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ONE-PERSON, ONE-INITIATIVE: EQUAL PROTECTION LIMITS ON MISSOURI'S PROPOSED DISTRICT-BASED INITIATIVE APPROVAL RULE

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INTRODUCTION

Direct democracy is deeply rooted in Missouri's history.[1] Since Missouri adopted the initiative and referendum processes in 1908, voters have successfully placed 130 measures on the ballot through citizen initiatives.[2]

1. *See* Gunnar Johanson, Note, *Indirect Initiative and Unpopular Referendum in Missouri*, 86 MO. L. REV. 625, 630 (2021).

2. Nicole Fisher, *Missouri Voters Have Decided 420 Statewide Ballot Measures Since 1908*, BALLOTPEDIA (July 15, 2025, at 16:45 CT), https://news.ballotpedia.org/2025/07/15/missouri-voters-have-decided-420-statewide-ballot-measures-since-1908/ [https://perma.cc/YAY7-Z62P].

However, this longstanding tradition has recently caused significant political tension as voters have been asked to decide an increasing number of high-profile, contentious issues through the process: "In the past few years alone, a majority of Missourians voted to legalize abortion and recreational marijuana and to increase minimum wage and mandate paid sick leave through the initiative petition process, all issues opposed by the Republican-dominated legislature."[3] Frustrated by these outcomes, the legislature referred Amendment 4,[4] a 2026 ballot measure that would have effectively ended direct democracy in Missouri.[5]

Under Amendment 4, a citizen initiative could pass only if "a majority of voters in all of Missouri's eight congressional districts and a statewide majority" vote in favor of the measure.[6] This means a mere 5 percent of voters could have defeated a citizen initiative,[7] compared to the current statewide simple-majority requirement.[8] The Missouri legislature justified this extreme measure on the ground that the current process allows issues lacking statewide support to be enshrined in the state constitution.[9] On August 4, 2026, Missouri voters resoundingly rejected Amendment 4, with 80.3 percent of the vote against the proposal.[10]

Although Amendment 4 is no longer viable legislation in Missouri, this Note provides a practical constitutional analysis that can be used to challenge similarly extreme future legislation as unconstitutional. This Note

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3. Annelise Hanshaw & Anna Spoerre, *As Few as 5% of Voters Could Defeat Initiative Petitions Under Missouri GOP Legislation*, MO. INDEP. (Sept. 4, 2025, at 20:07 CT), https://missouriindependent.com/2025/09/04/as-few-as-5-of-voters-could-defeat-initiative-petitions-under-missouri-gop-legislation/ [https://perma.cc/7ZYR-GXKK].

4. *2026 Ballot Measures*, MO. SEC'Y OF STATE, https://www.sos.mo.gov/petitions/2026BallotMeasures [https://perma.cc/4BTE-LKH6]. A preliminary version of this Note was published online prior to Amendment 4's August 2026 election date in Missouri, in which Amendment 4 failed overwhelmingly. *Missouri Amendment 4 Election Results: Modify Amendment Approval Requirements*, N.Y. TIMES (Aug. 4, 2026), https://www.nytimes.com/interactive/2026/08/04/us/elections/results-missouri-amendment-4-modify-amendment-approval-requirements-and-prohibit-foreign-spending-on-measures.html [https://perma.cc/7FAM-WH62]. Nonetheless, the analysis below remains relevant given the prevalence of legislative attempts to restrict citizen-led initiatives in Missouri and other states. *See infra* Section I.D.

5. Hanshaw & Spoerre, *supra* note 3 (stating that the proposal "would make it virtually impossible for voters to change the constitution or state law through the initiative petition process").

6. *Id.*

7. *Id.*

8. Rudi Keller, *Judge Revises Ballot Language for Plan to Make It Harder to Amend Missouri Constitution*, MO. INDEP. (Mar. 4, 2026, at 15:01 CT), https://missouriindependent.com/briefs/judge-revises-ballot-language-for-plan-to-make-it-harder-to-amend-missouri-constitution/ [https://perma.cc/9N5D-96B2].

9. Hanshaw & Spoerre, *supra* note 3 ("This (abortion) amendment didn't pass in most areas in Missouri, and I believe, would not have passed in even half of the congressional districts." (quoting Ed Lewis, Mo. State Rep.)).

10. *See Missouri Amendment 4 Election Results: Modify Amendment Approval Requirements*, *supra* note 4.

is the first to propose evaluating such a threshold under the Fourteenth Amendment's Equal Protection Clause[11] and argues that if Amendment 4 had passed, it would have likely violated the Equal Protection Clause by restructuring how votes are counted and weighted, thus implicating fundamental voting rights protections. Existing voting-rights doctrine and scholarship have not squarely addressed the constitutionality of district-based voting thresholds for citizen initiatives. Further, since no other state has ever implemented a comparably extreme voting threshold for passing initiative petitions, the Supreme Court has not directly ruled on the constitutionality of this issue.

This Note proceeds in three parts. Part I discusses the history of initiative petitions both generally and in Missouri, describes how Amendment 4 would have changed the state's initiative petition process, and compares the regulation to those introduced in other states. Part II examines the historical application of the Equal Protection Clause to voting regulations, underscoring that its application to the initiative process is rather unclear. Part III applies these principles to argue that if passed, Amendment 4 would likely have violated the Equal Protection Clause. Last, this Note offers two constitutionally permissible alternative regulations that would achieve Amendment 4's goals without frustrating constitutionally guaranteed voting rights.

I. BACKGROUND

A. History of Initiative and Referendum Petitions

During the Progressive Era of the 1890s and early 1900s, American democracy saw a structural transformation. Citizens grew dissatisfied with the government as special interest groups exerted greater influence over its decision-making.[12] The political system was widely regarded as "straitjacketed . . . into acquiescence to the social afflictions accompanying industrialization."[13] With reform necessary, citizens proposed a platform of significant political reforms that ultimately led to the emergence of the

11. U.S. CONST. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); *see also* Baker v. Carr, 369 U.S. 186, 197–98 (1962) (extending the Equal Protection Clause to voting).

12. *The History of the Initiative and Referendum Process in the United States*, INITIATIVE & REFERENDUM INST. [hereinafter *Initiative and Referendum History*], https://www.initiativeand referenduminstitute.org/history-us-direct-democracy [https://perma.cc/U7H7-2XXE].

13. Nathaniel A. Persily, *The Peculiar Geography of Direct Democracy: Why the Initiative, Referendum and Recall Developed in the American West*, 2 MICH. L. & POL'Y REV. 11, 23 (1997).

initiative and referendum—mechanisms of direct democracy that allowed voters to propose, enact, or reject laws without the mediation of state legislatures.[14]

Reformers viewed the process of direct democracy not as a replacement for representative government but rather as a necessary corrective to augment it.[15] President Theodore Roosevelt highlighted the sentiment when he asserted, "I believe in the initiative and the referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative. . . . [I]t has been found in very many States that legislative bodies have not been responsive to the popular will."[16] Effectively, direct-democracy tools appeared to restore a sense of popular sovereignty by ensuring that citizens had the ultimate say in public policy.[17]

In 1898, the reformers' proposal gained traction, as South Dakota became the first state to adopt statewide initiative and referendum processes.[18] Not long after South Dakota's introduction, many states began following suit, with the processes taking hold in the West.[19] The mass adoption in the West aligned with the widely held populist sentiment that "the people should rule the elected and not allow the elected to rule the people."[20] These states seemed to see themselves as workshops of democracy, where direct participation could curtail corporate dominance over legislation.

Today, twenty-six states have adopted the initiative, the referendum, or both.[21] Although both are forms of direct democracy, they serve distinct purposes. The initiative process enables citizens, upon collecting a required number of signatures, to submit proposed legislation or constitutional amendments directly to the voters for approval or rejection.[22] In contrast, the referendum operates as a popular check on legislative power, allowing citizens to vote on whether to approve or reject a measure already enacted

14. *Initiative and Referendum History*, *supra* note 12.

15. *Id.*

16. Theodore Roosevelt, Ex-President of the United States, A Charter of Democracy, Address Before the Ohio Constitutional Convention (Feb. 21, 1912), *in* S. DOC. NO. 62-348, at 11–12 (1912).

17. Persily, *supra* note 13, at 33. In South Dakota, progressives were able to use direct democracy to "reduce the influence of the railroads . . . that dominated the state legislature." *Id.* Colorado similarly did so regarding the influence of major utility companies. *Id.*

18. *Initiative and Referendum History*, *supra* note 12; Persily, *supra* note 13, at 16.

19. Persily, *supra* note 13, at 20 ("With the exception of Hawaii, every state that was admitted to the Union after 1870 has instituted the referendum, and all of those, excepting New Mexico, have instituted the initiative.").

20. *Initiative and Referendum History*, *supra* note 12.

21. *Direct Democracy in Your State*, INITIATIVE & REFERENDUM INST., https://www.initiative andreferenduminstitute.org/dd-in-your-state [https://perma.cc/HX9B-PSY8].

22. Priscilla F. Gunn, *Initiatives and Referendums: Direct Democracy and Minority Interests*, 22 URB. L. ANN. 135, 135 n.1 (1981).

by the legislature.[23] Contemporary political scientists, such as Elisabeth Gerber, emphasize that proponents of the initiative process view it as *directly* and *indirectly* representational.[24] Directly, it empowers citizens to propose and pass laws aligned with their preferences.[25] Indirectly, the threat of an initiative may incentivize legislators to more closely align their pursued policies with the interests of those they represent.[26] Together, these functions of the initiative seem to display how it operates as a "safety valve" when representative institutions diverge from the majority will.[27] Opponents of the initiative believe there is no benefit, arguing that it "produces poorly written laws that benefit wealthy interest groups, but not necessarily voters."[28]

Although the popularity of the initiative and referendum boomed in the late 1970s following the passage of California's Proposition 13,[29] their use has declined somewhat in recent decades.[30] Today, fewer measures reach state ballots, largely due to increased procedural barriers, such as higher signature thresholds[31] and growing legislative resistance to citizen-led lawmaking.[32] Nonetheless, initiatives and referenda remain a fundamental component of state-level governance, as citizens rely on them to address issues that legislatures have avoided or opposed.[33]

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23. *Id.* at 135 n.2.

24. Elisabeth R. Gerber, *Legislative Response to the Threat of Popular Initiatives*, 40 AM. J. POL. SCI. 99, 100 (1996).

25. *Id.*

26. *Id.*

27. N.D. Houghton, *The Initiative and Referendum in Missouri*, 19 MO. HIST. REV. 268, 277 (1925) (explaining how the initiative process supplements the representative form of government by "guard[ing] it from abuse and from becoming misrepresentative," effectively "perform[ing] the same function as the safety valve on an engine").

28. Gerber, *supra* note 24, at 100.

29. *Initiative and Referendum History*, *supra* note 12. California's 1978 Proposition 13, enacted through the initiative process, cut property taxes from 2.5 percent to 1 percent. *Id.* Proposition 13 also required that voters approve certain local taxes through a referendum. *See* CAL. CONST. art. XIII A, § 4. Shortly after its implementation, forty-three states followed California's example and adopted some property tax limitation or relief. *Initiative and Referendum History*, *supra* note 12.

30. *Id.*

31. *See* NAT'L CONF. OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM IN THE 21ST CENTURY 37 (2002). The National Conference of State Legislatures also makes several other legislative recommendations regarding signature requirements, such as geographic distribution requirements. *See id.* at 37–43.

32. *See, e.g.*, S.J. Res. 60, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025); *see also* Hanshaw & Spoerre, *supra* note 3 (discussing the Missouri legislature's attempt to limit the effectiveness of the citizen initiative process through Amendment 4).

33. *See, e.g.*, Hanshaw & Spoerre, *supra* note 3 (explaining that Missouri citizens overturned the Missouri legislature's abortion ban through an initiative).

B. Referenda and Initiative Petitions in Missouri

Initially, the initiative and referendum were quite unpopular in Missouri. In 1904, the Missouri legislature approved a bill to introduce these processes, but, by a 53,000-vote margin, it was ultimately rejected by Missouri voters.[34] However, proponents of direct democracy refused to accept defeat. After a sustained voter-education campaign,[35] Missouri voters in 1908 ratified a constitutional amendment granting the people the power to legislate and amend their constitution through initiative and referendum.[36] The adopted language from over a century ago remains unchanged today: "The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided."[37]

To effectively facilitate the initiative and referendum processes, Missouri's constitution adopted several additional provisions that laid out the form and procedure for signatures and voting.[38] Article III, Section 52(b) most notably sets forth the rule for the voter threshold to adopt an initiative: "Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise."[39] Thus, under the current procedure, each ballot is counted equally, irrespective of where it is cast.

Throughout Missouri's history, there have been 130 citizen initiatives on the ballot, with only about 35 percent approved.[40] Although initiatives are more often than not defeated by the voters, they have still been used to propose amendments on significant issues. Recently, the initiative process has been used in Missouri to allow voters to amend the state's constitution to cover relatively controversial topics.

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34. *Missouri*, INITIATIVE & REFERENDUM INST., https://www.initiativeandreferenduminstitute.org/missouri [https://perma.cc/4AM5-ET3U].
35. *Id.*
36. Persily, *supra* note 13, at 16.
37. MO. CONST. art. III, § 49.
38. *Id.* art. III, §§ 50–53.
39. *Id.* art. III, § 52(b).
40. Fisher, *supra* note 2.

TABLE 1: RESULTS OF RECENT INITIATIVES IN MISSOURI

Ballot Measure / Subject	***Year (Election Date)***	***Victory Margin***
Medical Marijuana Legalization[41]	2018	Passed 65.6% – 34.4%[42]
Medicaid Expansion[43]	2020	Passed 53.3% – 46.7%[44]
Recreational Marijuana Legalization[45]	2022	Passed 53.1% – 46.9%[46]
Abortion Rights[47]	2024	Passed 51.6% – 48.4%[48]
Sports Gambling[49]	2024	Passed 50.1% – 49.9%[50]

Missouri currently requires only a simple majority to pass a proposed initiative, which has enabled several recent initiatives to pass by extremely narrow margins.[51] These razor-thin margins are noteworthy, given that Missouri is a majority-Republican state with a Republican legislature[52] that would almost certainly not have passed them on its own.[53] Because the

41. This amendment was codified at MO. CONST. art. XIV, § 1.

42. MO. SEC'Y OF STATE, ELECTION RESULTS 49 (2018), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/2018GeneralElection.pdf [https://perma.cc/2UMW-B5TA].

43. This amendment was codified at MO. CONST. art. IV, § 36(c).

44. MO. SEC'Y OF STATE, ELECTION RESULTS 52 (2020), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/All_Results_2020_Primary_8_4_2020.pdf [https://perma.cc/M36G-JRAT].

45. This amendment was codified at MO. CONST. art. XIV, § 2.

46. MO. SEC'Y OF STATE, ELECTION RESULTS 30 (2022), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/2022GeneralElection.pdf [https://perma.cc/UE52-8MDL].

47. This amendment was codified at MO. CONST. art. I, § 36. A new initiative, seeking to repeal the 2024 initiative, will be on the 2026 ballot. *See 2026 Ballot Measures*, *supra* note 4.

48. MO. SEC'Y OF STATE, ELECTION RESULTS 36 (2024), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/2024GeneralElection.pdf [https://perma.cc/F5N9-GFZS].

49. This amendment was codified at MO. CONST. art. III, § 39(g).

50. MO. SEC'Y OF STATE, *supra* note 48, at 36.

51. *See* Pascal Sabino, *Under This August Measure, All of Missouri's Recent Popular Initiatives Would Have Failed*, BOLTS (Sept. 18, 2025), https://boltsmag.org/missouri-amendment-on-ballot-initiatives/ [https://perma.cc/3CAD-Y3FX] ("[A]ll measures in the state currently require a majority vote statewide . . . .").

52. NAT'L CONF. OF STATE LEGISLATURES, 2025 STATE & LEGISLATIVE PARTISAN COMPOSITION (2025), https://documents.ncsl.org/wwwncsl/Elections/Legis_Control_2025_8.29.25.pdf [https://perma.cc/EWU5-4SY7].

53. Hanshaw & Spoerre, *supra* note 3. Of those passed by voters, the Republican legislature unequivocally opposed the legalization of abortion and recreational marijuana, along with increases in minimum wage and mandated paid sick leave. *Id.*

Republican legislature has opposed several recent successful initiatives, it supported a new minimum voting threshold that would reduce the likelihood that voters can approve initiatives on the ballot.[54]

C. Proposed Change to Referenda and Initiative Voting in Missouri

Despite Missouri's longstanding history of requiring a simple majority vote to pass a citizen-led initiative, members of the Republican legislature proposed Amendment 4, which would have instead required a majority of votes within each of Missouri's eight congressional districts.[55] Under this proposed framework, as little as 5 percent of the statewide electorate, concentrated in a single dissenting district, could effectively veto the will of the remaining 95 percent.[56] Essentially, this new process would have created structural vote dilution, in which a "Yes" vote might carry significantly less weight than a "No" vote cast in an ideologically distinct district, potentially bringing an end to citizen initiatives.[57] Moreover, under the proposed threshold, every citizen initiative approved by Missouri voters since 2020—including Medicaid expansion, the legalization of marijuana, and the abortion rights amendment—would have failed, even the ones receiving clear statewide majorities.[58] Crucially, this burdensome new threshold would have applied *only* to citizen-led initiatives, maintaining a simple majority for those referred to the ballot by the legislature itself.[59]

State Representative Ed Lewis, the sponsor of Amendment 4, contended the measure was necessary to prevent the voices of voters in Missouri's heavily populated counties from dominating those of voters in rural, less populated counties.[60] Without requiring "broad geographic support" to ensure that "[e]very last inch of the state of Missouri [is] represented when . . . changing the constitution," Lewis believed that the current initiative threshold "disenfranchises rural Missouri."[61] Accordingly, Lewis asserted that the current initiative process, although constitutionally guaranteed,

54. *Id.*
55. *See id.*
56. *Id.*
57. Using the 2024 gubernatorial election again as a benchmark, the 156,000 "No" votes from Missouri's 1st District could override the expressed will of more than 1.7 million voters statewide, fundamentally altering the balance of voter influence. *See* MO. SEC'Y OF STATE, *supra* note 48, at 1.
58. Sabino, *supra* note 51.
59. *Id.*
60. *See* Hanshaw & Spoerre, *supra* note 3.
61. *Id.* Missouri's Republican Governor, Mike Kehoe, agreed with Lewis, stating, "For far too long, Missouri's Constitution has been the victim of out-of-touch policies . . . . It's time we give voters a chance to protect our Constitution." Hanshaw & Spoerre, *supra* note 3.

undermines the state's constitution by inserting partisan issues into the constitution.[62]

In response, dissenting lawmakers raised several concerns, chief among them the idea that Lewis's justifications mask a more strategic intent to maintain Republican dominance in the state, particularly because the proposal coincided with Missouri's passage of a heavily gerrymandered map designed to help Republicans obtain control over seven out of the state's eight U.S. House seats.[63] In light of the new map, Democratic State Representative Eric Woods dismissed Lewis's rationale behind the initiative threshold as internally inconsistent, noting that concerns of ensuring adequate geographic representation were difficult to reconcile with a congressional map that would stretch a district from downtown Kansas City to a rural county more than two hundred miles away—two regions within the state with diametrically opposed political ideologies.[64] Other Missouri Democrats characterized the contemporaneous proposals as a means of undermining the will of the majority of voters,[65] especially because Amendment 4 would have prevented voters from remedying what many believe is an unfair redistricting plan.[66] Considering such claims, Representative Lewis stated that he did not believe the two proposals were "linked,"[67] and that Amendment 4 was not a partisan proposal because a

62. Jason Rosenbaum & Brian Munoz, *Missouri House Advances Plan to Make It Harder for Some Amendments to Pass*, ST. LOUIS PUB. RADIO (Sept. 9, 2025, at 11:15 CT), https://www.stlpr.org/government-politics-issues/2025-09-09/missouri-house-passes-initiative-petition-changes [https://perma.cc/U6CK-JM24]. Lewis asserted that he was concerned with all partisan issues and believed Missouri voters should "want something that a broad consensus of all Missourians could support" as a change in the constitution. *Id.*

63. *Cf.* Jason Rosenbaum & Larry Kaplow, *Missouri Passes Trump-Backed Redistricting Plan to Help the GOP in the Midterms*, ST. LOUIS PUB. RADIO (Sept. 12, 2025, at 14:38 ET), https://www.npr.org/2025/09/12/nx-s1-5537977/redistricting-midterms-trump-missouri [https://perma.cc/WUH3-P5HK]. The map, which will likely enable a Republican candidate to win a seat currently held by a Democrat, has been signed by Missouri Governor Mike Kehoe following President Trump's calls on Republican legislatures nationwide to implement redistricting plans that would prevent Democrats from retaking the U.S. House in the 2026 midterm elections. *Id.* Although Missouri Republicans fully admit that their intent aligns with President Trump's demands, they assert that a seven-to-one map truly reflects Missouri's constituency because the state's geographic makeup is largely Republican. *Id.*

64. Hanshaw & Spoerre, *supra* note 3.

65. *See* Rosenbaum & Munoz, *supra* note 62. Kathy Steinhoff, a Democratic State Representative from Columbia, Missouri, contended that Lewis's proposal "gives certain parts of the state effective veto power over constitutional amendments – even if they pass overwhelmingly everywhere else." *Id.*

66. Hanshaw & Spoerre, *supra* note 3.

67. *Id.* Representative Lewis's claim that the proposals are not linked may have some merit, given that he has sponsored a bill to reform the initiative petition process every year since his election in 2020. *See* Ceilidh Kern, *On Initiative Petitions, Missouri Lawmakers, Citizens Look to Curb the Other Group's Power*, BEACON (Sept. 19, 2025), https://thebeaconnews.org/stories/2025/09/19/missouri-lawmakers-citizens-clash-initiative-petition-power/ [https://perma.cc/X85Y-Q623]. However,

majority vote in a single "liberal-leaning congressional district would be able to block a measure initiated by conservative citizens."[68]

Democratic opponents also raised serious concerns about the proposal's creation of an unjustified double standard by raising the voting threshold only for constitutional amendments advanced by the people and not for those referred by the legislature.[69] To these challengers, the proposal's failure to impose a higher threshold across the board underscored what they saw as the Republican legislature's true intent: limiting citizen-led amendments while preserving its own power.[70] Benjamin Singer, the co-founder of the Respect MO Voters coalition,[71] stated that the legislators were "establishing a double standard where they're claiming that they want to make it harder to amend the constitution, but over 80% of constitutional amendments come from the legislature."[72] Similarly, Columbia Democratic Senator Stephen Webber emphasized that "[i]f you're a politician in Jefferson City, you become more powerful after this passes."[73]

Responding to these arguments, Lewis insisted that it would be unfair to subject amendments referred to the ballot by Missouri lawmakers to a higher threshold, since legislating already requires "rigorous vetting" through public hearings.[74] Members of the legislature must first be elected, then seek to pass their resolution or amendment through the legislative process, which requires "majority approval from committees and both chambers multiple times" before Missourians have a chance to vote on it.[75]

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the proposal's sudden garnering of support may call his claim into question, suggesting a possible link between the two measures. *See id.* Moreover, statements from Governor Kehoe and Representative Lewis himself suggest some connection between the two. Governor Kehoe has stated that the General Assembly should "take action on congressional redistricting and initiative petition reform to ensure our districts and Constitution truly put Missouri values first." Press Release, Off. of Governor Mike Kehoe, Governor Kehoe Announces Special Session on Congressional Redistricting and Initiative Petition Reform (Aug. 29, 2025), https://governor.mo.gov/press-releases/archive/governor-kehoe-announces-special-session-congressional-redistricting-and [https://perma.cc/C6FN-DGLB]. He further stated that "Missouri's conservative, common-sense values should be truly represented at all levels of government. . . ." *Id.* Echoing these sentiments, Representative Lewis stated that the new congressional map would make "it easier to pass constitutional amendments." Kern, *supra*.

68. Sabino, *supra* note 51.

69. Kern, *supra* note 67; *see also* Hanshaw & Spoerre, *supra* note 3.

70. Kern, *supra* note 67.

71. Respect MO Voters is a cross-partisan coalition formed to protect the citizen-led initiative process and "majority rule" in Missouri. *About*, RESPECT MO VOTERS, https://respectmovoters.org/about [https://perma.cc/32HM-H45A].

72. Kern, *supra* note 67.

73. Jason Hancock, *Missouri Lawmakers Pass Gerrymandered Congressional Map, Initiative Petition Limits*, MO. INDEP. (Sept. 12, 2025, at 13:53 CT), https://missouriindependent.com/2025/09/12/gerrymandered-congressional-map-initiative-petitions-limits-sent-to-missouri-governor/ [https://perma.cc/P7B7-EHXX].

74. Sabino, *supra* note 51.

75. Kern, *supra* note 67.

To Lewis, the legislative procedural requirements are much more grueling than those for citizen initiatives, which merely require "some signatures" and a vote of "50% plus one," with no checks and balances like those in the legislative process.[76]

D. Comparing Missouri's Referenda and Initiative Voting to Other States

Regardless of its fate on the ballot, Missouri's Amendment 4 remains unique among states with initiative and referendum provisions, as no other state requires ballot measures to achieve congressional-district majorities alongside a statewide majority.[77] In fact, only three states—Colorado, Florida, and Illinois—require more than a simple majority for passage, with Colorado setting its threshold at 55 percent for constitutional amendments and Florida and Illinois each requiring 60 percent for both constitutional and statutory measures, rather than imposing district-based approval requirements.[78] Even in states that have recently decided to revisit their initiative processes, namely Arkansas,[79] Florida,[80] and Oklahoma,[81] reforms have focused on qualification requirements and the signature-obtaining process.

While these states' attempts to impair their citizen-initiative processes might seem less extreme than Missouri's, as they do not adjust voting thresholds or impose district-based approval requirements, citizens have

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76. *Id.*

77. Sabino, *supra* note 51.

78. *The Election and Adoption of Initiatives*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 27, 2025), https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes/the-election-and-adoption-of-initiatives [https://perma.cc/ARP4-XWBS]. Four other states have more stringent passage thresholds for specific topics. *Id.* Arizona, for example, has a 60 percent minimum threshold for all tax-related measures. *Id.* Of these states, none require a threshold higher than 66 percent for a particular issue, *id.*, which stands in stark contrast to Missouri's Amendment 4 that might have effectively created a threshold requiring about 95 percent of the vote, *see 2026 Ballot Measures*, *supra* note 4.

79. Daniel Nichanian, *"It Just Feels Like Death": Barrage of New Rules Target Arkansas Ballot Initiatives*, BOLTS (Mar. 10, 2025), https://boltsmag.org/new-rules-from-gop-legislature-target-arkansas-ballot-initiatives/ [https://perma.cc/XYH2-MKHH].

80. Pascal Sabino, *A New Crackdown on Ballot Initiatives Unnerves Florida Organizers*, BOLTS (May 7, 2025), https://boltsmag.org/florida-new-restrictions-on-ballot-initiative-process/ [https://perma.cc/P8AP-UWGL]. Florida's new legislation seeks to deter signature collectors by criminalizing various signature-gathering tactics. *Id.* "The legislation makes it a felony for a volunteer to collect more than 25 signatures for a campaign from people outside their family without getting approval from the state, which requires background checks and training." *Id.*; *see* FLA. STAT. § 100.371(2)(f)(a) (2026).

81. Daniel Nichanian, *Republicans Add New Barriers to Oklahoma's Dizzyingly Fast Process for Citizen Initiatives*, BOLTS (June 17, 2025), https://boltsmag.org/oklahoma-restricts-ballot-initiative-process/ [https://perma.cc/XL66-S3PH]. The new law proposed in Oklahoma seeks to complicate the signature process by limiting the "number of signatures that a campaign can secure in any given county," making signature gathering nearly impossible given the state's signature-collecting window of only ninety days. *Id.*; *see* OKLA. STAT. tit. 34, § 8(F), (H)(1) (2025).

nonetheless challenged them on constitutional grounds.[82] Pushback to Arkansas's proposal provides a notable example. Under the proposal, the Arkansas legislature has sought to deter initiative petition advancement by requiring canvassers to check petitioners for photo identification, read the initiative to petitioners out loud or ensure the petitioner reads it themselves in full, and inform petitioners that they may be liable for criminal charges if they commit fraud during the signing process.[83] If a canvasser fails to comply with any of these new requirements, Arkansas's proposal puts them at risk of criminal charges.[84] This proposal has faced significant scrutiny, with those opposed recognizing it as an attempt to make the signature process onerous and logistically infeasible.[85]

II. THE EQUAL PROTECTION CLAUSE AND VOTING

In 1962, the Supreme Court decided the landmark case *Baker v. Carr*,[86] which served as the foundation for the Court's application of the Equal Protection Clause to safeguard individual voting rights from state apportionment schemes that diluted the weight of citizens' votes in certain areas of the state.[87] In *Baker*, the Court faced a challenge to a Tennessee apportionment scheme that had not been updated for decades despite significant population shifts, resulting in severe disparities in representation between rural and urban districts.[88] Although the Court did not ultimately decide whether the apportionment scheme was unconstitutional, it held that such a challenge under the Equal Protection Clause was justiciable.[89] This

82. *See* Petitioners' Application to Assume Original Jurisdiction and Petition for Declaratory Judgment, Writ of Prohibition, or Other Appropriate Relief at 11, McVay v. Cockroft, No. PR-123179 (Okla. June 12, 2025) (contending Oklahoma's county-based signature caps violate "First Amendment and equal protection guarantees"); *see also* Fla. Decides Healthcare, Inc. v. Byrd, 831 F. Supp. 3d 1181, 1205–06 (N.D. Fla. 2026) (rejecting a First Amendment challenge to Florida's 25-signature maximum).

83. Nichanian, *supra* note 79.

84. *Id.*

85. *Id.* Recently, Chief Judge Timothy L. Brooks of the United States District Court for the Western District of Arkansas held these provisions unconstitutional as violating the First Amendment. League of Women Voters of Ark. v. Jester, No. 5:25-CV-5087, 2026 WL 1893401, at *18–25 (W.D. Ark. June 30, 2026). However, "the state intends to appeal the ruling." Antoinette Grajeda, *Federal Judge Permanently Blocks Arkansas Laws Restricting Direct Democracy Process*, ARK. ADVOC. (Aug. 21, 2026), https://arkansasadvocate.com/2026/08/21/federal-judge-permanently-blocks-arkansas-laws-restricting-direct-democracy-process/ [https://perma.cc/4UUG-C6MZ]. Although challenges to this proposal assert First Amendment rather than equal protection violations, they nonetheless demonstrate that states remain willing to push constitutional limits when altering their initiative processes.

86. 369 U.S. 186 (1962).

87. Brett W. King, *Deconstructing* Gordon *and Contingent Legislative Authority: The Constitutionality of Supermajority Rules*, 6 U. CHI. L. SCH. ROUNDTABLE 133, 141 (1999).

88. 369 U.S. at 192–94.

89. *Id.* at 197–98.

decision kick-started a "line of reapportionment cases" in the 1960s,[90] leading to the formulation of the crucial one-person, one-vote equal protection doctrine. Because states may burden voting rights in ways beyond vote dilution, the Court has recognized two additional categories of equal protection voting challenges: ballot access restriction cases[91] and cases imposing special burdens on identifiable classes.[92] Historically, the Court has applied a "distinct analytical framework" to each line of cases.[93]

A. The One-Person, One-Vote Framework

Following the Supreme Court's decision in *Baker*, states faced profuse challenges to legislative apportionment schemes.[94] Responding to widely perceived legislative malapportionment,[95] the Court soon after heard several cases that expanded *Baker* and explicitly articulated and solidified the one-person, one-vote principle[96] through three cases: *Gray v. Sanders*,[97] *Wesberry v. Sanders*,[98] and *Reynolds v. Sims*.[99]

In *Gray*, the first of the three seminal one-person, one-vote cases, the Supreme Court considered an equal protection challenge to Georgia's county-unit system for state officer nominations.[100] Rather than counting individual votes directly, the system allocated each county a fixed number of units based on population and required that a candidate receive "a majority of the county unit votes to be entitled to nomination in the first

90. King, *supra* note 87, at 141.

91. *Id.* at 146. Ballot access restriction cases, also commonly referred to as vote denial cases, involve laws that impose eligibility restrictions to "deny or exclude certain individuals from voting based on extraneous characteristics." *Id.* Some restrictions that the Court has struck down include race, *see, e.g.*, Gomillion v. Lightfoot, 364 U.S. 339 (1960), taxpayer status, *see, e.g.*, Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621 (1969), and property ownership, *see, e.g.*, Cipriano v. City of Houma, 395 U.S. 701 (1969). Because Missouri's Amendment 4 would not have restricted any individual's ballot access, this Note does not further address this type of equal protection voting challenge.

92. *See, e.g.*, Hunter v. Erickson, 393 U.S. 385, 391 (1969) (invalidating a charter amendment that singled out "those who would benefit from laws barring racial, religious, or ancestral discriminations").

93. Sarah Elizabeth Saucedo, Note, *Majority Rules Except in New Mexico: Constitutional and Policy Concerns Raised by New Mexico's Supermajority Requirement for Judicial Retention*, 86 B.U. L. REV. 173, 189 (2006).

94. Reynolds v. Sims, 377 U.S. 533, 556 n.30 (1964) (noting that within nine months of the Court's decision in *Baker v. Carr*, "[l]itigation challenging the constitutionality of state legislative apportionment schemes had been instituted in at least 34 States").

95. *Id.* at 556.

96. *See* Stephen Ansolabehere & Samuel Issacharoff, *The Story of* Baker v. Carr, *in* CONSTITUTIONAL LAW STORIES 271, 295 (Michael C. Dorf ed., 2d ed. 2009).

97. 372 U.S. 368 (1963).

98. 376 U.S. 1 (1964).

99. 377 U.S. 533 (1964).

100. *Gray*, 372 U.S. at 370.

primary."[101] As a result, counties in Georgia elections were functionally winner-take-all, which could prevent the statewide popular majority from prevailing, much like the Electoral College.[102] This distortion was further magnified by the county-unit system's bracket structure,[103] which ultimately weighted votes from rural counties more heavily than those from urban counties.[104] Although the district court held that the county-unit system as used in statewide elections violated the Equal Protection Clause because it effectively gave more weight to votes from less populous counties,[105] it did not outlaw the possibility of all weighted voting—in its view, a county unit system could be constitutionally permissible "if the disparity against any county is not in excess of the disparity that exists against any state in the most recent electoral college allocation," or "if the disparity against any county is not in excess of the disparity that exists . . . under the equal proportions formula for representation of the several states in the Congress."[106]

Much like the district court, the Supreme Court found Georgia's county-unit system troubling:

> Georgia gives every qualified voter one vote in a statewide election; but in counting those votes she employs the county unit system which in end result weights the rural vote more heavily than the urban vote and weights some small rural counties heavier than other larger rural counties. . . . How . . . can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county?[107]

Accordingly, the Supreme Court agreed with the district court's finding that Georgia's county-unit system violated the Equal Protection Clause.[108] While the Court's opinion seemed based partly on the fact that unequal county populations created the discrepancy,[109] it deliberately rejected the

101. *Id.* at 372.

102. Michael Weisbuch, *Winner-Take-All as a Collective Action Problem*, 35 J.L. & POL. 67, 74 (2019).

103. The bracket system allocated units in the following manner: "Counties with from 0 to 15,000 people were allotted two units; an additional one unit was allotted for the next 5,000 persons; an additional unit for the next 10,000 persons; another unit for each of the next two brackets of 15,000 persons; and, thereafter, two more units for each increase of 30,000 persons." *Gray*, 372 U.S. at 372.

104. *Id.* at 379.

105. *Id.* at 372–73.

106. *Id.* at 378 (quoting Sanders v. Gray, 203 F. Supp. 158, 170 (N.D. Ga. 1962), *vacated*, 372 U.S. 368 (1963)).

107. *Id.* at 379.

108. *Id.* at 381.

109. Weisbuch, *supra* note 102, at 74.

lower court's carve-out for systems comparable to the Electoral College,[110] holding that the system's winner-take-all function that disregarded the minority votes in a county would violate equal protection even if the units were allocated proportionally to population.[111] The Court stressed that allowing other comparable systems merely because the Constitution authorizes unequal vote weighting in national elections through the Electoral College—something the Founders included to address particular historical concerns—would be impermissible, as the Constitution provides no authorization or implication of an analogous system in statewide elections.[112] The Court later reinforced this understanding in *Gordon v. Lance*, explaining that the county-unit system invalidated in *Gray* was impermissible because it constituted geographic discrimination by diluting voting power based on geographic location.[113]

Less than a year after *Gray*, the Court examined another Georgia apportionment scheme in *Wesberry v. Sanders*.[114] There, citizens of Georgia's Fifth Congressional District challenged a statute that created ten congressional districts with grossly disproportionate populations,[115] arguing that the imbalance diluted their votes and prevented them from enjoying their constitutionally guaranteed right to equal representation.[116] Agreeing with the challengers, the Court reaffirmed *Gray*'s one-person, one-vote principle and held that the statute "contracts the value of some votes and expands that of others."[117] The Court's holding rested on Article I, Section 2 of the Constitution's historical requirement that in choosing

110. *Gray*, 372 U.S. at 378.

111. *Id.* at 381 n.12 (emphasizing the equal protection concern in a hypothetical scenario where "a candidate won 6,000 of 10,000 votes in a particular county" and got "the entire unit vote" and "the 4,000 other votes for a different candidate [would be] worth nothing and [be] counted only for the purpose of being discarded"); *see also* Gordon v. Lance, 403 U.S. 1, 4–5 (1971) (highlighting that the county-unit system in *Gray* was discriminatory because "[v]otes for the losing candidates were discarded solely because of the county where the votes were cast").

112. *Gray*, 372 U.S. at 378.

113. *Gordon*, 403 U.S. at 4–5; *see also* Reynolds v. Sims, 377 U.S. 533, 557 (1964) (explaining that Georgia's county-unit system, analyzed in *Gray*, "was unconstitutional since it resulted in a dilution of the weight of the votes of certain Georgia voters *merely because of where they resided*" (emphasis added)).

114. 376 U.S. 1 (1964).

115. *Id.* at 2. Under the statute's apportionment scheme, Georgia's Fifth Congressional District had a population of 823,680, which was well above the ten districts' average population of 394,312, and more than three times the population of the state's Ninth Congressional District. *Id.*

116. *Id.* at 3.

117. *Id.* at 7.

representatives, "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."[118]

Following *Gray* and *Wesberry*, the Supreme Court took *Reynolds v. Sims*,[119] evaluating an equal protection challenge largely resembling that in *Wesberry* to the apportionment of the Alabama Legislature.[120] The Court ultimately reaffirmed its decision in *Wesberry* and held that the current and proposed apportionment schemes violated the Equal Protection Clause because both produced vote dilution.[121] The Court highlighted two significant considerations regarding geographic vote dilution. First, the Court said:

> Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.[122]

Second, the Court emphasized that the Equal Protection Clause certainly would prohibit a law giving some citizens a vote weighted twice as much as other citizens', as "[t]he constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast."[123]

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118. *Id.* at 7–8. Crucially, the Court emphasized that it would be unfair to weight votes based on where one geographically resides. *Id.* ("It would be extraordinary to suggest that in such statewide elections the votes of inhabitants of some parts of a State, for example, Georgia's thinly populated Ninth District, could be weighted at two or three times the value of the votes of people living in more populous parts of the State, for example, the Fifth District around Atlanta." (citing Gray v. Sanders, 372 U.S. 368 (1963))).

119. 377 U.S. 533 (1964).

120. *Id.* at 540. The plaintiffs asserted that the state legislature's failure to reapportion despite significant, uneven population growth created "serious" voting discrimination "with respect to the allocation of legislative representation." *Id.* For example, Jefferson County—the residence of many of the plaintiffs—had a population greater than 600,000 and was given the same number of senators as 15,417-person Lowndes County: only one. *Id.* at 546.

121. *Id.* at 568 ("We hold that . . . the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.").

122. *Id.* at 562.

123. *Id.* at 563 n.40 (quoting Colegrove v. Green, 328 U.S. 549, 569–71 (1946) (Black, J., dissenting)); *accord* Saucedo, *supra* note 93, at 189–90.

B. Gordon v. Lance

Although *Gray*, *Wesberry*, and *Reynolds* established the one-person, one-vote doctrine to proscribe states from diluting voting power based on geographic location, the Supreme Court later added another layer to its equal protection inquiry in *Gordon v. Lance*, focusing on whether electoral rules disadvantage an identifiable class of voters.[124]

Following a failure to obtain the 60 percent voting requirement[125] in a referendum election to issue additional bonded debt or raise tax rates, as established by West Virginia's Constitution, voters brought an equal protection challenge to the constitutional supermajority requirement.[126] The Supreme Court of West Virginia, largely relying on *Gray* and *Cipriano*, held that the 60 percent requirement violated the Equal Protection Clause because it effectively diluted the weight of some votes.[127] The United States Supreme Court reversed, holding that the supermajority requirement was permissible under the Equal Protection Clause.[128] The Court distinguished this provision from those in *Gray* and *Cipriano*, which involved "the denial or dilution of voting power because of group characteristics" such as geographic location, and instead rested its decision on the fact that the supermajority requirement did not discriminate against an identifiable class.[129]

Interestingly, the Court acknowledged that although the provisions made it "more difficult for some kinds of governmental actions to be taken" by departing from strict majority requirements, thus giving "disproportionate power to the minority," neither the Constitution nor history nor cases require majority rule on all issues.[130] Nevertheless, the Court cautioned that it would "intimate no view on the constitutionality of a provision requiring unanimity

124. Gordon v. Lance, 403 U.S. 1 (1971).

125. Voters in Roane County, West Virginia, voted on whether the Board of Education of Roane County could issue $1,830,000 of general obligation bonds to construct new school buildings and improve existing school facilities, along with whether the Board of Education could "levy additional taxes to support current expenditures and capital improvements." *Id.* at 3. Although the former was favored by 51.55 percent of voters, and the latter by 51.51 percent, neither met the 60 percent threshold, and thus, both proposals were defeated. *Id.*

126. *Id.* at 2.

127. Lance v. Bd. of Educ., 170 S.E.2d 783, 790–91 (W. Va. 1969), *rev'd sub nom. Gordon*, 403 U.S. 1.

128. *Gordon*, 403 U.S. at 7.

129. *Id.* at 4. Scholars have challenged the Court's reasoning, asserting that "[t]he majority of voters who voted 'yes'" are an identifiable class disadvantaged by West Virginia's 60 percent supermajority requirement because their votes were weighted less than those of "no" voters. *See* Jerry W. Calvert, *The Popular Referendum Device and Equality of Voting Rights—How Minority Suspension of the Laws Subverts "One Person-One Vote" in the States*, 6 CORN. J.L. & PUB. POL'Y 383, 404 (1997).

130. *Gordon*, 403 U.S. at 5–6.

or giving a veto power to a very small group,"[131] leaving open the possibility that extremely high thresholds may exceed constitutional equal protection limits. In the only cases the Supreme Court has heard since explicitly leaving this "veto power" possibility unresolved, it has refused to find unconstitutional provisions that require a two-thirds majority vote.[132] The Court has not heard any cases that squarely present a more extreme voting requirement, such as a 95 percent threshold.

C. Equal Protection and Initiatives Generally

Precedent considering the Equal Protection Clause's application to initiatives is not particularly straightforward. Although it does not directly address initiatives, the Supreme Court's reasoning in *Moore v. Ogilvie*[133] offers a useful starting point. In *Moore*, the Court asserted that "[a]ll procedures used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgment of the right to vote."[134] Relying on this reasoning, several courts, albeit none in the Eighth Circuit, have held that equal protection requirements must extend to initiative petitions.[135]

Supporters of a vote-counting system like Missouri's Amendment 4 might argue that such a regulation would not violate the Equal Protection Clause based on the Eighth Circuit's holding in *Eggers v. Evnen*.[136] The *Eggers* court was presented with an equal protection challenge to a Nebraska signature-gathering requirement and asserted that unless the regulation "draw[s] a suspect classification or restrict[s] a fundamental right," it is subject to rational basis scrutiny, rather than strict scrutiny.[137]

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131. *Id.* at 8 n.6.

132. *See* Bogert v. Kinzer, 403 U.S. 914 (1971) (mem.), *dismissing appeal from* 465 P.2d 639 (Idaho 1970); Mihaly v. Westbrook, 403 U.S. 915 (1971) (mem.), *vacating* 471 P.2d 487 (Cal. 1970); Brenner v. Sch. Dist., 403 U.S. 913 (1971) (mem.), *aff'g* 315 F. Supp. 627 (W.D. Mo. 1970).

133. 394 U.S. 814 (1969). The Court in *Moore* analyzed whether an Illinois statute that required independent candidates for "the offices of electors of President and Vice President of the United States from Illinois" to gather at least 25,000 signatures, with at least 200 signatures coming from each of at least fifty counties, for their nomination violated the Equal Protection Clause. *Id.* at 815.

134. *Id.* at 818 (citing United States v. Classic, 313 U.S. 299, 314–18 (1941)).

135. *See, e.g.*, Idaho Coal. United for Bears v. Cenarrusa, 342 F.3d 1073, 1077 n.7 (9th Cir. 2003) ("[W]hen a state chooses to grant the right to vote in a particular form, it subjects itself to the requirements of the Equal Protection Clause. . . . Thus, while a state may decline to grant a right to legislate through ballot initiatives, it may not grant that right on a discriminatory basis."); *see also* Angle v. Miller, 673 F.3d 1122, 1127–28 (9th Cir. 2012) (explaining that a state's initiative process is subject to the Equal Protection Clause's requirements).

136. 48 F.4th 561 (8th Cir. 2022).

137. *Id.* at 566 (quoting Birchansky v. Clabaugh, 955 F.3d 751, 757 (8th Cir. 2020)). Fundamental rights, "for purposes of equal-protection analysis," are those that the Federal Constitution guarantees.

Relying on Supreme Court precedent,[138] the Eighth Circuit held that "the right to place initiatives on the state ballot" was not a fundamental right, and thus the highly deferential standard of rational basis scrutiny applied and was satisfied.[139]

Eggers and the Supreme Court precedent on which it relied involved regulations on *signature* requirements to qualify an initiative for ballot placement—a notably different scheme than the one the Missouri legislature proposed.[140] If presented with a challenge to a *voting* regulation, a court should find that voting is a fundamental right, regardless of whether the context is an election or an initiative.[141] Even if a reviewing court nonetheless finds that ballot initiative voting requirements are subject to rational basis scrutiny, the Supreme Court has asserted that "severe" restrictions of state election law rights require that the regulation be "narrowly drawn to advance a state interest of compelling importance."[142] However, where a restriction is "reasonable" and "nondiscriminatory," "the State's important regulatory interests are generally sufficient to justify the restrictions."[143] Therefore, existing precedent suggests that a regulation on counting votes for a statewide ballot initiative may raise equal protection concerns if it discriminates in the manners found impermissible in *Gray* and *Gordon*.

III. EQUAL PROTECTION, AMENDMENT 4, AND ALTERNATIVES

Among scholars, the initiative process is widely understood as an institutional mechanism by which the public may constrain or "check" legislative power.[144] This understanding was reflected in the early interpretations of Missouri's initiative process[145] and remains evident in

Id. at 565. According to the court, rational basis scrutiny "is met as long as someone could rationally conclude that the law furthers a legitimate government interest." *Id.* at 566 (citing *Birchansky*, 955 F.3d at 757).

138. *Id.* at 565 ("[Initiatives and referenda] are not compelled by the Federal Constitution. It is instead up to the people of each State . . . to decide whether and how to permit legislation by popular action. States enjoy considerable leeway . . . to specify the requirements for obtaining ballot access . . . ." (quoting Doe v. Reed, 561 U.S. 186, 212 (2010) (Sotomayor, J., concurring))).

139. *Id.*

140. *See id.* at 564; *Doe*, 561 U.S. at 190–91.

141. *See, e.g.*, Idaho Coal. United for Bears v. Cenarrusa, 342 F.3d 1073, 1077 n.7 (9th Cir. 2003).

142. Burdick v. Takushi, 504 U.S. 428, 434 (1992) (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)).

143. *Id.* at 434 (quoting Anderson v. Celebrezze, 460 U.S. 780, 788 (1983)).

144. *See* Calvert, *supra* note 129, at 409 ("[T]he initiative . . . process[] envision[s] representative government subject to direct checks by the people.").

145. Houghton, *supra* note 27, at 277 (explaining how the initiative process supplements the representative form of government by "guard[ing] it from abuse and from becoming misrepresentative," effectively "perform[ing] the same function as the safety valve on an engine").

both the constitutional text[146] and recent Missouri courts' interpretations.[147] However, Amendment 4 would have enabled the Missouri legislature to undermine this core constitutional principle by effectively diluting votes based on geographic location and entrenching minority rule by giving veto power to a small minority—concerns the Supreme Court expressly cautioned against in *Gray* and *Gordon*.[148] Unless reviewed under rational basis scrutiny, Amendment 4 would have likely violated the Equal Protection Clause.

A. Amendment 4 Dilutes Votes Based on Geography

By requiring a majority in each of Missouri's eight congressional districts, Amendment 4 would have restructured Missouri's initiative petition voting system to condition statewide electoral success on geographic segmentation, much like the county-unit system in *Gray*. The Supreme Court's reasoning for invalidating the county-unit system in *Gray* rested significantly on its concern that the system gave some votes two to ten times as much weight "merely because [the voter] live[d] in a rural area or . . . in the smallest rural county."[149] Missouri's Amendment 4 raised strikingly similar concerns: Votes cast by individuals who reside in a "swing district" could have disproportionately more weight than those of a voter in a more uniform district. For example,[150] if 60 percent of voters statewide

146. The Missouri Constitution's text asserts that the people must have the initiative power "independent of the general assembly." MO. CONST. art. III, § 49. Moreover, Article III, Section 52(b) of the Missouri Constitution declares that "[t]he veto power of the governor shall not extend to measures referred to the people." MO. CONST. art. III, § 52(b). Taken together, these constitutional provisions indicate an intent to insulate the initiative process from legislative interference.

147. *See, e.g.*, Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 827 (Mo. 1990) (en banc) (emphasizing that "[n]othing in [Missouri's] constitution so closely models participatory democracy in its pure form" as an initiative and that "[w]hen courts are called upon to intervene in the initiative process, they must act with restraint . . . and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course").

148. Some scholars have argued that entrenchment through higher voting thresholds, such as supermajorities, may be beneficial when used to encourage a broad, bipartisan consensus and avert minority alienation. *See* John O. McGinnis & Michael B. Rappaport, *Majority and Supermajority Rules: Three Views of the Capitol*, 85 TEX. L. REV. 1115, 1127–28, 1180–81 (2007); Elizabeth F. Maher, Comment, *When a Majority Does Not Rule: How Supermajority Requirements on Voter Initiatives Distort Elections and Deny Equal Protection*, 15 GEO. MASON L. REV. 1081, 1088–89 (2008) (collecting sources making this argument). While the Missouri legislature's justifications for Amendment 4 may align with these arguments, the type of majority it would have required is certainly inconsistent: Amendment 4 would have entrenched the majority by distributing voting power based on geographic distribution to excessively empower a small minority, which is considerably different from a uniform statewide supermajority requirement.

149. Gray v. Sanders, 372 U.S. 368, 379 (1963).

150. This hypothetical is based on total vote counts for each United States representative in Missouri's eight districts from the 2024 election. *See* MO. SEC'Y OF STATE, *supra* note 48, at 2–3. Using

voted "Yes" on a ballot measure, and in one district, 50.1 percent of voters voted "No," the votes of those who voted against the measure would be effectively 11.4 times more powerful than any "Yes" vote cast elsewhere, reflecting the disparity that troubled the *Gray* Court.[151] Thus, in accordance with the legislative intent behind Amendment 4 to require "broad geographic support" to pass a citizen initiative,[152] the minority vote would derive power from location rather than numbers.

Advocates of Amendment 4 would likely challenge its resemblance to *Gray*. In *Gray*, the county-unit system's geographic weighting resulted from varying county populations, which is not present in Missouri's districting.[153] Crucially, the *Gray* Court emphasized that, even without population disparities, the county-unit system would result in impermissible vote weighting, as it would essentially lead to non-majority votes in a particular district having no worth.[154] Some scholars have taken the Court's reasoning above, particularly its emphasis on the impermissibility of an electoral college–like state system, as suggesting that winner-take-all systems generally violate the one-person, one-vote principle and thus the Equal Protection Clause.[155] Consequently, regardless of how the voter population is allocated, Amendment 4 would have raised significant concerns, as it mirrored the county-unit logic and would create an almost identical winner-take-all system to that which the Court in *Gray* asserted contravenes equal protection.

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these totals allows for a straightforward demonstration, as the Missouri Secretary of State's election results do not provide district-based voting totals for initiative petitions. *See id.* Across the districts, 2,924,863 votes cast were for representatives, which closely aligns with the 2,981,681 votes for Constitutional Amendment 3, an initiative petition. *See id.* at 36.

151. This hypothetical is designed to demonstrate that, had it passed, Amendment 4 could cause worrisome vote weighting. Alternative hypotheticals may be used to demonstrate variances that suggest vote weighting could be either more or less severe.

152. Hanshaw & Spoerre, *supra* note 3; *see supra* note 61 and accompanying text.

153. *See* Rudi Keller, *Judge Rules Gerrymandered Missouri Congressional Map Is Constitutional*, MO. INDEP. (Mar. 12, 2026, at 17:26 CT), https://missouriindependent.com/2026/03/12/judge-rules-gerrymandered-missouri-congressional-map-is-constitutional/ [https://perma.cc/N8NS-FP5Y] (stating that each Missouri congressional district is of equal population); *HB1 Missouri Congressional Districts 2025*, MO. SPATIAL DATA INFO. SERV. (Sept. 29, 2025, at 18:02 CT), https://data-msdis.opendata.arcgis.com/datasets/ee1971b86cce43d4b92b5ce614866a18/about [https://perma.cc/K3K2-9DAY]; Healey v. State, 732 S.W.3d 827, 851 (Mo. 2026) (en banc) ("[N]o evidence was presented that the 2025 Map creates districts with unequal population.").

154. Gray v. Sanders, 372 U.S. 368, 381 n.12 (1963) ("The county unit system[] . . . would allow the candidate winning the popular vote in the county to have the entire unit vote of that county. Hence the weighting of votes would continue, even if unit votes were allocated strictly in proportion to population. Thus if a candidate won 6,000 of 10,000 votes in a particular county, he would get the entire unit vote, the 4,000 other votes for a different candidate being worth nothing and being counted only for the purpose of being discarded.").

155. *See* Weisbuch, *supra* note 102, at 74–75.

B. Amendment 4 May Give Veto Power to a Very Small Group

Regardless of whether Amendment 4 would have violated *Gray*'s one-person, one-vote doctrine, it may have nonetheless frustrated equal protection following the Supreme Court's reasoning in *Gordon*. True, Amendment 4 might not have singled out an independently identifiable class, as the *Gordon* Court requires.[156] However, under certain conditions, Amendment 4 could have operated to give a very small minority an effective veto power—the exact issue the *Gordon* Court explicitly left unresolved.[157] Supporters of Amendment 4 might argue that it would fall outside *Gordon*'s unresolved hypothetical because whether a statewide majority could lose under Amendment 4 would have depended entirely on contingent electoral outcomes.[158] Therefore, a very small minority might not always maintain veto power over a statewide majority. This argument, however, assumes a level of precision that *Gordon* never supplied, as the Court never defined what constitutes a "very small group."[159] In the absence of further guidance from the Supreme Court, the Ninth Circuit's reasoning in *Angle v. Miller*[160] is particularly instructive, as it provides the clearest judicial treatment of that unresolved question in the context of voting structures like Missouri's Amendment 4.[161]

In *Angle*, the Ninth Circuit considered an equal protection challenge to a Nevada statute obligating initiative advocates to meet a "10 percent signature threshold in each of the state's congressional districts."[162] Ultimately, the court held that the geographic signature requirement did not present equal protection concerns.[163] In its analysis, however, the court emphasized that it would likely reach a different result if the regulation affected vote counting rather than signatures:

> [W]ere a state to decide an election for governor by determining which candidate received a majority of the votes cast in a majority of

156. Gordon v. Lance, 403 U.S. 1, 7 (1971). Some scholars, however, have challenged the *Gordon* Court's reasoning, asserting that "[t]he majority of voters who voted 'yes'" are an identifiable class disadvantaged by West Virginia's 60 percent supermajority requirement because their votes were weighted less than those of "no" voters. *See* Calvert, *supra* note 129, at 404. This provides some support for the argument that Missouri's "yes" voters could, in some circumstances, be an identifiable class.

157. *Gordon*, 403 U.S. at 8 n.6.

158. *See supra* note 151 and accompanying text.

159. *See Gordon*, 403 U.S. at 8 n.6; Santa Clara Cnty. Loc. Transp. Auth. v. Guardino, 902 P.2d 225, 231 (Cal. 1995) (emphasizing that the Supreme Court did not define a "very small group" in *Gordon*).

160. 673 F.3d 1122 (9th Cir. 2012).

161. *See id.* at 1130.

162. *Id.* at 1126–27.

163. *Id.* at 1126.

> districts, rather than determining which candidate received a majority of the votes cast statewide, it might impermissibly devalue votes according to *Gray* and *Gordon.* The result presumably would be the same if a state were to decide an election on a statewide ballot measure by determining whether the initiative received majority support in a majority of districts, rather than whether the initiative received a majority of votes statewide. . . . [L]anguage in *Gray*, *Gordon* and *Reynolds* suggests that a district-by-district system of counting *votes* in a statewide election would violate equal protection . . . .[164]

By emphasizing that it would be impermissible under *Gordon* for states to count votes on a district-by-district basis, the Ninth Circuit's reasoning seems to rely on the very small minority veto scenario left open in *Gordon*.[165] That reading is further reinforced by the court's separate discussion of whether the Nevada statute discriminates against an identifiable class under *Gordon*.[166] Taken together, the Ninth Circuit's analysis suggests that a voting structure that systematically permits a comparatively small minority to exercise decisive blocking power over the statewide electorate is itself constitutionally suspect, regardless of whether that minority prevails in every instance.[167]

Although opponents may stress that *Angle* is not binding on Missouri, it nonetheless provides persuasive authority and, more importantly, offers a clear analytical framework a court may opt to utilize. Amendment 4 may have adopted precisely the type of district-by-district vote-counting system that the Ninth Circuit warned would raise serious constitutional concerns—a district-by-district vote-counting system that may undermine the "collective, aggregate will of the electorate."[168] In that sense, Amendment 4 seems to have presented the very question the *Gordon* Court declined to resolve: whether counting votes through a district-by-district system concentrates a veto power in a diminutive minority.[169]

C. Constitutional Alternatives to Amendment 4

To avoid potential Equal Protection Clause concerns, Missouri legislators could propose two alternative changes to the initiative process

164. *Id.* at 1130.
165. *Id.*
166. *Id.* at 1131.
167. *See id.* at 1130–31.
168. *See id.* at 1130.
169. *See* Gordon v. Lance, 403 U.S. 1, 8 n.6 (1971).

that would achieve their goal of ensuring rural voices across the state are not dominated by out-of-state special-interest groups while preventing the concentration of veto power in a very small minority.

Given that the Supreme Court has held that supermajority requirements are constitutionally valid,[170] one proposal Missouri legislators could consider adopting is a statewide supermajority that closely resembles the one the Supreme Court found permissible in *Gordon*.[171] For example, the legislature may impose a 60 percent voting threshold on all citizen-led ballot initiative petitions, but to avoid violating the Equal Protection Clause, that threshold must be uniformly applied across the state to avoid a possible geographic dilution of voting power that might be challengeable under *Gray*. Under such a system, the Missouri legislature's goal of making the citizen-led initiative process more difficult would certainly be satisfied—each major ballot initiative that has passed since 2020 would have failed under a 60 percent threshold.[172]

To avoid interfering with the voting process at all, the Missouri legislature could instead focus on modifying the signature requirements for citizen-initiative petitions, possibly following the approaches of Florida and Oklahoma, both of which have yet to be found unconstitutional.[173] Importantly, the Eighth Circuit has also held that signature requirements receive greater deference.[174] To ensure widespread geographic recognition and support, *Eggers v. Evnen*[175] offers a useful benchmark for Missouri's legislature.[176]

The Nebraska signature distribution requirement in *Eggers* required that signatures "be so distributed as to include five percent of the registered voters of each of two-fifths of the counties of the state."[177] The plaintiffs challenging the requirement under the Equal Protection Clause argued that it accorded greater weight to citizens' signatures in less populous counties.[178] Ultimately, the court held that the district court erred in entering

170. *See id.*

171. Some scholars have raised concerns that the Supreme Court's decision in *Gordon* was wrongly decided and that supermajorities could be considered a form of weighted voting, which should not be constitutionally permissible under Equal Protection. *See* King, *supra* note 87, at 143, 145.

172. *See supra* tbl. 1.

173. *See supra* note 82.

174. *See* Eggers v. Evnen, 48 F.4th 561 (8th Cir. 2022). The Ninth Circuit's opinion in *Angle*, where the court considered a Nevada rule setting a signature threshold of 10 percent in each congressional district, likewise supports this proposition. 673 F.3d at 1126–27, 1130 (emphasizing that neither *Gray*, *Gordon*, nor *Reynolds* "suggests that district-by-district counting of signatures obtained to qualify an initiative for the ballot" presents an Equal Protection problem (emphasis omitted)).

175. 48 F.4th at 561.

176. *See id.* at 564.

177. *Id.*

178. *Id.*

a preliminary injunction barring the signature distribution requirement's enforcement because the Nebraska Secretary of State identified a "legitimate government interest served by the signature distribution requirement"—namely, that the requirement furthers the government's interest in "weeding out initiatives with a small but concentrated support base."[179]

Although Missouri already has a geographic signature distribution requirement for citizen-led initiative petitions,[180] *Eggers* suggests that, as long as the amendment furthers a legitimate governmental interest, the Missouri legislature could either raise the minimum percentage, apply the minimum signature requirement across *all* districts, or require signatures across counties instead of districts. Of these options, a county-based requirement would be most effective because it would ensure that citizen-proposed initiatives garner broad support across more local jurisdictions rather than merely being concentrated in densely populated regions. Crucially, Missouri could advance this justification as mirroring the exact same legitimate governmental interest the Eighth Circuit recognized as valid in *Eggers*. So long as the requirement does not impose a severe burden or discriminate against a suspect class, it would likely be upheld and promote the Missouri legislature's goal of geographic diversity in the initiative process while remaining consistent with equal protection.

CONCLUSION

Through Amendment 4, the Missouri legislature sought to upend the voting threshold for citizen initiatives, effectively eliminating the initiative process deeply embedded in Missouri's history. The new requirement that these initiatives obtain approval from a majority of voters statewide and in each of the state's congressional districts would have had severe practical consequences and raised constitutional problems. The new system would ultimately have weighted votes based on geography, largely mirroring the county-unit system that the Supreme Court found constitutionally impermissible in *Gray v. Sanders*. Moreover, under some circumstances, the system would have given a very small minority de facto veto power, a result the Supreme Court refused to endorse in *Gordon v. Lance*. In light of these potential equal protection concerns, the Missouri legislature and advocates of future legislation resembling Amendment 4 should pursue

179. *Id.* at 566–67.

180. "Initiative petitions proposing amendments to the constitution shall be signed by eight percent of the legal voters in each of two-thirds of the congressional districts in the state, and petitions proposing laws shall be signed by five percent of such voters." MO. CONST. art. III, § 50.

alternative, constitutionally permissible regulations—such as a supermajority requirement or heightened signature threshold—to preserve the people's right to act as a "check" on the legislature.

Domenic Monteleone[*]

* J.D. Candidate, Washington University School of Law (2027); B.S., University of Missouri (2024). I would like to thank the editors of the *Washington University Law Review*, especially Caleb Rogers, Caylie Privitere, and my Notes Editor Jocelyn Brooks, for their invaluable guidance and assistance throughout the writing and publication of this Note. I would also like to thank my parents, Salvatore and Camellia Monteleone; my siblings, Salvatore and Annalisa Monteleone; my aunt, Lisa Monteleone; and my grandmother, Rita Beebe, for their unwavering support and encouragement throughout law school, which have made this accomplishment possible.