

# SENATE REMONSTRANCE NO. 1

Whereas, congressional redistricting is governed by Article III, Section 45 of the Missouri Constitution, which states: "*When the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled...*"; and

Whereas, Article III, Section 45 has existed, unaltered, since the Constitution was adopted in 1945; and

Whereas, the plain language of Article III, Section 45 mandates that the General Assembly draw new congressional districts every ten years, when the census is certified to the Governor; and

Whereas, under the plain language of Article III, Section 45, congressional redistricting may only occur in the period immediately following the certification of the census to the governor and may not occur again until the next census is completed and certified; and

Whereas, in *Pearson v. Koster*, the Missouri Supreme Court directly addressed the timing aspect of congressional redistricting, stating: "*Article III, Section 45...was triggered when the results of the 2010 United States Census revealed that...Missouri would lose one member of its delegation... It is the responsibility of the Missouri General Assembly to draw new congressional election districts. The new districts will take effect for the 2012 election and remain in place for the next decade or until a Census shows that the districts should change*"; and

Whereas, the above analysis necessarily flows from the plain language of Article III, Section 45. Specifically, the General Assembly is only authorized to draw new congressional districts when the census is certified to the governor, which only occurs once every ten years; and

Whereas, the temporal limitation in Article III, Section 45 prohibits the General Assembly from enacting more than one map after the census data is released, but before new data is released; and

Whereas, proponents of purely politically motivated mid-cycle redistricting argue that the lack of express language prohibiting mid-cycle redistricting means the General Assembly may redistrict whenever it sees fit; and

Whereas, if the authors of the 1945 Constitution had wanted to grant the General Assembly authority to redraw congressional lines "from time to time", they would have included such authority. Instead the language they used is clear that congressional redistricting may only occur when new census data is available; and

Whereas, Article III, Section 45 specifies when congressional redistricting may take place; and

Whereas, to hold otherwise would grant the General Assembly plenary power to engage in the legislative act of redistricting whenever it pleased. The only possible purpose of inserting this timing component is to establish that it is the sole time when such power may be exercised, meaning the timing for the General Assembly to draw congressional districts is limited; and

Whereas, other states have interpreted provisions similar to Article III, Section 45 of the Missouri Constitution to prohibit mid-cycle redistricting; and

Whereas, in 2003, the Supreme Court of Colorado held that its similarly worded constitutional provisions did not permit mid-cycle congressional redistricting; and

Whereas, like Article III, Section 45 of the Missouri Constitution, the Colorado Constitution states that the legislature shall redistrict when "a new apportionment shall be made by Congress" and the court ruled that there is no language empowering the General Assembly to redistrict more frequently or at any other time; and

Whereas, the plain language of the Missouri Constitution and the Missouri Supreme Court's precedent make clear that mid-cycle congressional redistricting is prohibited; and

Whereas, any attempt at mid-cycle congressional redistricting will draw substantial legal challenges which will succeed and invalidate this ill-conceived, politically motivated attempt to re-draw Congressional maps:

Now, Therefore, Be It Resolved that the members of the Missouri Senate, One Hundred and Third General Assembly, Second Extraordinary Session, hereby remonstrate against the Governor for calling an extraordinary session of the General Assembly for an expressly unconstitutional purpose; and

Be It Further Resolved that the Secretary of the Senate be instructed to send a copy of this remonstrance to the Governor and the Missouri Supreme Court.