
In The Supreme Court of the United States

DENNY HOSKINS, SECRETARY OF STATE OF MISSOURI,
Applicant,

v.

RICHARD VON GLAHN,
Respondent.

On Emergency Application for Stay of the Judgment of the Supreme Court of
Missouri

**AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE
IN SUPPORT OF APPLICANT'S EMERGENCY APPLICATION FOR STAY**

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INTEREST OF AMICUS CURIAE¹

The American Center for Law and Justice (“ACLJ”) is an organization dedicated to the defense of constitutional liberties secured by law, including election integrity and security in the electoral process. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g.*, *Trump v. Anderson*, 601 U.S. 100 (2024) (unanimously holding that states have no power under the U.S. Constitution to enforce Section Three of the Fourteenth Amendment with respect to federal offices); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); or as *amici*, *e.g.*, *Fischer v. United States*, 603 U.S. 480 (2024); *McDonnell v. United States*, 579 U.S. 550 (2016); and *Bush v. Gore*, 531 U.S. 98 (2000). The ACLJ has a fundamental interest in preserving the constitutional allocation of authority over federal elections and protecting the right of citizens to participate meaningfully in each stage of the electoral process. This case presents an extraordinary disruption of both interests.

SUMMARY OF ARGUMENT

This Court should stay the Missouri Supreme Court’s injunction because it imposes precisely the kind of last-minute judicial disruption of election rules that this Court has repeatedly warned against. Missouri enacted HB 1 through the

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

ordinary legislative process, conducted its congressional primary under that map, and approximately 1.2 million Missourians cast ballots in reliance on that electoral framework. The decision below nevertheless requires Missouri to conduct the corresponding general election under a different map, after nominees have been selected, campaigns have proceeded, election officials have begun administering the election, and federal ballot-transmission deadlines are imminent.

The *Purcell* principle is not a technical rule limited to federal courts. It reflects a practical and institutional judgment that courts should not alter election rules when voting is close at hand, because such orders create confusion for voters, candidates, parties, and election officials. That concern applies with equal force when the last-minute change comes from a state supreme court. Indeed, it applies with greater force here, where the court's injunction does not merely adjust a deadline or ballot procedure, but severs the general election from the primary election that already occurred under HB 1. Voters who selected nominees in one district may now be required to vote in another, while election officials must attempt to administer a congressional election under a map different from the one used to nominate candidates.

The injunction also deprives Missouri voters of the democratic process. This is not a case in which a court intervened before voters went to the polls. The primary has already occurred. The trial court found that reverting to the prior map at this stage would move hundreds of thousands of voters into different districts from those in which they voted in the primary, materially diminish their voting power, and

make timely election administration impossible. Those findings were not disturbed by the Missouri Supreme Court. By disregarding them, the decision below nullifies the votes cast in the primary and threatens the electoral process.

Finally, the Missouri Supreme Court's injunction conflicts with the Elections Clause. The Constitution assigns primary responsibility for regulating federal elections to state legislatures. Although state courts may enforce ordinary constraints of state law, they may not exceed the bounds of ordinary judicial review in a way that arrogates to themselves the power constitutionally vested in the legislature. Here, the Missouri Supreme Court did more than interpret state referendum law; it gave a referendum petition immediate operative effect over a federal congressional election already underway, displacing the legislature's enacted map for the same election cycle after that map had governed the primary. If permitted to stand, that rule would provide a ready-made mechanism for destabilizing federal elections nationwide. A stay is therefore necessary to preserve Missouri's enacted election framework, protect voters who already participated under it, and prevent the decision below from becoming a template for mid-cycle judicial disruption of federal elections.

ARGUMENT

I. This Court Should Issue a Stay to Prevent Post-Primary Judicial Disruption of a Federal Election and Preserve the Electoral Framework Under Which Missouri Voters Already Chose Their Nominees.

The Constitution vests the primary authority to set election regulations in state legislatures, not the courts; that authority has been threatened by the Missouri

Supreme Court’s ruling that overrides the will of the people of Missouri. The Elections Clause, U.S. Const. art. I, § 4, cl. 1, assigns to the “Legislature” of each State the power to direct the “Times, Places and Manner” whereby elections will be conducted. The Electors Clause, U.S. Const. art. II, § 1, cl. 2, likewise assigns to the “Legislature” of each State the power to direct the “Manner” of choosing presidential electors in federal elections. That authority to govern elections is threatened when a state court rejects the clear dictates of an election code in favor of its own view of how elections should proceed. The decision below implicates that federal boundary in its most concrete form: Missouri’s legislature enacted a congressional map, the State completed its primary election under that map, and the Missouri Supreme Court then ordered a different districting plan for the corresponding general election. This Court should issue a stay to restore the legislature’s authority.

A. This Court Should Enter a *Purcell* Stay to Prevent the Missouri Supreme Court’s Last-Minute Disruption of the Missouri Democratic Process.

The *Purcell* principle should lead this Court to immediately enter a stay of the Missouri Supreme Court’s attempt to rewrite state election law. The *Purcell* principle is a recent name for what is really a commonsense doctrine: election laws should remain fixed and not be changed shortly before elections occur. Such changes threaten both the integrity of the electoral system and the nation’s trust in it. This Court has warned repeatedly of the dangers of last-minute changes to election procedures: “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 549

U.S. 1, 4–5 (2006). While the doctrine has been applied with rigor to federal courts that have interfered with state election procedures, that risk remains whether state or federal courts do the tampering. As Justice Kavanaugh has highlighted, “[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays).

Those concerns apply with equal, if not greater, force when the last-minute alteration comes from a state court rather than a federal one; a voter confused about which district she lives in, or a county clerk unsure which map to program into the state’s voter-registration system, faces the same disruption regardless of which judiciary issued the order. *See Malliotakis v. Williams*, 146 S. Ct. 809, 810–11 (2026) (Alito, J., concurring in grant of stay) (staying a state-court order that altered a congressional map before an upcoming election). Nothing could be more confusing or disruptive than a state changing its map at the last minute, after the primary already occurred. This Court’s warning against such last-minute changes applies with particular force here, where the change “fundamentally alters the nature of the election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). Courts, whether federal or state, should seek “to avoid this kind of judicially created confusion.” *Id.* at 425.

State courts have regularly relied on the *Purcell* principle. For example, the Maine Supreme Judicial Court affirmed a lower court’s decision to deny an injunction

request made by an organization and group of voters who sought to have the Maine Secretary of State count absentee ballots received ten days after the statutory deadline. *Alliance for Retired Ams. v. Sec’y of State*, 240 A.3d 45, 52 (Me. 2020). The Maine Supreme Judicial Court cited and relied on *Purcell* for its decision, emphasizing the need for caution in interfering with state election laws. The court’s opinion discussed *Purcell* at length, “find[ing] it instructive” that the Supreme Court stayed a Wisconsin federal court’s injunction with the admonition that it “has repeatedly emphasized that lower federal courts should not ordinarily alter the election rules on the eve of an election.” *Id.* (quoting *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. at 424). Although the cited language from this Court’s decision emphasizes the need for lower federal courts to follow *Purcell*, the Maine Supreme Court showed no hesitancy in acknowledging that *Purcell*’s warning applied as it adjudicated similar challenges.

The Connecticut Supreme Court, likewise, has acknowledged the *Purcell* principle as applicable in state proceedings and relied on this Court’s precedent as authoritative guidance in addressing the timing of election questions. *Fay v. Merrill*, 256 A.3d 622, 638 n.21 (Conn. 2021). That court highlighted that the *Purcell* principle would be implicated by a state court declaratory judgment in the plaintiff’s favor in an election matter and emphasized that “[t]he *Purcell* principle remains applicable” to the proceedings before it. *Id.*

The Tennessee Supreme Court relied on this principle in *Moore v. Lee*, 644 S.W.3d 59 (Tenn. 2022), a case in which a group of voters challenged a state Senate

redistricting plan as violating the Tennessee Constitution. That court relied on *Purcell* to prohibit any last-minute interference with state voting laws. *Id.* at 65. It emphasized that its own precedent was not in tension with *Purcell* but “similarly has shown restraint when asked to enjoin the effectiveness of constitutionally suspect reapportionment plans.” *Id.* at 66.

Many state courts have regularly acknowledged this same principle and refused to condone last-minute attacks on election legislation. *See League of United Latin Am. Citizens v. Pate*, 950 N.W.2d 204, 215–16 (Iowa 2020) (declining, “on the eve of this election[,] to invalidate the legislature’s statute providing additional election safeguards,” particularly given that “[t]he United States Supreme Court has repeatedly warned that courts ‘should ordinarily not alter the election rules on the eve of an election’”) (quoting *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. at 424).

The principles underlying the *Purcell* doctrine are not limited to federalism; they reflect the basic interest of the American people in ensuring that elections are free and fair and not disrupted by last-minute threats to the electoral process. *Purcell* is no esoteric doctrine: “[c]all 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.” *DeVisser v. Sec’y of State & Dir. of the Bureau of Elections*, 981 N.W.2d 30, 35 (Mich. 2022) (Welch, J., concurring) (quoting *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016)).

Missouri’s own courts are no exception — which makes the decision below all the

more egregious. In *Hadley v. Junior College District of Metropolitan Kansas City*, the Missouri Supreme Court held that, “[i]n awarding or withholding immediate relief” after invalidating a redistricting scheme, “a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of . . . election laws, and should act and rely upon general equitable principles.” 460 S.W.2d 1, 2 (Mo. 1970) (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)). Applying that principle, the *Hadley* court declined to order implementation of new districts just days before the close of the relevant candidate-filing period. *Id.* at 2–3. Here, the relevant candidate-filing period closed more than five months before the Missouri Supreme Court’s order, and Missouri had *already completed* its primary election approximately a month earlier — an equitable case for restraint dramatically stronger than the one *Hadley* itself found sufficient. Yet the Missouri Supreme Court’s opinion below does not cite *Hadley* at all. It does not distinguish it, limit it, or explain why the equitable principle *Hadley* announced should not apply with even greater force to a post-primary map change. It simply declared any consideration of “the confusion, expense, and practical difficulties that may result” from its injunction to be “irrelevant.” App. 12a–13a. A state supreme court’s silent departure from its own settled equitable doctrine, in a case presenting a far more extreme version of the very problem that doctrine was designed to address, strongly signals that something has gone wrong below.

This case presents those harms in a uniquely severe form. Voters are not merely being told that a deadline or ballot-return procedure has changed. Some are being

transferred into a different congressional district after selecting nominees in another. Election officials are not merely revising instructions; they must reassign precincts, alter ballots, reconcile candidate eligibility and district residence, and meet federal ballot-transmission obligations. The record-supported trial-court finding was that changing the map at this stage is “impossible.” App. 52a.

For those reasons, this is not a close case for equitable restraint. The Missouri Supreme Court’s injunction does exactly what *Purcell* forbids: it unsettles election rules at the most sensitive point in the electoral process, after voters have already selected nominees and while election officials face imminent federal deadlines. A stay would not decide the ultimate validity of Missouri’s referendum process. It would simply preserve the only coherent electoral framework remaining for the 2026 congressional election — the framework under which Missouri voters already selected their nominees.

B. The Missouri Supreme Court Deprived the Voters of the Democratic Process.

The order under review presents a more extreme case than any in which this Court has previously invoked *Purcell*-related equities to grant a stay. In *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (per curiam), and in *Malliotakis*, this Court acted to prevent a congressional map from changing before a primary election — in *Malliotakis*, approximately four months before the primary was scheduled to begin. Here, by contrast, Missouri’s primary is over: 1.2 million Missourians *already voted* in the August 2026 primary under the map the Missouri Supreme Court has now enjoined. No case cited in the application, and no case of which *amicus* is aware, has

ever required a State to substitute an entirely new congressional map for the general election after the primary has already occurred under the old one. If a four-month runway before a primary was enough to warrant a stay in *Malliotakis*, then a case in which the primary *has already been completed* — and the votes of 1.2 million Missourians are on the line — presents an *a fortiori* claim for relief.

The specific harms that flow from the injunction’s timing are not speculative; they are the direct, undisputed findings of the trial court, which the Missouri Supreme Court never disturbed. The trial court found that “changing the maps at this late juncture is not just ‘impractical,’ it is impossible,” App. 52a, and that “[c]andidate filing closed months ago,” nominees “have been selected,” and “[c]ampaigns for the general election are underway.” *Id.* at 50a. Reverting to the 2022 map, the trial court found, “would move hundreds of thousands of voters into different districts for the imminent 2026 general election compared to the districts in which they cast their ballots in the August primary elections,” leaving those voters with “materially less voting power than voters whose districts remained the same.” *Id.* at 20a, 45a. The Missouri Supreme Court ignored these findings.

The constitutional defect is not merely that Missouri changed an election rule late. It is that the court below severed two legally connected stages of the same federal election. This Court has recognized that “[w]here the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Article I, § 2.” *United States v. Classic*,

313 U.S. 299, 318 (1941). The Constitution’s protection of the people’s choice of Representatives therefore does not begin only when general-election ballots are cast. It applies to a state-created primary that determines the nominees presented to the electorate.

Missouri’s primary performed precisely that function. Voters within each HB 1 district selected nominees to compete for that district’s congressional seat. The injunction leaves those nominations nominally intact while replacing the constituencies for which the nominations occurred. Thus, some voters who participated in selecting the nominees for one district will be assigned to another district in the general election, while general-election voters will be asked to choose among candidates selected by a materially different primary electorate. That breaks the connection between nomination and election on which Missouri’s electoral process depends.

The right to vote also includes “the right to have one’s vote counted.” *United States v. Mosley*, 238 U.S. 383, 386 (1915). A vote may be deprived of its intended effect not only when an official refuses to tabulate it, but also when the government retroactively changes the electoral contest in which the vote operated. The primary votes here were cast to select nominees for congressional districts established by HB 1. Reassigning voters after those selections leaves their ballots recorded but deprives them of their intended role in determining the candidates among whom those voters will choose in November. Such a deprivation is inconsistent with the Constitution.

C. The Missouri Supreme Court’s Injunction Violates the Elections Clause.

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 alteration by Congress. U.S. Const. art. I, § 4, cl. 1. Under *Moore v. Harper*, state courts may enforce ordinary constraints of state law, but they may not exceed the ordinary bounds of judicial review in a way that arrogates to themselves the legislature’s constitutionally assigned authority over federal elections. 600 U.S. 1, 36 (2023). That is what happened here: Missouri’s legislature enacted HB 1, the State conducted its congressional primary under that map, and the Missouri Supreme Court then ordered a different map for the corresponding general election. In so doing, it substituted its own judgment for that of the legislature.

The Constitution’s allocation of authority over federal elections reflects a deliberate judgment by the Framers that election regulations should be established through prospective lawmaking rather than *ad hoc* judicial revision. As Alexander Hamilton explained, “[e]very government ought to contain in itself the means of its own preservation.” *The Federalist No. 59* (Hamilton). The Framers therefore vested authority over federal election regulations primarily in legislatures rather than leaving the rules governing federal elections subject to uncertainty.

The term “Legislature” was “not . . . of uncertain meaning when incorporated into the Constitution”: it referred to “the representative body which made the laws of the people.” *Hawke v. Smith*, 253 U.S. 221, 227 (1920). “[T]he Elections Clause expressly vests power to carry out its provisions in ‘the Legislature’ of each State, a deliberate

choice that this Court must respect.” *Moore*, 600 U.S. at 34. Thus, this Court reviews claims where state actors invoke state law to change federal election rules to ensure they “do not evade federal law.” *Id.*

This Court has recently emphasized the primacy of state legislatures in enacting election laws. In *Moore*, 600 U.S. at 10, this Court confirmed that it is state legislatures that have the primary, mandatory responsibility to determine the election laws for their states. This Court made emphatically clear “that state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Id.* at 36. The Elections Clause does not “exempt state legislatures from the ordinary constraints” of state law, *id.* at 34, but this Court was careful to remind the parties of its “obligation to ensure that state court interpretations of that law do not evade federal law.” *Id.* It is the state legislature’s authority that is preserved and given primacy. As Justice Kavanaugh emphasized, “[f]ederal court review of a state court’s interpretation of state law in a federal election case ‘does not imply a disrespect for state courts but rather a respect for the constitutionally prescribed role of state legislatures.’” *Id.* at 38 (Kavanaugh, J., concurring) (quoting *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring)).

Moore ultimately left unaddressed the full scope of the Elections Clause standard. But it did make the outer bounds of that inquiry very clear. This Court left no doubt that “state courts may not so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state

legislatures by Article I, Section 4, of the Federal Constitution.” *Id.* at 37. The Elections Clause may mean other things as well, but at a minimum it prohibits state courts from going beyond ordinary judicial review to intrude on the decisions of state legislatures.

That is precisely what the Missouri Supreme Court has done here. The scale of what the Missouri Supreme Court sanctioned bears emphasis. HB 1 passed the Missouri Senate 21 to 11 and the Missouri House of Representatives 90 to 65 — substantial majorities in both chambers, followed by the Governor’s signature. App. 17a. The referendum petition that displaced it, by contrast, required signatures from only “five percent of the legal voters in each of two-thirds of the congressional districts in the state,” Mo. Const. art. III, § 52(a) — roughly 3.3% of Missouri’s registered voters, and roughly 106,000 signatures in absolute terms, gathered by Respondent’s organization in about one month. Under the Missouri Supreme Court’s decision, that petition alone — with no statewide vote yet held — was enough to displace the General Assembly’s map for the 2026 election cycle.

“[S]tate legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules.” *Democratic Nat’l Comm. v. Wisconsin State Leg.*, 592 U.S. 1039, 1041 (2020) (Gorsuch, J., concurring in denial of application to vacate stay). If a small, self-selected fraction of the electorate can unilaterally suspend that authority merely by submitting a petition — before the very statewide vote the Missouri Constitution’s referendum provisions contemplate ever takes place — little is left of the Elections

Clause’s assignment of that authority to “the Legislature.” The novelty of the Missouri Supreme Court’s approach reinforces the point: as the application explains, no court in Missouri or any other State has ever, so far as the parties are aware, held that a congressional map must be displaced for an entire election cycle based on a referendum petition, much less ordered that displacement after voters had already selected their nominees under that map. “Perhaps the most telling indication of the severe constitutional problem” with a novel exercise of asserted authority is that the party defending it has not “located any historical analogues” for it. *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 505–06 (2010) (citation omitted).

The violation, then, is not simply that the Missouri Supreme Court interpreted state referendum law. It is that the court used that interpretation to give a referendum petition immediate operative effect over a federal congressional election already underway, thereby displacing the legislature’s enacted map for the same election cycle after that map had already governed the primary. That is not ordinary judicial review of legislative action. It is judicial substitution of a new federal-election rule for the legislature’s rule at the very point when Article I requires the legislature’s prescription to control unless Congress alters it.

Forcing voters into different districts, with different nominees, for the general election after they participated in a completed primary is squarely the kind of practical disenfranchisement the Constitution forbids — depriving the August primary votes of their intended effect in the electoral process for which they were

cast. The Elections Clause does not require this Court to resolve every question of Missouri referendum law on an emergency application. But it does require this Court to prevent a state court from using state law to displace the legislature's federal-election rules in a manner that exceeds ordinary judicial review and destabilizes an election already underway. Because the injunction substitutes judicial revision for legislative prescription, and does so after Missouri's primary has already been held, the Missouri Supreme Court's order should not be permitted to govern the 2026 congressional election pending this Court's review.

CONCLUSION

For the foregoing reasons, the application should be granted.

Respectfully submitted,

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