continued to run out the clock.

There is “no dispute the secretary could have issued his certificate any time after the December 9 filing.” App.3a. The Secretary did not have to count all the signatures, and as the federal court observed, “there is no apparent reason why he would incur the significant cost of signature verification given his stated belief that the petition is constitutionally deficient.” *Missouri Gen. Assembly*, 2025 WL 3514277, at *2 n.2. But of course, there was a reason, the same one the Secretary had announced from the beginning: to protect the Governor’s map by delaying review

¹⁰ The Secretary knew—or should have known—that his legal theory was wrong, as Missouri Courts have noted the applicability of referenda to redistricting multiple times. App.8a (citing cases).

until it would cause maximum disruption so that he could then claim it was too late to use a lawful map. So instead of issuing the certificate, he pursued his strategy and waited. In fact, while he had discretion under the law to verify the signatures using random sampling, he chose instead to verify every signature individually, further extending the process. App.12a n.8.

The Secretary's slow-walk in advance of the August 4, 2026 primary continued amid pleas from local election officials to provide guidance about which map would be used. Local election officials recognized that whatever decision Hoskins made would be challenged in court, and they begged for clarity as soon as possible. "We need the secretary of state to make a decision so the courts would give us a decision on which map is in effect," St. Charles County Elections Director Kurt Bahr told the press.¹¹ Mr. Bahr is a Republican who supported the new map, but his overriding goal was a desire for clarity and to avoid the confusion and late-breaking litigation that delay could cause. *Id.* He even signed onto an *amicus* brief in April 2026 raising these concerns. App.1051a. But unlike Mr. Bahr, the Secretary was not interested in avoiding chaos. He was committed to locking in place the new map, even if it was unlawful. And he once again told the press that his strategy to do so was delay, by "us[ing] the entire time that I have possible in order to review those signatures."¹²

On the last day possible, one hour before the statutory deadline—and on the day of Missouri's primary election—the Secretary did what he could have done eight

¹¹ Rudi Keller, *St. Charles County election leader warns redistricting delay could threaten August primary*, Missouri Independent (May 16, 2026), <https://missouriindependent.com/2026/05/16/st-charles-county-election-leader-warns-redistricting-delay-could-threaten-august-primary/>.

¹² Keller, *supra* note 11.

months prior, and issued a certificate of insufficiency claiming the referendum petition was unconstitutional. App.12a n.8. By waiting until the last moment to issue the certificate, he evaded judicial review before the primary election. His plan of delay seemed to be working. Then, on September 3, 2026, the Missouri Supreme Court issued the decision below, unanimously holding that the Secretary's certificate of insufficiency was legally incorrect and that as a matter of law, the 2022 map, not the HB 1 map, was legally in force. App.13a. In short, the Court did exactly what it said it would do back in May when it issued the *Maggard* decision. The Secretary now comes to this Court on its emergency docket to execute the final step in his plan.

The Secretary's delay saga is the epitome of unclean hands. As the Missouri Supreme Court noted, the undisputed facts about the Secretary's cynical gamesmanship make his equitable arguments "wholly unpersuasive." App.12a n.8. "[T]he secretary's delay created the confusion, expense, and practical difficulties of which he complains," *id.*, and this Court should apply the unclean hands principle and reject his requests for equitable relief now, *Reed*, 286 U.S. at 198; *Precision Instrument Mfg. Co.*, 324 U.S. at 814.

The Secretary claims that there was nothing untoward in waiting until 4:00 p.m. on August 4 to issue his certificate of insufficiency because he was within the statutory window by an hour. But the unclean hands principle does not require the offending action to be illegal. Rather, "any willful act" related to the issue before the Court that "transgress[es] equitable standards of conduct" is sufficient to deny relief. *Precision Instrument Mfg. Co.*, 324 U.S. at 815. The Secretary did not need to wait

until the literal final hour to formally declare what he intended to do all along and knew what would happen if he did, but he chose to run out the clock. Nor did the August 4 statutory deadline relieve the Secretary of his duty to respect the people's exercise of their rights under the Missouri Constitution. *See* App.11a.

Having willfully neglected every path that could have resulted in clarity and resolution sooner, the Secretary is suddenly very concerned about chaos. He uses the word eight times in his application. But the Secretary's newfound concern for election officials "scrambling to figure out how to comply," voters who are "confused," and candidates who have "campaigned for over a year and raised tens of millions of dollars" based on unlawful districts the Secretary contrived to lock in place, Appl. at 5, all rings hollow since he caused the very chaos he now threatens will follow. In the face of all this, this Court's course is clear: "To decide the case [this Court] need look no further than the maxim that no man may take advantage of his own wrong." *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232, (1959).

The Secretary does not claim his hands are clean. He all but concedes the state court's damning chronicle of his scheme. Appl. at 27. Instead, he asks this Court to look past his machinations and join him, asserting that if this Court denies a stay, Missouri "will be barred from using a duly enacted congressional map." Appl. at 4. But the Missouri Supreme Court just held emphatically that the 2025 map is *not* duly enacted. App.12a n.8. Any election under HB 1 is *not* a "lawful federal election." *Contra* Appl. at 5. The matter of the Secretary's fidelity to his own State's constitution

is not an “irrelevant” “squabble,” Appl. at 27, and no principle of equity counsels in favor of this Court granting relief.

III. To the extent *Purcell* considerations apply, they weigh heavily in favor of denying the application.

The Secretary half-heartedly invokes *Purcell* in support of his application, but his arguments are misguided and insufficient. First, *Purcell* is animated by federalism concerns that do not apply to state court rulings, and the Secretary’s attempts to invoke state court pseudo-equivalents are unpersuasive. Second, a review of this Court’s precedent makes abundantly clear that it would be this Court’s *granting* of the Secretary’s application that would run afoul of *Purcell*. Third, the Secretary’s complaints of crunched timelines and logistical challenges are inconsistent, contradictory, and self-inflicted.

As this Court has repeatedly emphasized, *Purcell* is an equitable principle rooted in federalism, warning that “lower *federal* courts should ordinarily not alter the election rules on the eve of an election.” *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (quoting *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam)) (emphasis added). *Purcell* has no bearing on electoral changes made by *state* actors, including state courts. *See Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (“While *federal* courts should not impose changes close to an election, *States* are free to decide for themselves whether last-minute changes to an election are in their best interests.”) (emphasis added, internal citation omitted); *see also Grove v. Emison*, 507 U.S. 25, 34 (1993) (“[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional . . .

districts,” and federal courts must “neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.”).

Despite this case involving a state court deciding an issue of state election law, the Secretary initially contends that “this Court’s *Purcell* precedents demonstrate that Missouri’s harms are overwhelming and warrant equitable relief.” Appl. at 34. Yet the Secretary himself seems to sense the baselessness of his argument, noting in the next breath that this would only be true “[i]f a federal court had entered the order under review here.” *Id.* at 35 (emphasis added). The Secretary’s counterfactuals aside, the Missouri Supreme Court’s ruling clearly falls outside the bounds of the equitable concerns of *Purcell* as defined by this Court.

The Secretary, however, insists that “the primary rationale underlying *Purcell v. Gonzalez*—preventing chaos in a federal election, 549 U.S. 1, 4-5 (2006)—squarely fits this case.” *Id.* On the contrary, it would be this Court’s *granting* of his stay application that would run counter to *Purcell*. HB 1 is not the law, and the 2022 map is the only valid redistricting plan in effect. App.12a-13a n.8. Thus, while the Secretary seeks to frame a grant of his stay application as a restoration of the status quo, such a ruling would in truth *upend* the status quo. Granting the Secretary’s stay application would result in exactly the type of last-minute meddling by the federal judiciary into state election rules that *Purcell* counsels against, and that this Court has avoided. *See Milligan*, 146 S. Ct. at 1381; *Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Mem) (Kavanaugh, J., concurring).

The Secretary’s reliance on *Malliotakis v. Williams*, 146 S. Ct. 809 (2026), is misguided. There, this Court granted the stay because of the “unacceptably strong possibility that the applicants’ appeal in the state court system will not conclude until it is too late for us to review the ultimate decision.” 146 S. Ct. at 811 (Alito, J., concurring). Here, no such concern exists: an ultimate decision on the merits has already been issued by the Missouri Supreme Court. What’s more, Justice Alito explained that such a delay was problematic because “[b]y then, the principle of restraint we recognized in [*Purcell*] may counsel against the issuance of an injunction.” *Id.* That is, with only four months until the election, this Court needed to act sooner rather than later in order to avoid running afoul of *Purcell*. Missouri’s election officials are currently working to comply with the Missouri Supreme Court’s injunction for a general election less than two months away. And the Secretary comes to this Court with unclean hands seeking equitable relief that would itself violate the Constitution and federal law. *Purcell* does not preclude *every* late-breaking action by a federal court, see *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Mem.) (Kavanaugh, J., concurring), but it surely precludes the relief the Secretary seeks here.

The Secretary also relies on *Hadley v. Junior College District of Metropolitan Kansas City*, 460 S.W.2d 1 (Mo. 1970), where the Missouri Supreme Court held that, in deciding election-related cases, “a court is entitled to *and should* consider the proximity of a forthcoming election and the mechanics and complexities of state election laws.” Appl. at 36 (quoting *Hadley*, 460 S.W.2d at 2). That is exactly what the court did. As the Secretary himself notes, “the Missouri Supreme Court held that

any consideration of ‘the confusion, expense, and practical difficulties that may result’ from enjoining the congressional map was irrelevant.” Appl. at 37 (citing App.12a-13a). Such an application of state law is well within the state high court’s discretion.

Finally, the Secretary attempts to buttress his argument by highlighting the logistical challenges of implementing the Missouri Supreme Court’s order, repeatedly citing the trial court’s order declaring the task “impossible,” and pronouncing that “Missouri cannot run a timely, lawful election absent a stay,” Appl. at 5. But the Secretary has previously unequivocally stated that Missouri *is* able to comply with any ruling made by *this* Court by the September 8 deadline noted by the Missouri Supreme Court. In response to a question from the press on September 3, the day of the order at issue, about a potential appeal to this Court, the Secretary stated, “[w]e will abide by whatever court decision is made by the [U.S.] Supreme Court . . . So if the [U.S.] Supreme Court makes a decision by the Sept. 8 deadline, we will meet whatever requirements that they set forth in that decision.”¹³ If the Secretary is able to comply with “whatever requirements” set out by this Court by September 8, there is no reason he cannot do the same for the Missouri Supreme Court’s order which came five days earlier. As this Court has held, the Secretary cannot offer *Purcell*-type arguments that run counter to “previous representations . . . that the schedule on which” the court is proceeding is “sufficient to enable effectual relief.” *Rose*, 143 S. Ct. at 59.

¹³ Kacen Bayless, *Trump attacks Missouri map ruling as ‘Dark Day,’ AG vows to fight decision*, Kansas City Star (Sep. 3, 2026), <https://perma.cc/3DXZ-SVLH>.

The contradictions do not end there. In his application, the Secretary states that, if required to comply with the Missouri Supreme Court’s order, “Missouri will be forced to violate UOCAVA and delay the start of voting.” Appl. at 5. The Secretary follows this up by matter-of-factly stating, *in the very next paragraph*, that “[t]o enable Missouri to comply with [the UOCAVA] deadline, Secretary Hoskins respectfully requests this Court issue a decision not later than September 14, 2026.” His ability to comply with the UOCAVA deadline plainly has not passed.

Further, the Secretary’s argument regarding the “impossibility” of utilizing the only lawful congressional map in the November election relies heavily on the testimony of Tammy Brown, a *former* member of the Jackson County Election Board (JCEB). Ms. Brown previously testified that “it would not be feasible for Jackson County’s election officials to comply with a court order to change the congressional map in advance of the 2026 general election.” App.1666a. But Ms. Brown’s testimony is undercut by the two *current* directors of the JCEB, Republican Tyler Spencer and Democrat Sara Zorich, who, in a joint statement to the press on September 4 regarding the Missouri Supreme Court’s order, stated that “[w]e are equipped to make the necessary changes.”¹⁴

As such, to the extent the equitable considerations of *Purcell* apply here, they weigh heavily in favor of denying the Secretary’s application for stay.

CONCLUSION

For the foregoing reasons, the application should be denied.

¹⁴ Bayless, *supra* note 2.

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Gillian R. Wilcox
Jason Orr
Jonathan D. Schmid
Kristin M. Mulvey
ACLU OF MISSOURI FOUNDATION
406 W. 34th Street, Suite 420
Kansas City, MO 64111

Ming Cheung
Cecillia D. Wang
Sophia Lin Lakin
Dayton Campbell-Harris
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004

/s/ Mark P. Gaber

Mark P. Gaber
Counsel of Record
Aseem Mulji
Simone Leeper
Benjamin Phillips
Isaac DeSanto
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2000
mgaber@campaignlegalcenter.org

Annabelle E. Harless
CAMPAIGN LEGAL CENTER
55 W. Monroe Street, Suite 1925
Chicago, IL 60603

Counsel for Amici