IN THE SUPREME COURT OF MISSOURI

No. SC 101541

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE MISSOURI STATE CONFERENCE, et. al.

Appellants,

v.

MIKE KEHOE in his official capacity as Governor of the State of Missouri, et. al.

Respondent.

APPELLANT'S BRIEF

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INTRODUCTION

This case presents important questions of constitutional interpretation regarding the Governor's authority under Article IV, Section 9. Petitioners specifically challenge the Constitutionality of Governor Kehoe's August 29, 2025 Proclamation convening an extraordinary session of the Missouri General Assembly and challenge the validity of the legislative action, HB1 and HJR3, taken during the extraordinary session.

This question is one of first impression in this State as it is apparently the first time the issue of whether the Governor has properly declared an extraordinary occasion in a Proclamation has been brought. D57:P2. Previous challenges around extraordinary sessions have been related to other questions such as the ability of the legislature to act outside of the issues referred by the Governor. *See e.g. State ex rel. Department of Penal Institutions v. Becker*, 47 S.W.2d 781 (1932). This case is centered around one question: is the Governor's authority in Art. IV Sec. 9 dependent on the existence of an extraordinary occasion and did he properly state one?

HB1 enacted a new congressional redistricting map for Missouri mid-decade, HJR3, places a Constitutional Amendment on the ballot that would amend the Missouri Constitution to require that statewide ballot measures pass by a majority of voters both statewide and in each congressional district. Both measures were enacted exclusively as a result of the extraordinary session called by the Governor's Proclamation. The end of the extraordinary session and the recent Supreme Court ruling in *Luther v. Hoskins* SC101412 do not extinguish Appellants' claims. HB1 is in effect as law and currently governs Missouri's congressional districts for the 2026 election cycle.[1] HJR3 is pending submission to voters in the November general election. The constitutional challenge to both measures is live and capable of resolution. Moreover, the underlying constitutional question is capable of repetition yet evading review. The Governor's recent practice of calling extraordinary sessions has become more frequent and less tethered to genuinely novel circumstances showing the necessity of resolving this question.

[1] *Maggard et al., v. State*, No. 25AC-CC09120 (Cole Cnty. 2025).

The Circuit Court appears to agree that Appellants have standing and the courts have the authority to resolve the issue at least as to whether the Constitutional requirements have been met. Judgment p 4. All issues presented in this appeal were raised before the Circuit Court, argued at the December 15, 2025 bench trial, and ruled upon in the Judgment entered February 13, 2026. This Court should rule on the merits.

Accordingly, Appellants request that this Court find and rule that the Circuit Court erred in its interpretation and application of Art. IV Sec. 9, that the Court's Judgment is against the evidence and circumstances (as the Circuit Court did not rule on the evidence), and thus, this Court should rule that the subject Proclamation was in excess of the Governor's Constitutional authority as prescribed by Article IV, Section 9 and any action taken by the General Assembly pursuant thereto is void.

JURISDICTIONAL STATEMENT

The Supreme Court has exclusive appellate jurisdiction of constitutional challenges to state statutes. MO. CONST. art. V, § 3. Specifically, Appellants challenge the Circuit Court's order of February 13, 2026 denying Appellants' claim that the Constitution limits the Governor's authority under Article IV, Section 9, to convene an extraordinary session of the General Assembly and requires the existence of an extraordinary occasion; and therefore, that HB1 and HJR3 enacted during that session are not valid.

Appellants filed their Notice of Appeal concurrently with a request to shorten time under Rule 81.045 on February 27, 2026. The Motion to shorten time was granted on March 11, 2026. The appeal is timely under Supreme Court Rules 81.04(a) and 81.05(b). D1:P16.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On August 29, 2025, Governor Kehoe issued a Proclamation convening the Missouri General Assembly into an extraordinary session pursuant to Article IV, Section 9 of the Missouri Constitution, directing the General Assembly to convene on September 3, 2025. The Proclamation identified two subject areas for legislative action: (1) establishment of new congressional districts; and (2) amendments to the state's initiative petition process. The General Assembly convened on September 3, 2025. During the session, the General Assembly considered and passed two pieces of legislation. House Bill 1 ("HB1") enacted a new congressional redistricting map for the State of Missouri. House Joint Resolution 3 ("HJR3") proposed an amendment to Article III of the Missouri Constitution that would require a statewide ballot measure to be adopted by a majority of voters statewide and a majority of voters in each congressional district, a concurrent majority requirement, and made related changes to the ballot initiative process. HB1 was signed into law by Governor Kehoe on September 28, 2025. HJR3 was delivered to the Missouri Secretary of State on September 12, 2025, and, if not enjoined, will be submitted to Missouri voters at the 2026 November general election. The General Assembly adjourned sine die on September 12, 2025. D57:PP 1-2; D50:P3 ¶11.

Appellants filed their Verified Petition for Declaratory Judgment and Injunctive Relief on September 3, 2025. D1:P8. Following a change of judge, the case was assigned to Judge Christopher K. Limbaugh. D1:P11. After extensive briefing, the Court held a bench trial on December 15, 2025. D1:P15. The parties submitted proposed judgments by December 23, 2025. D1:P15. On February 13, 2026, the Circuit Court entered Judgment in favor of Respondents, holding that the Governor has unfettered constitutional discretion to determine what constitutes an extraordinary occasion under Article IV, Section 9. D1:P16. This appeal follows.

POINTS RELIED ON

I. The Circuit Court erred in determining the Governor's proclamation was sufficient under Article IV Section 9, because Article IV Section 9 requires an extraordinary occasion to exist before the Governor may exercise discretion in convening the legislature and recommending legislative action, in that the phrase "deemed necessary" is related to the determination of what legislation is necessary and not as to whether an extraordinary occasion exists.

Buechner v. Bond, 650 S.W.2d 611, 613 (Mo. banc 1983)
State ex rel. Dept of Penal Inst v. Becker, 47 S.W.2d 781, (Mo. 1932)
Wright-Jones v. Nasheed, 368 S.W.3d 157 (Mo. 2012)
MO. CONST. art. V, § 3

II. The Court erred in declaring the issue a political question because the issue in this case is one of Constitutional sufficiency and subject to rational basis review and not a question of appropriate public policy, in that the political question doctrine is limited to instances of true discretion over public policy.

Baker v. Carr, 369 U.S. 186 (1962)
Kinder v. Holden, 92 S.W.3d 793 (Mo. App. 2002)
Mo. Coal. for Env't v. Joint Comm. on Admin. Rules, 948 S.W.2d 125 (1997)
Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

STANDARD OF REVIEW

The questions presented in this appeal are pure questions of law: the proper interpretation of Article IV, Section 9 of the Missouri Constitution, and whether the Circuit Court correctly determined the scope of judicial review over gubernatorial proclamations. Questions of constitutional interpretation are reviewed de novo. *Faatz v. Ashcroft*, 685 S.W.3d 388, 400 (Mo. banc 2024). This Court applies no deference to the Circuit Court's legal conclusions. Id. Challenges to the constitutionality of the extraordinary session were raised at the earliest possible time, no post-trial motion was required, and this issue is preserved for appeal.

ARGUMENT

I. The Circuit Court erred in determining the Governor's proclamation was sufficient under Article IV Section 9, because Article IV Section 9 requires an extraordinary occasion to exist before the Governor may exercise discretion in convening the legislature and recommending legislative action, in that the phrase "deemed necessary" is related to the determination of what legislation is necessary and not as to whether an extraordinary occasion exists.

A. The plain language of Art. IV Sec. 9 requires an extraordinary occasion to exist before the Governor is authorized to convene the legislature.

The Constitution should be interpreted based upon the plain meaning of the words and phrases used. *Wright-Jones v. Nasheed*, 368 S.W.3d 157 (2012). Where terms are not otherwise defined, the plain meaning is derived from the dictionary. *Cox v. Dir. of Revenue*, 98 S.W.3d 548 (2003).

The operative sentence in Art. IV Sec. 9 is "On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary." This sentence is easily broken down into its component parts.[2] The subject of this sentence is "he" meaning the Governor as can be seen by the connection to the previous sentence. The direct object of the sentence is the "general assembly." Thus, the question is, what can the governor do with regard to the general assembly? The answer to that is that he "may convene" it. The remaining phrases in the sentence modify the verb "may convene." First, by stating **when** the governor may convene the general assembly. Second, by stating **how** the governor may convene the general assembly.

The Trial Court focused only on this second criteria of how the governor may convene the general assembly when discussing discretion. Instead, the Court should have

[2] See Generally GORDON LOBERGER & KATE SHOUP, WEBSTER'S NEW WORLD ENGLISH GRAMMAR HANDBOOK, SECOND EDITION, (2009)

recognized the nature of the first criteria and given weight to the prepositional clause stating when the governor may convene the general assembly. The phrase "on extraordinary occasions" is an adverbial clause modifying the phrase "may convene" which is the main verb of the sentence. The second prepositional clause begins "by proclamation" and is modified by the adjective clause beginning "wherein" and the words following.

Everything following the word "wherein" is modifying the noun "proclamation." The proclamation must contain within it statements of matters "on which action is deemed necessary." No grammatical construction of the sentence would connect the two distinct modifying phrases of "extraordinary occasion" and "deemed necessary." These two phrases operate at categorically different levels. "On extraordinary occasions" is a jurisdictional trigger. It defines the precondition that must exist before the power to convene arises at all. "Wherein he shall state specifically each matter on which action is deemed necessary" is a procedural requirement. It defines how the power must be exercised once the trigger is satisfied.

The governor's decision to act to convene, or not to convene, the general assembly is discretionary, as shown by the term "may" being used; however, the constitutional limit for when that discretion exists is not. The governor may only exercise his discretion when there is an extraordinary occasion. It is equally true that a governor may, in his discretion, choose not to call a session even during a genuine emergency. The word "may" confers the option to act, it does not expand the scope of when action is permitted. Discretion exists within a grant of authority; it does not enlarge the boundaries of that authority.

The Circuit Court read the second phrase and concluded it was the only operative constraint, thereby collapsing the trigger of authority into the procedural requirement and rendering the phrase "on extraordinary occasions" superfluous. With different words, the Constitution could have granted the unlimited authority suggested by the State, for example by omitting the phrase "on extraordinary occasions." The existence of the phrase means it has to have meaning. The only possible meaning for the inclusion of the phrase is as a trigger that limits the grant of authority. That trigger is an "extraordinary occasion." Any other reading directly violates the constitutional canon that no word in a constitutional

provision is to be read as meaningless surplusage. *Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983).

The Circuit Court extended the Governor's discretion beyond determining what action is necessary to address the extraordinary occasion and held that Missouri Courts had no power to determine if an extraordinary occasion was properly named. Instead, the Circuit court should have found the governor has discretion to recommend legislative action for a extraordinary session as long as he has described an extraordinary occasion that exists and properly submitted a proclamation. As discussed below, case law relied upon by the Circuit Court arising from similar executive orders have focused on this second question of what was recommended or how authority was exercised. This apparently remains the only case that is asking directly whether an extraordinary occasion existed prior to the Governor issuing the executive order under Art. IV Sec. 9. D57:P2.

B. This is a case of first impression for the Court as to whether the Governor's proclamation properly stated an extraordinary occasion.

There is no Missouri decision squarely interpreting the meaning of an "extraordinary occasion," as a limitation on the Governor's authority under Art. IV Sec. 9 of the Missouri Constitution. This is a case of first impression and is a question that is likely to appear again as the Governor's calls in recent administrations for extraordinary sessions have become more frequent, with looser and more tenuous descriptions of the reasoning behind the call. A review of Missouri's history of extraordinary sessions confirms that prior governors understood the requirement to involve a genuine, unforeseen change in circumstances. For example, the need to appropriate funds for emergency weather events, re-enacting legislation after court cases invalidated a statute, adopting a new congressional map after re-apportionment, responding to the COVID-19 pandemic, and complying with major unanticipated changes in federal lending laws have been cited in past proclamations. See 1974-1975 House Journal, Second Regular, Veto and Second Extraordinary Session, Volume 2, pp 2056-2058; 1982 House Journal, First Extraordinary, Second regular, Second extra and veto session, pp 3-5; 1989 House Journal, First Regular Session, Vol 4, pp 727-729; 1993 House Journal, First Regular Session, Vol 3, pp 1135-

1137; 2020 House Journal, Second Regular Session, First and Second Extra Session, Veto Session, First Extraordinary Session Page 2. Other states, such as Kentucky, have concluded that "extraordinary occasion" means an emergency threatening public health and welfare like the 2020 pandemic. *Beshear v. Acree*, 615 S.W.3d 780 (Ky. 2020). The Proclamation at issue here does not approach those examples. As discussed below, it merely describes the long-term status quo of Missouri. So it falls on the Court to determine what the meaning of "extraordinary occasion" is and then to determine if the Governor in this instance has met the necessary Constitutional threshold.

The Constitution should be interpreted based upon the plain meaning of the words and phrases used. *Wright-Jones v. Nasheed*, 368 S.W.3d 157 (2012). Where terms are not otherwise defined, the plain meaning is derived from the dictionary. *Cox v. Dir. of Revenue*, 98 S.W.3d 548 (2003). The Missouri Supreme Court "assumes that every word in the constitutional provision has effect and meaning." *Pearson v. Koster*, 367 S.W.3d 36 (Mo. 2012), citing *Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983). "Words used in constitutional provisions must be viewed in context; their use is presumed intended, and not meaningless surplusage." *Buechner* at 613.

The dictionary provides the following definitions:

A. Extraordinary

- Out of the ordinary; exceeding the usual, average, or normal measure or degree; beyond or out of the common order, method or rule; not usual, regular, or of a customary kind; remarkable; uncommon; rare; employed for an exceptional purpose or on a special occasion. (Black's Law Dictionary Sixth Edition)
- Beyond what is common or usual: remarkable. (Webster's II Revised Edition)

B. Occasion

- That which provides an opportunity for the causal agency to act. Meaning not only particular time but carrying idea of opportunity, necessity or need, or even cause in a limited sense. Condition of affairs; juncture entailing need; exigency; or juncture affording ground or reason for something. (Black's Law Dictionary Sixth Edition)
- An event, especially a notable event. The time at which something occurs. A favorable moment: opportunity. Something that brings on

> an event. A need created by particular circumstances. (Webster's II Revised Edition)

Combining these definitions, the term "extraordinary occasion" requires three things: (1) circumstances that are unusual, not merely of recurring concern; (2) an event or development that represents a change from the status quo since the last regular session; and (3) a specific need to act that the legislature could not have addressed in its regular session. In other words, an unusual set of circumstances and an event or opportunity to act. This means that continued status quo without a precipitating event or unexpected opportunity to act is not sufficient to authorize the Governor to convene the General Assembly under Art. IV Sec. 9. The Governor must describe an extraordinary circumstance, e.g. one that the general assembly did not have an opportunity to address during the last legislative session and should be addressed before the next legislative session. Otherwise, the interpretation of Art. IV Sec. 9 would have to be strained to mean "on any occasion," rendering the text "extraordinary occasion" unintended, meaningless surplusage, contrary to *Buechner. supra*.

The legal test, properly stated, is whether the whereas statements of the Proclamation, taken together, describe an extraordinary occasion actually existed at the time of the Proclamation. Under this test, descriptions of the status quo that existed during multiple prior regular legislative sessions cannot constitute an extraordinary occasion. A declaration by the Governor that a matter "constitutes an extraordinary occasion" is not sufficient to satisfy this test; otherwise, the Governor could bootstrap an extraordinary occasion into existence by fiat, rendering the constitutional requirement entirely illusory. The Governor must have a rational basis to believe sufficient extraordinary occasion exists to convene the general assembly. The Court must look beyond the label to the substance of what is described.

C. There was no extraordinary occasion described in the Governor's August 29, 2025 Proclamation, and therefore the extraordinary session was improperly called and invalid.

The Proclamation convening the legislature into an extraordinary session lays out eleven "whereas" statements justifying the reasoning for the Proclamation. Each of them fail to present an "extraordinary occasion" by even the most generous of standards. An accompanying press release stated essentially the same reasoning as the official proclamation. A brief review of each follows:

- "WHEREAS, the General Assembly has adjourned its regular legislative session without having enacted new congressional district boundaries; and" D3:P1
    - This has been true since the 2023 legislative session after the new Congressional District map was passed in the 2022 legislative session following the 2020 decennial census. HB2909(2022); §128.461-496 RSMo. This statement does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly. Indeed, as stipulated by the parties, no census has been certified to the Governor of Missouri since August 12, 2021, and the United States Census Bureau has not conducted a census since the 2020 census. There is accordingly no constitutional or legal trigger requiring the General Assembly to draw new congressional districts at this time. D50:P3 ¶¶ 15-21.
- "WHEREAS, Article III, Section 45 of the Missouri Constitution authorizes the General Assembly to divide the state into districts for the United States House of Representatives; and" D3:P1.
    - This has been true since the 1945 Missouri Constitution was adopted. Art. III, Sec. 45 (1945 Missouri Constitution). This does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.
- "WHEREAS, the State of Missouri's current congressional district map may be vulnerable to a legal challenge under the Voting Rights Act and the Fourteenth Amendment, due to a lack of compactness in certain districts; and" D3:P1.
    - This been true since the new map was passed in the 2022 legislative session following the 2020 decennial census. HB2909(2022); §128.461-496 RSMo.

Additionally, as stipulated by the parties, no lawsuits challenging HB2909(2022) have succeeded in invalidating those districts. D50:P3 ¶ 22. The map was unsuccessfully challenged in 2022 and 2023.[3] This does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.

- "WHEREAS, our congressional delegation should reflect the values of Missourians; and" D3:P1.
    - This is a political or policy statement that is not only vague, but is not a new position or concept. This does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.
- "WHEREAS, congressional candidate filing for the 2026 election cycle begins on February 24, 2026; and" D3:P1.
    - Has been true since the passage of the current election filing dates in 1982. SB 526(1982), §115.349 RSMo. This does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.
- "WHEREAS, legislation to establish new congressional districts for the State of Missouri cannot be accomplished in the 2026 Regular Session; and" D3:P1.
    - This is mere speculation. Not only is there no requirement that a congressional candidate live within the boundaries of the district they represent, but legislation can be passed within the first two months of the legislative session when necessary. Art. I, Sec. 2 U.S. Constitution. In 2026, the first bill was on the Governor's desk by March 13, 2026. SB888(2026). Had this been congressional

[3] Only two challenges to the district boundaries passed in HB2909(2022) have been filed, and neither was pursued to conclusion by the plaintiffs. *See Berry v. Ashcroft*, U.S. District Court for the Eastern District of Missouri, St. Louis Division - No. 4:22-cv-465; *Thomas v. Missouri*, Missouri Circuit Court, Cole County - No. 22AC-CC00222.

map or other election-related legislation with an emergency clause, there would have been more than two weeks left in the five week filing window for candidates after its effective date. Additionally, as has been previously stated, new congressional districts were adopted in 2022 following the last decennial census and there is no requirement for new maps to be adopted prior to the next decennial census. HB2909(2022); §128.461-496 RSMo. This does not describe an unusual set of circumstances and an event or opportunity to act.

- "WHEREAS, the failure to establish new congressional districts constitutes an extraordinary occasion that warrants immediate legislative action; and" D3:P1.
    - This whereas clause illustrates the central defect of the entire Proclamation: the Governor has not described an extraordinary occasion. He has simply declared that one exists. A gubernatorial declaration that a matter "constitutes an extraordinary occasion" is not the same as an extraordinary occasion actually existing. If a bare declaration were sufficient, the constitutional requirement would be toothless. Any governor could convene the legislature on any matter by simply labeling it "extraordinary." This Court should reject any reading of the provision, which reduces Art. IV Sec. 9's first requirement to a purely ceremonial formality. Furthermore, this claim is false on its own terms: new congressional districts are not absent. They were established following the last decennial census. HB2909(2022); §128.461-496 RSMo. Even if the claim were accepted as true, the alleged deficiency has existed since the passage of the maps in 2022. It does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.
- "WHEREAS, the swift and efficient resolution of this matter is necessary to prepare for the upcoming election cycle and to provide certainty for voters; and" D3:P1.
    - This is a political or policy statement that is not only vague, but is not a new position or concept. This does not describe an unusual set of circumstances and

an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.

- "WHEREAS, a fair and transparent initiative petition process is essential for the citizens of the State of Missouri to propose and enact laws; and" D3:P1.
    - This is a political or policy statement that is not only vague, but is not a new position or concept. This does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.
- "WHEREAS, the current initiative petition process may be vulnerable to foreign and out-of-state influence; and" D3:P1.
    - This is a political or policy statement that is not only vague, but is not a new position or concept. This does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.
- "WHEREAS, certain ballot initiatives can be confusing to voters and lead to unintended consequences; and" D3:P1.
    - This is a political or policy statement that is not only vague, but is not a new position or concept. This does not describe an unusual set of circumstances and an event or opportunity to act. It is a description of the status quo during the previous regular session of the general assembly.

The "whereas" statements generally include the adjournment of the General Assembly without passage of new congressional district boundaries (although no new congressional maps are required until after the 2030 census) and the speculation that the current congressional district map may be vulnerable to a legal challenge from unnamed persons for unexplained reasons. Other "whereas" statements generally relate to the need for a "fair and transparent" initiative petition process free from unspecified influence from unnamed foreign sources. Together these eleven statements provide the official justification that an extraordinary occasion exists. This justification does nothing more than state the status quo that has existed for several regular legislative sessions. They do not

describe a change since the adjournment of the last regular session of the General Assembly nor do they present an unusual opportunity for the General Assembly to act.

Not a single one of the eleven whereas statements describes a development that arose after the adjournment of the most recent regular legislative session. Every condition stated in the Proclamation existed during, and was available to be addressed by, multiple prior regular sessions of the General Assembly. That is the antithesis of an "extraordinary occasion."

The lack of a change in circumstances is further demonstrated by looking at the actions being recommended to the general assembly. All but one of the recommendations are already in Missouri law. The remaining recommendation that is not already in the law has been filed, debated, and rejected by the general assembly for the last few legislative sessions.

- “To enact legislation to establish new congressional districts for the State of Missouri.” D3:P2.
    - Art. III Sec. 45 requires new congressional district lines to be passed by the general assembly following each decennial census. Missouri's general assembly fulfilled this requirement in 2022. The Governor has not received certified numbers from the House of the Congress of the United States triggering a new process under Art. III Sec. 45 after May 18, 2022. HB2909(2022); §128.461-496 RSMo. D50:P3-4, ¶¶ 15-21. The legislature's decision during multiple regular sessions not to draw new maps was a valid exercise of its own constitutional discretion. The legislature's choice not to redistrict is not a failure of constitutional duty. It is the exercise of legislative judgment. A governor may not characterize a deliberate legislative choice as a gap requiring emergency executive intervention.
- “To enact legislation to amend the state's initiative petition process as follows: To ban foreign nationals from contributing to committees for or against a statewide ballot measure; and” D3:P2.

- This provision was passed into law in SB152 entitled "AN ACT To amend chapter 130, RSMo, by adding thereto six new sections relating to campaign finance," in 2025. Senate Bill 152 contained several provisions which restricted donations from foreign nationals and the use of foreign funds for the purposes of ballot measures. Senate Bill 152 went into effect on August 28, 2025, the day before the Proclamation was issued. SB152(2025); §§130.170-188 RSMo. The Governor's Proclamation called the legislature into session to enact legislation that had already been enacted and was already effective. This is perhaps the most striking illustration of the absence of any extraordinary occasion: the law he directed the legislature to pass had already been signed and was in effect at the moment he issued the Proclamation.

- "To enact legislation to amend the state's initiative petition process as follows: To establish a criminal election offense for fraudulently signing or gathering signatures for a statewide ballot measure; and" D3:P2.
    - Missouri statutes already make it a crime to fraudulently gather signatures for an initiative petition. This section was last amended in 2013. §116.090 RSMo.
- "To enact legislation to amend the state's initiative petition process as follows: To provide that a statewide ballot measure be passed only if a majority of voters statewide and a majority of voters in each congressional district vote to adopt the proposed measure; and" D3:P2.
    - Changes to the initiative petition process have been proposed as Joint Resolutions at least as far back as 2010.[4] The concurrent jurisdiction model recommended by the Governor's proclamation was proposed each year since 2023. See HJR18(2023); HJR72(2024); HJR10(2025); SJR11(2025). During the

[4] See e.g. HJR94(2010) plus 2 more; SJR13(2011) plus two more; HJR47(2012); SJR10(2015) plus one more; SJR23(2016); HJR48(2018) plus 3 more; HJR7(2019) plus 7 more; HJR97(2020) plus 3 more; SJR29(2021) plus 8 more; HJR91(2022) plus 9 more; HJR18(2023) plus 13 more; HJR72(2024) plus 7 more; HJR10(2025); HJR92(2025); HJR99(2025); SJR11(2025).

2025 regular legislative session, the general assembly considered at least 4 proposals to change voting thresholds for initiative petitions. HJR10(2025); HJR92; HJR99; SJR11(2025). Two of them were exactly the proposal referred to the general assembly by the Governor. HJR10(2025); SJR11(2025). None of the proposals made it all the way through the process despite having committee hearings and floor debate. The legislature's repeated consideration and rejection of this proposal over multiple sessions confirms that this is a settled policy dispute, not an extraordinary occasion. The Governor may not use the extraordinary session mechanism to override the considered judgment of the legislature on a matter it has debated and declined to enact.

- "To enact legislation to amend the state's initiative petition process as follows: To require that before a statewide ballot measure is certified for signatures to be gathered, there shall be an opportunity for public comment; and" D3:P2.
    - Missouri provides an opportunity for public comment on every initiative petition filed with the Secretary of State. These sections were last amended in 2014 and 2025 respectively. §§116.153 and 116.334 RSMo.
- "To enact legislation to amend the state's initiative petition process as follows: To require that the full text of a statewide ballot measure be printed and available to voters at all election sites and polling places." D3:P2.
    - Missouri requires copies of the full text of each statewide ballot measure to be made available at each polling place. This section was last amended in 1983. §116.290 RSMo.

All but one of the actions deemed necessary by the Governor in the Proclamation have already occurred. The only one not already in the law has been a topic of discussion during the regular legislative session for at least the past 16 years.

The purpose of extraordinary sessions is to provide the legislature an opportunity to take action at a time where they would not otherwise be able to act. Clearly, the legislature has had ample opportunity to act and has chosen to do so when they deemed appropriate. The legislature's inaction is not an extraordinary occasion. It is the legislature exercising

its own constitutional discretion. A governor may not invoke the extraordinary session power to override or circumvent that legislative judgment under the guise of an extraordinary occasion. Without a change in circumstance giving rise to an opportunity to act, the Governor's authority to convene the legislature and exercise his discretion to recommend action to the general assembly under Art. IV Sec. 9 is not triggered.

Instead of determining the governor has unlimited discretion, the Circuit Court should have undertaken a rational basis analysis of the whereas statements to determine whether the governor had met his threshold obligation of stating an extraordinary occasion. The proper standard is whether the whereas statements, taken together, provide a rational basis for concluding that an extraordinary occasion actually existed at the time of the Proclamation. This standard is drawn from the plain meaning of "extraordinary occasion" itself and from the constitutional principle that every word of the Constitution must be given effect. Appellants argued at the trial court level and continue to argue here that such analysis is properly in the hands of the court and that this Proclamation fails the test.

D. Any legislative action taken during an improperly called extraordinary session is void.

If the Appellants' argument is correct and the Proclamation was invalid; then the General Assembly was not properly convened and did not have the authority to act. Any legislative action taken during the improperly convened session would be likewise improper and should be declared void. As the court has previously recognized, legislation enacted during an unlawfully called extraordinary session is invalid. *State ex rel Department of Penal Institutions v. Becker*, 47 S.W.2d 781 (1932). In *Becker*, the Missouri Supreme Court voided legislation enacted during an extraordinary session where the session itself was constitutionally unauthorized, establishing the principle that the validity of legislative action taken during an extraordinary session depends entirely on the validity of the session itself. The same principle governs here: HB1 and HJR3 derive their only claim to lawful enactment from the Proclamation. If the Proclamation is void, HB1 and HJR3 are void. There is no independent basis on which either measure can be sustained.

In this case, the Governor has not stated an extraordinary occasion. Instead he has provided a list of political and policy statements that were in existence during not only the previous legislative session but many legislative sessions before then. The lack of an extraordinary occasion means the extraordinary session was improperly convened, and therefore, the two actions taken by the general assembly during the extraordinary session are therefore likewise invalid.

The Circuit Court erred as a matter of law in holding that the existence of an extraordinary occasion is a political question beyond judicial review, and in failing to apply the plain meaning of Art. IV, Sec. 9 as a jurisdictional limit on the Governor's power to convene the General Assembly. This Court should review the question de novo and should find, on the undisputed record, that none of the eleven whereas statements in the Proclamation describes a change in circumstances, an unforeseen event, or a novel opportunity for legislative action that arose after the adjournment of the prior regular session.

It is Petitioners' contention that a mere declaration that an "extraordinary occasion" exists is not sufficient under Art. IV Sec. 9 to allow the Governor to convene an extraordinary session of the General Assembly. Such an interpretation would render the text of the constitution meaningless surplusage. Even if the court was willing to accept the Governor's statements as his attempt to justify the call, they are not sufficient. Applying the plain language of the Missouri Constitution, including the mandatory provisions, no "extraordinary occasion" has occurred to justify the Governor's call for a special session of the General Assembly. The circumstances described by the Proclamation and the accompanying Press Release are the status quo or existing law. They do not describe a change since the adjournment of the last regular session of the General Assembly nor do they present an unusual opportunity for the General Assembly to act.

Because no extraordinary occasion existed, the Proclamation was constitutionally infirm from its issuance. This Court should declare the Proclamation to be in excess of the Governor's constitutional authority, declare HB1 void and of no effect, declare HJR3 void, and enjoin the Secretary of State from submitting HJR3 to the voters of Missouri.

The appropriate remedy is a declaratory judgment that the Proclamation exceeded the Governor's authority under Art. IV, Sec. 9, that HB1 is void and of no effect, and that HJR3 is void and the Secretary of State is enjoined from certifying it for the ballot at the 2026 general election or any subsequent election. Sections 527.010 and 526.050 RSMo provide authority for this Court to grant declaratory and injunctive relief.

II. The Court erred in declaring the issue a political question because the issue in this case is one of Constitutional sufficiency and subject to rational basis review and not a question of appropriate public policy, in that the political question doctrine is limited to instances of true discretion over public policy.

A. The political question doctrine only applies to questions of policy not those of Constitutional interpretation.

Before applying the political question doctrine, a court must carefully analyze whether the specific issue presented has been "textually committed" to another branch by the Constitution. *Baker v. Carr*, 369 U.S. 186, 210 (1962). The Supreme Court in *Baker* identified six factors relevant to identifying a nonjusticiable political question: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches; (5) an unusual need for unquestioning adherence to a political decision already made; and (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question. *Id.* at 217. None of these factors compels non-justiciability here.

First, Art. IV Sec. 9 does not textually commit the question of whether an extraordinary occasion exists to the Governor. To the contrary, as discussed above, the plain language of the Constitution creates a limit on the Governor's authority by limiting it to "extraordinary occasions." Where a constitutional provision sets express limits on an executive power, the judicial branch is the proper interpreter of those limits. *Praxair*, 344

S.W.3d at 186. The absence of an express instruction that the Governor is to be "the sole judge" of what constitutes an extraordinary occasion is significant. The Kansas Supreme Court in *Farrelly* read such a commitment into the silence of its constitution, but the text of Art. IV Sec. 9 is not silent and does contain a limitation on authority. *Farrelly v. Cole*, 56 P. 492 498 (Kan. 1899). Missouri has a long established principle that constitutional interpretation is a non-delegable function of the judiciary. The question in this case calls for just such and interpretation.

Second, there are judicially discoverable and manageable standards. As discussed in the record at the trial court and elsewhere in this brief, the plain text of the Constitution, construed through dictionary definitions and the canon against surplusage, provides workable criteria for what constitutes an "extraordinary occasion." Courts regularly apply such textual standards to executive action. Additionally, a review of historical Proclamations calling for extraordinary sessions shows a clear trend toward actions that are necessary because of events happening after the most recent regular session of the general assembly and requiring legislative action prior to the next regular session. With a few notable outliers, historically extraordinary sessions were rare and necessitated by a clear change from the status quo. Recent years have seen a shift in this trend and this shift is why this case of first impression is now before the Court.

Third, Appellants are not asking the Court to make a policy determination as to whether a recent change in the status quo is sufficient to necessitate the convening of an extraordinary session. They are instead asking the Court to determine whether any change in status quo has been stated. Determining whether the whereas statements of a proclamation describe a changed or novel circumstance requiring legislative action is not an "initial policy determination." It is a factual and legal question that courts are well-equipped to resolve. By comparing the stated circumstances in the Proclamation to the circumstances prior to the adjournment of the most recent regular session of the general assembly, the Court can determine whether a change in status quo has been demonstrated.

Fourth, Appellants are not asking the Court to disrespect or overrule the Governor's proper exercise of discretion. They are arguing that the Governor's discretionary authority

was never triggered. There is no need for the Court to make declarations regarding the wisdom or policy goals demonstrated by the Governor's Proclamation. They need only determine whether the Proclamation states a change in circumstances from the status quo. This is not a disrespect for a co-equal branch of government. It is a proper exercise of the role of the Court to determine the meaning of the Constitution and whether its provisions have been adhered to.

The fifth and sixth elements do not apply in this case as the Court is not being asked to adhere to any policy and multiple entities are not involved. This is a question of pure Constitutional interpretation regarding the meaning of the phrase "on extraordinary occasions."

As the court concluded in *Baker*, "Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence. The doctrine of which we treat is one of 'political questions,' not one of 'political cases.'" *Baker* at 217.

The courts are the proper venue to seek clarity over the provisions of the Constitution and to determine if a Government entity has exceeded their authority under the Constitution. Art. II Sec. 1 of the Missouri Constitution gives specific powers and authority to each Branch of the Government. However, the separation of powers doctrine "does not erect an impenetrable wall of separation between the departments of government." *Chastain v. Chastain*, 932 S.W.2d 396 (1996). Applying Constitutional principles, the judiciary has exclusive jurisdiction and authority to determine whether a Branch of Government has exceeded its constitutional authority. This is a non-delegable power of the judiciary. *State ex rel. Praxair, Inc. v. Mo. Pub. Serv. Comm'n*, 344 S.W.3d 178, 186 (2011).

"The Missouri Supreme Court shall have exclusive appellate jurisdiction in all cases involving the validity of a statute or provision of the constitution of Missouri." Mo. Const. Art. V, § 3. "[I]t is emphatically the province and duty of the judicial department to say what the law is," *Mo. Coal. for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (1997), quoting *Marbury v. Madison*, 5 U.S. 137 (1803). No Gubernatorial action is

beyond scrutiny by the courts when it carries the force of law. "It is clear to us that the Executive Branch, through executive orders, is not permitted under our system of government to usurp the judicial prerogative to interpret constitutional or statutory provisions. If such power was granted, those interpretations would be subject to change at least every four years, and the law would be filled with uncertainty." *Shapp v. Butera*, 348 A.2d 910, 914, 22 Pa.Cmwlth. 229 (Pa. Commw. Ct. 1975). This power is foundational to our system of government and the separation of powers doctrine. The Judiciary has long been found to have authority to review and determine whether Executive actions were constitutional. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). *See Also*, *Learning Res. v. Trump*, 607 U.S. ___; 24-1287, 25-250 (Feb 20, 2026) (holding the International Emergency Economic Powers Act does not authorize the president to impose tariffs, a power held by Congress under Art. I Sec. 8 of the U.S. Constitution, in effect that the President did not identify an "extraordinary threat" under the Act sufficient to usurp the constitutional power of Congress to issue tariffs.)

The courts have determined they have jurisdiction to determine the appropriateness of Gubernatorial proclamations and executive orders when they are specifically authorized by statute or the Constitution. *Kinder v. Holden*, 92 S.W.3d 793 (2002). The Governor's proclamation in this case is specifically authorized, within express limits, by the Constitution and is therefore reviewable by the courts. Id. This Proclamation is more than a ceremonial recognition or executive recommendation. The Proclamation called the General Assembly to convene on a specific date and limited the subjects upon which it could act. D3:P2. Its legal effect is to authorize the General Assembly to legislate outside of their normal Constitutionally prescribed regular sessions. The Proclamation therefore carries the force of law insofar as it determines the validity of legislation enacted pursuant to it.

In this case, the Court is being asked to address a question of law regarding the limits of the authority granted by the Constitution. This is fundamentally not a political question that would evade judicial review. To the contrary, it is clearly in the province of the court to answer. "Deciding whether a matter has in any measure been committed by the

Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." *Baker v. Carr*, 369 U.S. 186, 210 (1962). The Governor's authority under Art. IV Sec. 9 is no different from any other Constitutional grant of authority. It is subject to review and interpretation by the courts.

The Circuit Court's holding that the question of whether an extraordinary occasion existed is a nonjusticiable political question would, if affirmed, create a category of executive action entirely beyond judicial review — a result directly contrary to the foundational principle established in *Marbury v. Madison*. Under the Circuit Court's reasoning, a governor could convene the legislature at any time, for any purpose, simply by invoking the words "extraordinary occasion" in his proclamation, and no court would have power to say otherwise. This Court has never sanctioned such an interpretation, and it should not do so now.

B. The issue in this case is whether or not the Governor's authority under Art. IV Sec. 9 was properly invoked due to the existence of an extraordinary occasion.

The subject provisions of the Missouri Constitution are mandatory, and the requirements therein should be interpreted and applied by courts as such. Article IV, section 9 provides in part: "On extraordinary occasions he [the Governor] may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary." While the general decision to convene, or not to convene the legislature on "extraordinary occasions" is granted to the Governor, this authority is not boundless and absolute. In fact, the plain language of the provision limits the Governor's authority to when an "extraordinary occasion" occurs. There is no other reasonable reading of the provision.

The courts have exclusive jurisdiction over Constitutional questions. There is no basis for making an exception in the long held authority of the courts to make judicial interpretations of text in its plain meaning for this particular Constitutional provision. Art.

II, Sec. 1 of the Missouri Constitution creates and delineates the three branches of government and their separate areas of authority. However, that provision does not create an "impenetrable wall" between the branches. *Chastain*, *supra*, 932 S.W.2d at 398. The Separation of Powers doctrine gives discretion to the executive branch, but it does not make their decisions beyond review for compliance with the Constitution. *See e.g. Dames Moore v. Regan*, 453 U.S. 654 (1981); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). "The doctrine of the separation of powers [is not meant to] promote efficiency but to preclude the exercise of arbitrary power. The purpose [is] not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." *Missouri Coalition for Environment v. Joint Committee on Administrative Rules*, 948 S.W.2d 125 (Mo. 1997) (quoting *Myers v. United States*, 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting))(*brackets in the original*). All of these cases taken together mean actions of the Governor are subject to Constitutional review.

Applying these constitutional principles, the judiciary has exclusive jurisdiction and authority to determine whether a Branch of Government has exceeded its constitutional authority. *See Mo. Coal.*, *supra*, 133-134 (holding that legislature improperly exercised executive rulemaking power). Consistent with these principles, the Legislature has granted authority to circuit courts to make determinations regarding rights and remedies, and to restrain action pending such a determination on the merits. Sections 527.010, 526.050 RSMo.

C. A review of cases from other states and the federal courts also support the ability of the courts to determine the meaning of the phrase “on extraordinary occasions.”

Relying on a Kansas state authority dating over 125 years ago, the Circuit Court held that "Missouri governors have the constitutional discretion to determine what constitutes an 'extraordinary occasion' under Article IV, Section 9 of the Missouri Constitution." D57:P5, referencing *Farrelly v. Cole*, 56 P. 492 (Kan. 1899). However, on its face, the trial court's suggestion that the executive branch has "constitutional discretion"

to, in effect, interpret the state constitution, would supplant the power of the third branch of government, the judiciary. Thus, the Circuit Court's ruling that Missouri governors "alone" have "constitutional discretion" to interpret and apply provisions of the state constitution, without any review possible by the courts, would radically undercut the longstanding jurisdiction and authority of this Court.

Further, Circuit Court's characterization of the quotation as a "finding" from *Farrelly* is incorrect. The block quote at page 5 of the Judgment was not an express finding of *Farrelly*, rather, the Supreme Court for the State of Kansas was quoting from *Whiteman's Executors v. Railroad*, 2 Harr. 514, which is a case cited in Delaware legal records, i.e. volume 2 of Harrington's Delaware Reports, covering legal decisions from Delaware in the 1830s or early 1840s. In other words, the Judgment is relying on obscure legal authorities from 2 foreign jurisdictions dating back nearly 200 years in order to subvert and cast aside the non-delegable and exclusive jurisdiction of Missouri Courts to interpret the state constitution and say what the law is.

Moreover, the *Farrelly* court's reasoning is internally flawed in a way that the Circuit Court did not address. The *Farrelly* court concluded that because the Kansas Constitution did not define "extraordinary occasion" nor assign its interpretation to any other department, the Governor "must necessarily be himself the judge, or he cannot exercise the power." *Farrelly v. Cole*, 56 P. at 498. This reasoning proves too much. By the same logic, the Governor would be the sole judge of every undefined term in the Constitution that relates to executive authority. The absence of a definition does not confer interpretive authority on the actor who benefits from the power; it is precisely the absence of a definition that makes judicial interpretation necessary.

Other cases relied upon by the Circuit Court are also readily distinguishable. See D57:P4, fn. 2. In *State v. Fair*, 76 P. 731, 731 (Wash. 1904) and *Jaksha v. State*, 385 N.W.2d 922, 927 (Neb. 1986), the question of whether the governor had exclusive authority under the state constitution to determine whether an extraordinary occasion existed was not at issue. In *People ex rel. Carter v. Rice*, 20 N.Y.S. 293, 296 (Gen. Term), *aff'd*, 135 N.Y. 473, 31 N.E. 921, 924 (N.Y. 1892), the central question related to the scope

of what the legislature could address once an extraordinary session was called, not whether the session was properly called. *Rice*, 20 N.Y.S. 293, has apparently not been cited by any subsequent court in the Twentieth or Twenty-First Centuries. None of these decisions analyzed the threshold question of whether the facts stated in a proclamation actually constituted an "extraordinary occasion," and none involved a challenge by injured parties seeking to void legislation enacted during an improperly called session. They are therefore neither controlling nor persuasive on the question presented here.

The Circuit Court also erroneously interpreted *Beshear v. Acree*, 615 S.W.3d 780, 807 (Ky. 2020), by stating that the "*Beshear* case aligns with fully discretionary gubernatorial powers." D57:P4, fn. 2. In that case, the governor had issued a proclamation for a extraordinary session during a global pandemic giving "rise to an obvious emergency." *Id*. at 808 (emphasis added). In legislation passed, the governor was given emergency powers, including the ability to issue orders and administrative regulations which "shall have the full force of law." *Id*. at 811. The Kentucky Attorney General argued that legislation was an unconstitutional delegation of lawmaking authority. *Id*. at 794, 805, 809.

Thus, the central issues in *Beshear* related to separation of powers, and whether the legislature had improperly delegated its authority to the Governor. *Id*. at 806. The Circuit Court incorrectly interpreted *Beshear* to mean that reference to permissive language, such as "may … convene," indicated that a governor had fully discretionary powers. The issue was quite different. In *Beshear*, the court concluded that the language of the State Constitution "may … convene" was "permissive, not mandatory," and thus, rejected the argument of the state attorney general that the governor was required to "work hand in hand" with the legislature, relative to separation of powers. *Id*. at 808-809.

Thus, the Circuit Court's quote from *Beshear* does not support the assertion that the court in that case had concluded that the constitution indicated that the governor's powers to call a special session were "fully discretionary." Rather, that case involved circumstances where there was no question that an "extraordinary occasion" existed, and thus, under those circumstances, the governor still had general discretion whether or not to take the action of

calling a special session. *Beshear* is entirely consistent with Appellants' position: a governor possesses discretion to decide whether to convene the legislature in response to a genuine extraordinary occasion, but the extraordinary occasion itself must exist.

The federal courts have consistently held that executives may not unilaterally claim emergency or extraordinary authority when the factual predicates for that authority do not exist. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court of the United States held that President Truman could not seize private steel mills by executive order simply because he characterized the situation as an emergency, when no statute or constitutional provision conferred that authority on the executive. The Court made clear that executive power is not self-defining. It is bounded by the text of the authority granted. *Id*. at 585. An executive cannot expand his own authority by labeling a situation as extraordinary if the conditions for extraordinary authority do not independently exist.

Similarly, the structural principle of limited enumerated executive power applies with equal force to state governors. The Missouri Governor's authority to convene the legislature is not inherent. It is textually conferred by Art. IV, Sec. 9, and bounded by the conditions set forth in that provision. The Governor does not have the authority to call an extraordinary session whenever he deems it politically advantageous; he has authority only when an extraordinary occasion exists. The determination of whether that precondition is satisfied is a legal question for this Court.

CONCLUSION

For the reasons discussed above, the Governor's Proclamation exceeds the authority entrusted to his office under Art. IV Sec. 9 because it does not properly declare an extraordinary occasion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a copy of Appellants' brief was filed by the Court's electronic filing system on April 10, 2026, for service electronically on all counsel of record. This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 9,753, excluding the cover, table of contents, signature block, appendix, and this certificate. The font is Times New Roman 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

/s/ Sharon Geuea Jones

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