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LEGAL ANALYSIS AND COMMENTARY FROM JUSTIA

Important Takeaways From the Missouri Districting Debacle and the Supreme Court's Reaction to It

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Last Friday the U.S. Supreme Court, for the third (and one would hope final!) time, **shut down** efforts by Republican officials (alongside a Republican congressional candidate) in Missouri to have November's election conducted using a Republican-friendly map adopted by state lawmakers in September of 2025 (in a bill

known as HB1). HB1 was a part of the national partisan redistricting tit-for-tat kicked off by Texas's decision (undertaken at the urging of President Donald Trump) to redraw its congressional lines to create five additional Republican-leaning districts. About a month ago, in early September 2026, the Missouri Supreme Court (an ostensibly non-partisan seven-member body comprised of five Justices appointed by Republican Governors and two Justices appointed by Democratic Governors) unanimously held that HB1 was not at that time, and has never been, valid law in Missouri under the state constitution, even though HB1's lines were (wrongly) used in the August 2026 primary election. (For more background on this complicated litigation, see, e.g., [here](#), [here](#) and [here](#).) As the U.S. Supreme Court put the point on Friday, the Missouri Supreme Court held that "as a matter of state law, the 2022 map—not the 2025 map—must be used in the 2026 congressional election."

Friday's action by the Justices in Washington to undo the most recent ruling (handed down last Monday, September 21) by the U.S. Court of Appeals for the Eighth Circuit attempting to dictate use of the 2025 map was fully [predicted](#); as far as I could tell, no sophisticated analyst expressed any real doubt about the bottom line the Court would reach. But we did not know if the Court would explain its decision with an opinion ([it did](#)), whether any Justices might publicly dissent (none did), and if the Court did write how stern and explicit its criticism of the lower federal courts' handling

of this matter might be (turns out quite stern and quite explicit.) These aspects, and others, of Friday's action can teach us many things about how the Court operates these days, as we head into a new Term in early October. Below are five or six important lessons that I glean:

FIRST, contrary to the common refrain from some academics and even from Justice Ketanji Brown Jackson in some of her opinions and public speeches, the Court does not in general seem to use the emergency (or so-called "shadow") docket to improperly favor President Donald Trump and his legally vulnerable initiatives. Friday's decision—especially alongside the Court's recent denial of the Administration's unilateral attempts to direct the U.S. Postal Service (USPS) to limit the distribution and delivery of mail-in ballots—shows that the Court (or at least the dispositive middle of the Court) in the emergency docket is, for the most part, trying to call things as it sees them. The three separate emergency-docket rulings in the Missouri matter (rejecting arguments made by President Trump, Republican officials in Missouri and four lower-court Republican appointees, three of whom were chosen by President Trump himself), all issued by the high Court without published dissent, taken together with the Court's decision (with only two public dissents) in the USPS litigation, are the emergency-docket rulings with the clearest impact on the upcoming election. True, the Court last Friday did, in the emergency docket, also lift a lower court stay on states' ability to

obtain from federal agencies information that might bear on the citizenship status of individuals seeking to vote in those states, but election-law experts confirm my sense that, given legal limits on states' abilities to alter voting lists at this late date, this ruling is not likely to have much immediate real-world effect.

I have long argued (see [here](#) and [here](#)) that critics of the emergency docket are misguided in their accusations of partisanship, and that the seemingly (but in reality not so) impressive track record the Administration compiled in the emergency docket at the Court since the beginning of President Trump's second term has been a function of: cherry picking by DOJ; recurring mistakes by district courts about whether and how the government suffers irreparable injury by not being able to enforce likely permissible policies; and the fact that immigration enforcement and internal control of the executive branch (two areas of law that account for a large portion of the emergency docket) are realms in which the President's likelihood of ultimate success on the merits (a dominant factor in emergency-docket decisions) is quite high. Recent actions by the Court involving the upcoming election seem to corroborate my (non-partisan) explanation.

SECOND, the U.S. Supreme Court does not like it when lower federal courts disrespect its prior actions, even actions undertaken without full explanation in the emergency docket. Last Friday the Court began its opinion by recounting the tortured procedural

history of this litigation, and observed that the district court (in issuing a TRO directing use of HB1's map in November) had ordered relief that Justice Kavanaugh "had just denied." (Interestingly, the opinion characterized Justice Kavanaugh's denial of a stay request by the Missouri Secretary of State as one of "two orders [by] this Court" and not simply an action by a single Justice.) Friday's opinion then referred to the Court's September 10 stay (without public dissent) of the district court's TRO (which stay had been denied by the Eighth Circuit 3-0). The affirmative grant of that stay by the Justices necessarily meant that HB1 *opponents* (the stay applicants) had "made a strong showing that [they were] likely to succeed on the merits" of their argument that the district court was *wrong* in granting relief premised on the notion that Article I, section 2 of the U.S. Constitution requires whatever map was used in the primary to be used in the general election. We know that at least a majority of the Supreme Court believed HB1 opponents had made a strong showing on this score because such a showing is a requirement for the issuance of a stay. And yet that "strong showing" (whether or not it necessarily meant a likelihood of success that was greater than 50%) is in sharp tension with the Eighth Circuit's conclusion last week that HB1 *proponents* had a *clearly winning claim* on the merits of their Article I, section 2 contention, a high standard the Eighth Circuit itself seemed to recognize was required given the equities in the case. (I should note also that this Article I, section 2 argument was *not* the primary argument advanced by Missouri officials when

they first asked Justice Kavanaugh to stay the Missouri Supreme Court's ruling; in that stay application the principal argument was the **equally unpersuasive** claim, apparently since abandoned, that the Missouri Supreme Court had run afoul of Article I, section 4 by empowering a relatively small number of referendum petition signatories to block the will of elected lawmakers.)

The upshot of all this led the Justices on Friday to utter the following forceful statement: "Given this Court's two prior orders in this litigation, our conclusion that [the Eighth Circuit's most recent order directing use of HB1's map] was error should come as no surprise." It's hard to read this sentence as anything other than: "not only did the Eighth Circuit err, its mistake was not reasonable, and the Eighth Circuit judges should have known that what they were doing was legally wrong." As if to underscore concern about how the Eighth Circuit and district court were handling this litigation, the Justices did not merely stay the Eighth Circuit's September 21 order; the Justices added for good measure (presumably in case the lower courts might seek to dictate use of HB1's map on new grounds altogether) the following absolute command: "The District Court and the Court of Appeals should not enjoin or otherwise prohibit the use of the 2022 map in the 2026 congressional election in Missouri. And the district court and Court of Appeals should not order or otherwise require Missouri to use the 2025 map in the 2026 congressional election in Missouri."

THIRD, the Justices were protecting not just their own past rulings, but also that of the state supreme court, the ultimate expositor of state law. As I (together with my brother Akhil) explained in [other posts](#), under the so-called *Rooker-Feldman* doctrine, “federal district courts cannot try to review state supreme courts; only the U.S. Supreme Court can oversee a state supreme court. The district court [and also the Eighth Circuit] essentially undid an already final state supreme court ruling, and that is a no-no.” Especially when the U.S. Supreme Court had already been dragged into the matter (via the request by Missouri officials to Justice Kavanaugh) and had declined to invalidate the state high court ruling.

FOURTH, and related, *Moore v. Harper* confirms the primacy of state-court rulings interpreting state election law (even as to federal elections) and the Supreme Court remains committed to *Moore*’s protection of state-court rulings. In the wake of *Moore*, some analysts predicted the U.S. Supreme Court would continue to be open to attacks on state-court rulings on the ground that they violate the Elections Clause of Article I of the Constitution. I [disagreed](#). And we now have data. This Missouri litigation represents the sixth or seventh time disappointed state-court litigants (both Republicans, as in Missouri, and Democrats, as [in Virginia](#)) have tried to get the U.S. Supreme Court to backslide from *Moore*’s central teaching, and not a single member of the Court has taken the bait (at least not publicly) even a single time.

Instead, as the Court reminded on Friday, “states [which includes state courts construing state constitutions] are free to decide for themselves whether [] changes to an election are in their best interests—subject . . . to certain *limited* constraints imposed by federal law” (emphasis added).

FIFTH, federal courts, by contrast, remain constrained by the so-called *Purcell* doctrine. As I **argued last week**, *Purcell* factors cut even harder against the Eighth Circuit now than when the Supreme Court acted on September 10. And on Friday the Court said exactly that: “[t]he *Purcell* principle applies with even greater force . . . because [t]he election is not merely upcoming; it has already started.”

SIXTH, and this brings us full circle, in response to the Eighth Circuit’s suggestion that any confusion of the kind the *Purcell* doctrine is supposed to avoid was caused in the present case by the Missouri Supreme Court’s ruling earlier this month, the Court did more than remind everyone that, unlike federal courts, state courts aren’t constrained by *Purcell*; the Court firmly laid the blame for the mess in Missouri (including the fact that a different map would be used in the general election than was used in the primary) not on the state courts, but on the state elected Republican Secretary of State, Denny Hoskins. As the Court made clear, “in the several-month period before the August primary election, the Missouri Secretary of State was well aware [because of, among other things,