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SC101572

IN THE SUPREME COURT OF MISSOURI

TERRENCE WISE, *et al.*,

Appellants,

v.

STATE OF MISSOURI

Respondent,

and

MISSOURI REPUBLICAN STATE COMMITTEE,

Intervenor-Respondent.

INTERVENOR-RESPONDENT'S BRIEF

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INTRODUCTION

Appellants ask the Court to take extraordinary and untenable actions: to invalidate the General Assembly's duly enacted Missouri First Plan, to replace it with Appellants' preferred Kansas City First Plan, and to do so *during* the ongoing 2026 congressional elections. Appellants, however, identify no defensible basis on which the Court could take any of those actions. To the contrary, Appellants seek to sidestep the heavy burden of proof they failed to carry, disregard the governing standard of review requiring substantial deference to the circuit court's judgment, mischaracterize the circuit court's factual findings as alleged "legal errors," and misrepresent the facts and trial record. Appellants therefore come nowhere close to establishing that the Court should reverse the circuit court's conclusion that they failed to prove that the Missouri First Plan "'clearly and undoubtedly contravene[s] the constitution.'" *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012) (quotations omitted).

At the threshold, Appellants attempt to avoid their heavy burden of proof—and even to shift it to Respondents. They claim on the first page of their brief that their burden of proof on their compactness claim in Count II "is not burdensome," Opening Br. 10 (quotations omitted), and repeatedly suggest that Respondents bore the burden to prove that Districts 4 and 5 are compact and that recognized factors justified the configuration of each district, *see, e.g.*, Opening Br. 85-86, 99, 102. Those suggestions are incorrect: Plaintiffs bear a heavy burden of showing that the 2025 Plan "'clearly and undoubtedly contravene[s] the constitution,'" *Johnson*, 366 S.W.3d at 20 (quotations omitted), "Plaintiffs at all times have the burden of proving the Map is unconstitutional," and "[t]he burden of persuasion and the burden of production *never shift* to the defendants," *Pearson v. Koster*, 367 S.W.3d 36, 47 (Mo. banc 2012) (*Pearson II*) (emphasis added).

The flaws in Appellants' position do not end there: they also seek to evade the deferential standard cabining this Court's review. For one thing, they attempt to recharacterize virtually every disputed factual question as "legal error." But labeling a factual dispute "legal" does not make it so. This Court, moreover, has already clarified that the dispositive issue on Appellants' compactness claim—"whether [the challenged] districts are 'as compact . . . *as may be*'" within the meaning of Article III, Section 45—is a question of fact. *Pearson v. Koster*, 359 S.W.3d 35, 40 (Mo. banc 2012) (*Pearson I*); *Pearson II*, 367 S.W.3d at 42-43.

This Court thus "defer[s] to the trial court's assessment" on that and any other factual question and will "not re-evaluate testimony through its own perspective." *Pearson II*, 367 S.W.3d at 44 (quotations omitted). The Court's posture to the circuit court's conclusions is particularly deferential here: Appellants do not dispute that they failed to identify the controverted issues they wished the circuit court to decide and, thus, failed to request specific findings of fact and conclusions of law. *See* D108:P5. Accordingly, any factual gap Appellants identify on appeal must be resolved in favor of the judgment—not against it. *See* Mo. R. Civ. P. 73.01(c); *see also Johnson*, 366 S.W.3d at 20.

In addition to misstating the governing legal standards, Appellants mischaracterize the record, suggesting that entire portions of their experts' testimony went "uncontested" and "unrebutted." *See, e.g.*, Opening Br. 11, 22, 38, 71, 83, 86. But Respondents challenged that testimony at every stage, and the circuit court found it neither useful nor probative. That the circuit court rejected Appellants' proof does not make it "uncontested"; it means that Appellants did not carry their heavy burden of proving a constitutional violation.

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Indeed, no Missouri court has *ever* held that a redistricting plan enacted by the General Assembly fails the Constitution's compactness requirement—and here again, Appellants failed to prove a compactness violation. The circuit court found that the challenged districts "fall within historical norms," and even outperform their predecessors from the 2012 Plan that passed constitutional muster, on standard statistical compactness measures. D108:P24. It further found that the Missouri First Map improved performance on traditional redistricting principles across the State. D108:P8-9, 25-26. It also concluded that Appellants' evidence, including the testimony of their expert witnesses, was unprobative, unreliable, and unhelpful—and it specifically credited Respondents' experts and their "helpful" testimony. D108:P14 ¶¶ 88-89; *id.* at 24. Thus, after a four-day bench trial hearing all of the evidence and observing all of the witnesses firsthand, the circuit court found that the 2025 Plan and the challenged Districts 4 and 5 are "as compact . . . as may be." D108:P22. Those various findings left no basis for the circuit court, and leave no basis for this Court on deferential review, to accept Appellants' invitation to substitute their experts' views and judgments regarding compactness for the General Assembly's views and judgments. *See Pearson I*, 359 S.W.3d at 39.

Moreover, Appellants did not even *present* evidence in support of their population-equality and contiguity claims in Counts III and IV, let alone carry their heavy burden to prove them or to show reversible error in the circuit court's rejection of them. Even now, they identify no evidence to support their allegation of misassignment of either "KC 811" VTD. D108:P18 ¶ 119. In fact, Appellants' own expert acknowledged at trial that the computer file the Secretary of State has promulgated to implement HB 1 properly assigns one

KC 811 in District 4 and the other in District 5 and, thus, achieves population equality and contiguity. Tr. 104:1-105:7.

Finally, in all events, Appellants offer no persuasive reason for this Court to supplant the General Assembly's preferred Missouri First Map with Appellants' preferred Kansas City First Map during the ongoing 2026 election cycle. After all, any judicially ordered changes to the map at this late juncture would harm candidates who have already filed to run in the upcoming primary elections in the Missouri First districts, "result in voter confusion and consequent incentive to remain away from the polls," and erode the "[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). The Court should affirm.

STATEMENT OF FACTS

I. BACKGROUND

The United States Census Bureau conducted a decennial census in 2020 and certified the results to the Governor of Missouri on August 12, 2021. *See* D86:P5 ¶¶ 21-22. Thereafter, the General Assembly drew congressional districts based on the 2020 Census and passed such districts in House Bill 2909 (2022). *See* D86:P6 ¶ 32. On August 29, 2025, Governor Kehoe publicly announced that he was convening an extraordinary session of the General Assembly and "calling on the General Assembly to take action on congressional redistricting . . . to ensure our districts . . . put Missouri values first." D86:P8 ¶ 51; *Governor Kehoe Announces Special Session* (Aug. 29, 2025).[1] Governor Kehoe also unveiled the Missouri First Map at that time. D86:P9 ¶ 52. The

[1] Available at https://governor.mo.gov/press-releases/archive/governor-kehoe-announces-special-session-congressional-redistricting-and.

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General Assembly enacted the Missouri First Map as HB 1 on September 12, 2025, and Governor Kehoe signed it into law on September 28, 2025. D86:P9 ¶¶ 59-60. At the time of signing, Governor Kehoe praised the new plan for improving performance on traditional districting principles and "best represent[ing] Missourians." *Governor Kehoe Signs Missouri First Map Into Law* (Sept. 28, 2025).[2]

Appellants are qualified Missouri voters. *See* D86:P1-2 ¶¶ 1-3. They filed their Petition challenging HB 1 in the Circuit Court of Jackson County at Kansas City on September 12, 2025. *See* D2. The Petition named Secretary of State Denny Hoskins, the Jackson County Board of Election Commissioners, and the Kansas City Board of Election Commissioners as the Defendants. *See* D2:P1-2.

Appellants brought four claims against the 2025 Plan under Article III, Section 45. Count I alleged that Section 45 prohibits mid-decade redistricting; Count II challenged Districts 4 and 5 as insufficiently compact; Count III alleged a violation of the equal-population requirement in Districts 4 and 5; and Count IV alleged a violation of the contiguity requirement in Districts 4 and 5. D2:P39-44. Appellants sought declaratory relief and an injunction prohibiting Defendants from using the 2025 Plan to conduct any congressional election and reverting Missouri to the 2022 Plan. *See* D2:P44-45.

The Missouri Republican State Committee moved to intervene in defense of HB 1 on November 8, 2025. *See* D20. On December 10, the circuit court granted the motion to intervene and consolidated this case with the case brought by the *Healey* Appellants for trial. *See* D34; *see also* SC101570, *Healey v. Missouri*. That same day, the circuit court stayed proceedings on

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[2] Available at https://governor.mo.gov/press-releases/archive/governor-kehoe-signs-missouri-first-map-law.

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Appellants' mid-decade redistricting challenge in Count I because a "similar if not identical" challenge was currently before this Court. *See* D35; *Luther v. Hoskins*, 730 S.W.3d 567 (Mo. banc 2026).

During discovery, the *Wise* and *Healey* Appellants disclosed and produced expert reports from four putative experts. The *Wise* Appellants identified three experts as follows with their respective areas of expertise: Dr. Jonathan Cervas (political science, redistricting, and census data); Dr. John Cromartie (population geography, rural demography, and urban/rural classification); and Dr. Ari Stern (applied and computational mathematics, redistricting, and ensemble analysis). The *Healey* Appellants disclosed one expert witness, Dr. Jonathan Rodden, but failed to offer him as an expert at trial. The State disclosed one expert, Dr. Sean Trende, in the areas of elections, redistricting, political methodology, and redistricting simulations. Intervenor-Respondent disclosed one expert, Dr. M.V. Hood III, in the areas of American politics, redistricting, and quantitative political science. The parties all stipulated, on the record, that each expert witness was an expert in their respective areas of expertise. Tr. 58:14-19 (Cervas); 155:11-14 (Stern); 425:12-15 (Cromartie); 588:9-16 (Trende); 733:1-4 (Hood).

The circuit court heard trial on the merits from February 17-20, 2026. *See* D100-106. Before opening statements, counsel for the State requested general "findings of fact." Tr. 12:16-18. The *Healey* Appellants' counsel "agree[d] on the request for findings of fact." Tr. 12:21-24. Neither the *Wise* nor the *Healey* Appellants' counsel identified any disputed issues of fact for the circuit court to address. Tr. 12-13.

II. THE MISSOURI FIRST MAP FARES BETTER ON STATISTICAL MEASURES OF COMPACTNESS THAN PRIOR MAPS.

At trial, experts on both sides of the case agreed that the Missouri First

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Map is more compact than prior maps on commonly used statistical measures of compactness. Both sides' experts relied upon the Reock measure, which is one of the first statistical measures of compactness ever invented. *See* D108:P6 ¶ 1; Trende Report at 6 (DX 101); Rodden Report at 30 (PX 27); Cervas Report at 7 (PX 23). The Reock measure compares the area of the district to the area of the smallest circle that wholly encompasses the district—also known as the "minimum bounding circle." Trende Report at 6-7 (DX 101); Tr. 593:5-11 (Trende). Both sides' experts also relied upon the Polsby-Popper measure, which calculates the percentage of a circle with the same perimeter as the district that the district would fill. D108:P6 ¶ 2; Cervas Report at 7 (PX 23); Tr. 366:17-21 (Rodden); Tr. 593:24-594:20 (Trende). Even Appellants' experts acknowledged that courts have relied on the Reock and Polsby-Popper measures for "decades," Tr. 68:10-13 (Cervas), and that they are the two measures "that come up most frequently," Tr. 366:17-21 (Rodden); *see also* D108:P6 ¶ 3.

Both sides' experts agreed that the 2025 Missouri First Map is more compact statewide than the 2022 Plan on the Polsby-Popper measure. *See* D108:P6 ¶ 4; Hood Report at 6, 14 (IX 215); Trende Report at 18 (DX 101); *see also* Rodden Report at 30 (PX 27); Cervas Report at 7 (PX 23); Tr. 101:13-16 (Cervas); Tr. 741:23-742:6 (Hood). The 2025 Missouri First Map is also more compact statewide than the 2022 Plan on the Reock measure as calculated by one common redistricting and mapping software, Maptitude. *See* D108:P6 ¶ 5; Hood Report at 5 (IX 215). Every district in the 2025 Plan—including the two challenged districts—is more compact than the least compact district in the 2022 Plan on the Reock and Polsby-Popper measures. *See* D108:P6 ¶ 6; Hood Report at 5 (IX 215); Tr. 102-03 (Cervas). In fact, District 4 is *more* compact on the Polsby-Popper measure in the 2025 Plan than it was in the

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2022 Plan. *See* Hood Report at 5-6 (IX 215); Tr. 101:17-20 (Cervas); Tr. 366:22-25 (Rodden).

As both sides' experts acknowledged, the 2025 Plan also outperforms on statistical measures of compactness the 2012 Plan upheld by this Court in *Pearson II*. *See* Tr. 368:17-24 (Rodden); Tr. 738:1-5, 742:1-6 (Hood). Statewide, the 2025 Plan scores better as a whole on compactness than the 2012 Plan on both the Reock and Polsby-Popper measures. *See* Hood Report at 5-6 (IX 215); Trende Report at 18 (DX 101). Even the two districts Appellants challenge are more compact in the 2025 Plan than the versions of those districts in the constitutionally compact 2012 Plan. *See* Hood Report at 5-6 (IX 215). District 5—which this Court specifically addressed and upheld in the 2012 Plan, *Pearson II*, 367 S.W.3d at 53-57—is more compact on the Polsby-Popper measure and on the Reock measure as calculated by both Maptitude and Dave's Redistricting App, *see* Hood Report at 5-6 (IX 215); *see also* Tr. 738:14-16, 742:18-22 (Hood). District 4 is more compact on the Polsby-Popper measure, has the same Reock score according to Maptitude, and has a minimally lower Reock score (.02) according to Dave's Redistricting App. *See* Hood Report at 5-6 (IX 215). Districts 4 and 5 in the 2025 Plan are each more compact on the Reock and Polsby-Popper measures than the least compact district in the 2012 Plan. Tr. 739:7-15, 741:6-17 (Hood).

III. THE MISSOURI FIRST MAP PRESERVES POLITICAL SUBDIVISIONS.

The evidence at trial confirmed that the General Assembly also pursued—and significantly improved performance compared to the 2022 Plan on—preserving political subdivisions. D108:P8-10. It is undisputed that the 2025 Missouri First Map reduces the number of county splits to 5 counties 7 times, compared to the 9 counties split 10 times in the 2022 Plan. D108:P8

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¶ 27; *see also* Trende Report at 19 (DX 101); Tr. 100:11-20 (Cervas); Tr. 239:22-24 (Stern); Tr. 605:18-24 (Trende). The 4 counties the 2025 Plan makes whole are Camden, Clay, St. Charles, and Warren. *See* HB 1; DX 115 & 116, Trende Report at 20-21 (DX 101); *see also* Tr. 356:13-17 (Rodden).

It is also undisputed that the 2025 Map reduces the number of split municipalities to 13, compared to 31 municipality splits in the 2022 Plan. D108:P9 ¶ 30; *see also* Cervas Report at 7 (PX 23); Hood Report at 11 (IX 215); Tr. 77:25-78:4 (Cervas) (explaining that the 2025 map "does significantly less dividing of municipalities compared to [the] 2022 map"); Tr. 606:14-607:10 (Trende). Statewide, the 2022 Plan split 22 municipalities contained wholly within a single county, while the 2025 Plan splits only 2 such municipalities. *See* D108:P9 ¶ 31; *see also* Hood Report at 11 (IX 215); Tr. 126:23-127:13 (Cervas) (conceding that his report did not chart the number of municipal splits of municipalities that are wholly contained within a single county). The 2025 Plan also reduces the number of split VTDs statewide. D108:P9 ¶ 32; *see also* Hood Report at 12 (IX 215); Cervas Report at 7 (PX 23).

The 2025 Plan even improves performance on traditional principles in the Kansas City and Jackson County areas Appellants focus on. D108:P9. The 2022 Plan split the Clay County portion of Kansas City into Districts 5 and 6, but the 2025 Plan places the entire Clay County portion of Kansas City into District 6. D108:P9 ¶ 33; *see also* Rodden Report at 8, 11 (PX 27). The Clay County portion of Kansas City accounts for approximately 40% of Kansas City's population. D108:P9 ¶ 34; *see also* Tr. 262 (Stern); Tr. 538:18-539:16 (Lucas). The 2025 Plan also fixes all 8 of the 2022 Plan's municipality splits in Jackson County other than the longstanding split of Kansas City, which must be split to comply with the equal-population requirement. D108:P9 ¶ 35; *see also* Trende Report at 24-26 (DX 101); Tr. 99:23-100:3 (Cervas) (conceding

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that the Missouri First Map keeps Independence in a single district); Tr. 378:22-25 (Rodden) (conceding that the 2025 Plan "fixes all the municipal splits in Jackson County other than in Kansas City"). And it respects other political subdivisions in the Kansas City area as well because it "follows the State Senate map through Jackson County almost perfectly." Trende Report at 22; *see also* D108:P9 ¶ 36.

The 2025 Plan, like the 2022 Plan and the 2012 Plan, splits Kansas City and Jackson County into Districts 4, 5, and 6. D108:P9 ¶ 37; *see also* Rodden Report at 8, 11-13 (PX 27); Tr. 356:7-12 (Rodden); Tr. 537:22-538:9 (Lucas). The 2025 Plan draws a district line over a portion of Troost Avenue in Kansas City that is also used as a district line in the State Senate map and the Kansas City Council map. *See* Tr. 526-37 (Lucas); IX 210, 216-220. Unlike prior plans, the 2025 Plan places "the downtown airport, (Charles B. Wheeler MKC), in the Sixth District" whose current representative, Sam Graves, chairs the House Transportation Committee. Trende Report at 27 (DX 101).

The 2025 Plan also places a larger share of the populations of Kansas City and Jackson County in Districts 4 and 6 compared to prior plans. D108:P9 ¶ 40. Accordingly, a substantial portion of the constituencies of the representatives of those districts hails from Kansas City and/or Jackson County. *See* Rodden Report at 8, 11-13 (PX 27); Rodden Rebuttal Report at 11 (PX 28). In fact, Kansas City is the largest municipality by population in Districts 4, 5, and 6, and Jackson County is the largest county by population in Districts 4 and 5. *See* D108:P9 ¶ 41; *see also* Tr. 254-63 (Stern); IX 212 at 766; IX 213 at 820.

Moreover, District 4 was a majority-rural district in the 2022 Plan, but became majority-urban in the 2025 Plan. *See* Cervas Report at 19 (PX 23). Districts 5 and 6 were majority-urban in the 2022 Plan and remain majority-

urban in the 2025 Plan. *Id.* In other words, the 2025 Plan creates a third majority-urban district to represent Kansas City's interests in Congress. The creation of a third majority-urban district in the Kansas City area treats that area on par with the St. Louis area, which also has 3 majority-urban districts (Districts 1, 2, and 3) in the 2022 and 2025 Plans. *See id.* at 19-21.

IV. APPELLANTS' TRIAL EVIDENCE FAILED TO SUPPORT THEIR CLAIMS.

A. APPELLANTS' WITNESSES TESTIFIED THAT THEY WANTED TO PRESERVE URBAN COMMUNITIES OF INTEREST IN KANSAS CITY.

Appellants presented testimony from their experts and several community members at trial. These witnesses conceded that they did not speak with any Missouri legislator or any map drawer about the factors the General Assembly considered in enacting HB 1. D108:P10 ¶ 50; *see, e.g.*, Tr. 94:1-11 (Cervas); Tr. 361:14-362:6 (Rodden). They instead testified about their preference for a map that would place Kansas City's "urban" communities in a single district separate from "rural" communities, even if doing so sacrificed the map's performance on traditional districting principles statewide. *See, e.g.*, Tr. 347-49, 364-66 (Rodden); Tr. 451-53, 459-60, 463-65, 482-83 (Cromartie).

For example, Appellants' expert Dr. Cromartie testified that Kansas City should have a single congressional district because urban and rural communities, including in the area he called "Western Missouri," sometimes have different interests. Tr. 463-65; *see also* D108:P10 ¶ 52. Dr. Cromartie's conclusions were not based on individualized analyses of the counties in the area he defined as "Western Missouri." Tr. 463-65. He did not survey any residents, talk to anyone in the communities, read local newspapers, or individually analyze the specific poverty rates, unemployment rates, or educational attainment of any county in "Western Missouri." Tr. 459-60, 463-

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65. In fact, Dr. Cromartie conceded that he has no experience with redistricting, has never published any articles on redistricting, and is not familiar with traditional redistricting principles such as contiguity and compactness. Tr. 451-53; *see also* D108:P11 ¶ 55. He instead simply classified counties based exclusively on "rural-urban status"—a definition he invented only after Appellants' counsel asked him to do so—and made assumptions about communities in his "Western Missouri" area based on nationwide trends. Cromartie Report at 4 (PX 25); *see also* Tr. 454 (conceding that he had not encountered the term "closely united territory" before this litigation).

Dr. Cromartie conceded that those assumptions may not reflect reality in Western Missouri. D108:P11 ¶ 58. For example, although he characterized rural areas as "disadvantaged," he acknowledged that there are wealthy rural areas, poor urban areas, and rural areas with low employment. Tr. 464:8-466:12. His report and testimony did not account for such differences between specific Missouri counties. Dr. Cromartie also characterized rural and urban counties as "distant" and "disconnected." He agreed, however, that urban and rural communities often *share* common interests. Tr. 466:21-467:5. He did not attempt to identify such common interests. Dr. Cromartie also acknowledged that Kansas City itself has many different communities with different interests, significant economic diversity, and wide income dispersion. Tr. 473:7-474:19; *see also* D108:P11 ¶ 61. In that sense, parts of Kansas City have shared interests with rural counties and defy the binary classification "urban" or "rural." Tr. 473:7-474:19.

The *Healey* Appellants' expert, Dr. Rodden, also proposed a definition of "closely united territory" that distinguished between rural and urban communities of interest. *See, e.g.*, Rodden Report at 1 (PX 27) (suggesting that congressional redistricting should unite areas with "common interests in

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policy"). Dr. Rodden opined that rural communities are separate and distinct from urban communities because they "have common interests or a set of common issues that are important to them." Tr. 365:25-366:8. He proposed a number of factors for identifying "closely united territory" in the form of a community with "common interests," including "population density," "industrial structure," "occupations," and "transit networks." Tr. 330-31, 362, 364; *see also* Rodden Report at 18-28 (PX 27).

For example, his "population density" factor weighed in favor of placing areas of similar population density in the same district and placing areas of dissimilar population densities in different districts. Tr. 362:16-24; Rodden Report at 18-19 (PX 27). Dr. Rodden did not consider whether Missouri legislators might have wanted to unite areas with different population densities in the same district. Tr. 362:20-364:4. He also did not consider whether spreading more of Kansas City's residents into Districts 4 and 6, and creating 3 majority-urban districts in the Kansas City area, might enhance representation of urban interests. Tr. 364:5-16. In fact, Dr. Rodden conceded that he was not aware that Districts 4, 5, and 6 are all majority-urban districts under the Census Bureau's definition. Tr. 363:11-21. He thus did not consider whether the Missouri First Map would result in *better* representation for Kansas City and Jackson County because, compared to prior plans, a substantial portion of the constituencies of 3 representatives now hails from Kansas City and/or Jackson County. Tr. 364:5-16; *see also* D108:P12 ¶ 69.

Dr. Rodden's other factors purported to weigh how Kansas City's transit system, the geographic distribution of renters and homeowners, and the concentration of workers in certain occupations overlap with congressional district boundaries. Tr. 364:21-24; Rodden Report at 20-28 (PX 27). He conceded, however, that this Court did not mention any of these considerations

in *Pearson*. Tr. 364:25-365:6.

Dr. Rodden also relied on a population-based "district sprawl" approach to compactness that he invented for this case, has not been subject to peer review, and has not been accepted by any court. *See* Tr. 369:5-16; Rodden Report at 30-33 (PX 27). He defines "district sprawl" as the distance between the median population center of a district and its furthest geographic extent. Rodden Report at 30-31 (PX 27). In other words, he used this metric to measure how far a district extends from where most of its population resides. Tr. 370:10-12. According to Dr. Rodden, the less "sprawling" a district is, the more compact it is. Tr. 324:23-25. He acknowledged, however, that District 4 somehow became "more sprawling" in the 2025 Plan even though it became geographically smaller compared to the 2022 Plan. Tr. 371:20-25. He also acknowledged that District 6—which Appellants did not challenge—is more sprawling (and, thus, less compact) than District 4 or 5 under this method. Tr. 370:14-371:4.

Appellants' fact witnesses also testified to their preference to keep urban communities of interest in a congressional district separate from rural communities. For example, Terrence Wise testified that he would prefer such a map because it would afford special treatment to issues his community cares about, such as "healthcare and LGBTQ rights[,] Medicaid expansion[,]" and "safe housing." Tr. 39:7-13; *see also* Tr. 43:10-25 (stating that Missouri congressmen representing "rural parts of the state[]" did not support his preferred legislation). Reverend Mindy Fugarino likewise testified that her church is in the "Historical Northeast" community, which has needs such as "renters' rights," "economic development," "affordable healthcare and access," and "resistance of the current tactics of ICE." Tr. 281-84. Appellants' other fact witnesses each echoed this testimony, saying their "concern is that [the

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2025 Plan is] going to divide communities of interest" in Kansas City. Tr. 537:16-21, 548:18-22 (Lucas); *see also* Tr. 147-49 (Bussey); Tr. 393-95 (Anatol); Tr. 406:8-15 (Wright); Tr. 557:9-12, 566:4-23 (Esselman).

B. Appellants' Alternative Maps Were Not Before The Legislature, Do Not Reflect the Principles Used To Create The 2025 Map, And Were Not Offered As A Remedy.

Two of Appellants' experts, Dr. Stern and Dr. Cervas, drew alternative maps. Appellants did not ask the circuit court to adopt any of the alternative maps as a remedy. *See* Tr. 106:12-25 (Cervas). These maps were also not before the General Assembly, so the General Assembly never considered them when it passed HB 1. *See* Tr. 251:9-12 (Stern). Underscoring how divorced these maps were from the legislative process, Appellants' experts conceded that they did not even know, let alone consider, all the factors that the General Assembly weighed in enacting HB 1. Tr. 121:7-17 (Cervas); *see also* Tr. 121-23 (conceding that he did not know what percentage of the General Assembly's choices in the 2025 Plan he retained in his alternative maps).

The alternative maps represent a stark departure from the General Assembly's priorities. *See* D108:P16-17. Several of Dr. Cervas's maps split different counties than the Missouri First Map, including Clay County. Tr. 125:5-15. His maps also split municipalities that the Missouri First Map made whole, including Blue Springs, Claycomo, Greenwood, Independence, Lake Lotawana, Lee's Summit, Pleasant Valley, and Sugar Creek. Tr. 113-15. Dr. Cervas conceded he did not try to minimize, let alone assess, the number of splits of municipalities contained wholly within a single county. Tr. 126:6-127:13.

Dr. Stern used an "ensemble analysis" to generate thousands of plans that the General Assembly never considered to purportedly assess whether the Missouri First Map is a statistical outlier on compactness. *See* D108:P17

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¶ 112; Stern Report at 4, 7-8 (PX 21). Dr. Stern conceded that most of his "ensemble maps allow a ±1% tolerance in population," Stern Report at 20 (PX 21), while some have a "stricter population tolerance of ±.1%," *id.* at 10. He therefore acknowledged that the maps in his ensemble could have a population variance across districts of over 15,000 people. Tr. 245:14-21. Dr. Stern also conceded that he was not aware of the principles the General Assembly used to create the Missouri First Map or how the General Assembly balanced them, so his ensemble could not simulate those principles or that balancing. *See* Tr. 211:9-16 (acknowledging that "counsel advised [him] on which redistricting considerations [he] should look at" in his report); Tr. 227 (offering "no conclusions" about county split improvements from 2022 to 2025). Moreover, Dr. Stern acknowledged that the algorithm he used to generate his ensemble inherently favors compact maps over maps that perform better on other traditional principles. Tr. 221:5-8.

C. APPELLANTS PRESENTED NO EVIDENCE TO SUPPORT THEIR CLAIMS IN COUNTS III AND IV.

Appellants put on no evidence about their claims in Counts III and IV at trial. D108:P18 ¶ 119. No witness testified that the Missouri First Map is not contiguous. D108:P18 ¶ 120. No witness testified that the Missouri First Map does not create districts with equal population. D108:P18 ¶ 121. And no witness testified that any voting tabulation district ("VTD") was double assigned. D108:P18 ¶ 122. Appellants' own expert agreed on the stand that while two different VTDs in Jackson County are named "KC 811," each has a unique GEOID that allows mapping software to assign each separately to the appropriate district, creating districts that are contiguous and equally populated. *See* Tr. 104:1-105:7 (Cervas).

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V. THE CIRCUIT COURT REJECTS APPELLANTS' CLAIMS.

The circuit court entered judgment in favor of Respondents and denying Appellants' claims and requested relief in Counts II-IV on March 12, 2026. The circuit court noted at the threshold that Appellants' "general request[]" for factual findings was "facially deficient" and did "not trigger the . . . duty to make specific findings of fact and conclusions of law under Rule 73.01(c)" because Appellants "did not identify or specify any controverted fact issues." D108:P5. The circuit court nevertheless "made some factual findings it deem[ed] appropriate" and provided "grounds for its decisions under Missouri law." D108:P5. It noted that "[a]ll facts not specifically found in [its] judgment should be interpreted as having been found in accordance with the judgment and decision." D108:P5-6.

A. FACTUAL FINDINGS

The circuit court found that "the 2025 Plan is quantitatively compact statewide." D108:P8 ¶ 26. Citing the statistical measures of compactness used by both sides' experts, the circuit court explained that "the quantitative data persuasively shows that the 2025 Plan performs better statewide than enacted congressional and state legislative maps in many categories." D108:P8 ¶ 25. In particular, the circuit court found Dr. Trende "credible in his assessment that Districts 4, 5, and 6 in the 2025 Plan 'fall within the range of what's been draw[n] in Missouri in fairly recent maps.'" D108:P7 ¶ 15. The circuit court noted that Dr. Trende "has previously been found credible by a Missouri court for his testimony in redistricting practices." D108:P24 (citing *Faatz v. Ashcroft*, 685 S.W.3d 388, 402 (Mo. banc 2024)). The circuit court also found Dr. Hood's testimony "credible and useful" in "finding that the 2025 Plan is not an outlier compared to" prior plans. D108:P14 ¶ 88. The circuit court agreed with Dr. Hood that "compactness scores need to be compared to something with context

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in Missouri redistricting history to evaluate a new plan," making Dr. Hood's comparison against districts in the 2012 and 2022 plans particularly "useful." D108:P14 ¶ 89.

The circuit court further found that the Missouri First Map improves performance on traditional redistricting criteria. The circuit court noted that all of the parties and their experts agreed that the Missouri First Map improves county splits, municipal splits, and VTD splits compared to the 2022 Plan. D108:P8-9. In fact, the circuit court credited Dr. Trende's explanation that the 2025 Plan's 7 county splits "are the practical *minimum* number of county splits in an 8-district map drawn to precisely equal population." D108:P8 ¶ 29 (emphasis added). The circuit court also declined to accept Appellants' characterization of the split of Kansas City as unprecedented. To the contrary, it noted that the 2022 and 2012 maps also split Kansas City into Districts 4, 5, and 6. D108:P9 ¶ 37.

The circuit court addressed the testimony of Appellants' witnesses and found it unprobative and unpersuasive on the issues presented. For example, the circuit court noted Dr. Cromartie's lack of experience with redistricting, and found unpersuasive his attempt to classify counties as "urban" or "rural" based on nationwide trends divorced from Missouri geography and traditional redistricting principles. D108:P11. Because Dr. Cromartie did not tailor his analysis to Missouri, *see* D108:P11 ¶ 54, the circuit court concluded that his assumptions had "no credible explanation" and failed to account for the differences between communities that "defy the binary classification of 'urban' or 'rural,'" D108:P11 ¶¶ 57-61. The circuit court thus gave Dr. Cromartie's conclusions "little weight," finding that his goal of dividing rural and urban communities "amount[s] to [a] policy preference[] best left to the political process" that "ha[s] not been identified as relevant in prior Missouri reviews of

compactness." D108:P12 ¶ 62.

The circuit court also did "not find Dr. Rodden's conclusion, that the 2025 Plan lacks compactness, persuasive." D108:P14 ¶ 84. It explained that his analyses are "without prior use in Missouri courts," including his conflation of compactness with factors that he posited form a community with "common interests" such as transit networks and industrial structure, D108:P12-13 ¶¶ 65, 71-75, as well as his use of a novel, untested district sprawl methodology, D108:P13 ¶ 76. The circuit court concluded that Dr. Rodden's analysis reflected an "implied requirement of homogeneity" in each district, which "is not and should not be a significant factor in the Court's evaluation of the 2025 Plan's compactness." D108:P14 ¶ 84. By contrast, the circuit court found Dr. Rodden's historical maps helpful as they demonstrated that "Kansas City has been split into multiple districts on prior plans," including splits in the Jackson County portion of Kansas City between six consecutive plans from 1935 to 1982. D108:P14 ¶ 86.

The circuit court found that the "policy preferences of [Appellants'] fact witnesses have limited value to" the compactness determination. D108:P15 ¶ 96. The circuit court observed that those witnesses preferred to "keep [their] urban communities of interest in a congressional district separate from rural communities" and keep their "current representation." D108:P14 ¶ 90. But the circuit court noted that these same witnesses acknowledged that the Missouri First Map *united* other communities of interest, such as in the "Northland" of Kansas City. D108:P15 ¶¶ 92-95. The circuit court also found that the lay witnesses' testimony was "speculative" because it relied on incidents that "occurred under the 2022 Plan and" did not explain "how finding the 2025 Plan unconstitutional would affect the existing policy complaints the witnesses raise[d]." D108:P15 ¶ 97. For this reason too, their testimony had

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"little bearing on an objective review of the constitutionality of the 2025 Plan." D108:P15 ¶ 97.

Appellants' alternative maps also had "limit[ed] . . . usefulness in a determination of whether the 2025 Plan is unconstitutional." D108:P17. The circuit court found that those maps failed to account for the factors the General Assembly weighed in enacting the 2025 Plan. D108:P16 ¶ 103. For example, the circuit court noted that Dr. Cervas's maps did not prioritize limiting the number of splits of municipalities contained in a single county and split different municipalities and counties than the Missouri First Map. D108:P16-17 ¶¶ 105-08. His maps thus "produc[ed] absurd results," such as splitting Boone County twice rather than Jackson County twice, "even though Jackson County is more than three times larger." D108:P17 ¶¶ 108-09.

The circuit court found that Dr. Stern's maps were even further afield of the actual redistricting process, since they "d[id] not have strict population requirements" necessary to comply with federal law. D108:P17-18 ¶¶ 113-15, 117. The circuit court also noted that Dr. Stern's algorithm "inherently favors compact maps over maps that perform better on other traditional principles[,]" further "limit[ing] the usefulness" of his maps. D108:P17-18 ¶ 116. Summing up the various defects in Dr. Stern's analysis, the circuit court explained that "[t]he creation of ensemble maps without details (*e.g.*, which municipalities split in the 30 maps with equal population) and control for redistricting principles (no apparent control to avoid splitting municipalities) with a focus on Kansas City only, and a lack of comparison to prior plans (even the 2022 Plan which is what Plaintiffs request remain in place) does little to aid the Court in its evaluation of the 2025 Plan." D108:P18 ¶ 118.

The circuit court found "no evidence at trial established that VTD KC 811 was double assigned in the 2025 Plan." D108:P19 ¶ 132. Instead, each

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VTD 811 assigned to Jackson County "has a unique GEOID, a unique alphanumeric identifier, that allows mapping software to assign each separately to the appropriate district." D108:P18 ¶ 125. The Secretary of State's office "did so when it generated the software file, known as a shapefile, used to implement the 2025 Plan." D108:P18 ¶ 126. The circuit court also found that "[b]oth District 4 and District 5 in the shapefile are contiguous and have equal population." D108:P18 ¶ 128. If there were any doubt, the circuit court found that "[o]ne of the Kansas City Board of Election Commissioners, Shawn Kieffer, credibly explained that it would be *impossible* to assign voters to two different districts." D108:P19 ¶ 131 (emphasis added). Thus, the circuit court concluded that "[t]he Board will assign voters to their respective districts based on the districts in the shapefile." D108:P19 ¶ 131.

B. GROUNDS FOR DECISION

Applying the principle that a redistricting plan "is assumed to be constitutional," the circuit court ruled that Appellants did not meet their heavy burden to "prove that [the Missouri First Map] clearly and undoubtedly contravenes the constitution." D108:P19. The circuit court ruled that Appellants did not prove that the 2025 Plan departs from the principle of compactness. Quite the opposite: the various statistical measures both sides employed "do not suggest any departure from the principle of compactness" because "[t]he 2025 Plan and even the . . . challenged districts compare favorably to predecessor plans, including the constitutionally compact 2012 Plan." D108:P23-24.

Even if Appellants could establish "'a departure from the principle of compactness,'" the circuit court ruled that their compactness challenges would "still fail because they cannot show that any of the challenged districts are not 'as compact . . . as may be' under the circumstances." D108:P25 (quoting

Pearson II, 367 S.W.3d at 48). The circuit court explained that the trial record "is clear" that the 2025 Plan "improved county and municipal splits"—including in Kansas City—and tracks state and local legislative boundaries. D108:P25-26. The circuit court thus concluded that the 2025 Plan "performs within the confines of traditional principles and within the broad legislative discretion in congressional redistricting." D108:P26.

The circuit court ruled that Appellants' witness testimony could not carry Appellants' heavy burden to demonstrate a constitutional violation for several reasons. *First*, the circuit court ruled that Appellants' premise—that a redistricting map must maximize compactness—"is not the standard under Missouri law." D108:P26. "Compactness will never be perfect," the circuit court explained, "because, as the experts agree, a more compact map can generally always be created." D108:P27. Indeed, under Appellants' own premise, the 2022 Plan that they seek as a remedy "did not maximize compactness and would be unconstitutional." D108:P27.

Second, the circuit court ruled that "Plaintiffs . . . conflate the requirement that districts contain 'closely united territory' with their policy preference that districts preserve 'communities of interest' in Kansas City" by dividing rural from urban voters. D108:P27. But Missouri law neither "'recognize[s] . . . maintaining communities of interest'" as a redistricting factor nor "prohibits the General Assembly from" "unit[ing] [rural and urban] areas with *different* population density in the same district." D108:P27 (quoting *Johnson*, 366 S.W.3d at 30). And even if Appellants' communities of interest testimony had some relevance, Appellants would "still fail to meet their burden" because the Missouri First Map "connect[s]" communities of interest in the "Northland" and the circuit court's "role" was not "to decide" which communities of interest to maintain in the same district. D108:P15 ¶ 96; *id.*

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at 28.

Third, the circuit court ruled that "[t]he alternative maps advanced by Plaintiffs do not prove the 2025 Plan is unconstitutional." Those maps were of "limited use," the circuit court explained, because they used "impermissible population variance" and did "not recognize permissible redistricting factors" that can form the basis for a redistricting plan under Missouri law. D108:P29.

The circuit court disposed of Appellants' contiguity and equal population claims in Counts III and IV, ruling that Appellants failed to meet their heavy burden with respect to those counts because the only evidence at trial showed that Districts 4 and 5 in the shapefile used to implement the 2026 election "are contiguous and have equal population." D108:P18 ¶ 128.

C. POST-TRIAL DEVELOPMENTS

After the circuit court issued its order, Appellants voluntarily dismissed Count I of their petition in light of this Court's decision in *Luther v. Hoskins*, D109, requested that the circuit court shorten the 30-day period over which it had control over the final judgment, D111, and filed a notice of appeal, D113. The circuit court granted Appellants' motion on March 20, 2026. D110. This Court denied Appellants' motion to expedite appellate proceedings and consolidate this appeal with the appeal in *Healey v. Missouri*. *See* SC101570. Intervenor-Respondent now files this timely brief.

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POINTS RELIED ON

I. APPELLANTS FAILED TO CARRY THEIR HEAVY BURDEN ON THEIR COMPACTNESS CLAIM.

Mo. Const., art. III, § 45

Faatz v. Ashcroft, 685 S.W.3d 388 (Mo. banc 2024)

Pearson v. Koster, 359 S.W.3d 35 (Mo. banc 2012) (*Pearson I*)

Pearson v. Koster, 367 S.W.3d 36 (Mo. banc 2012) (*Pearson II*)

Johnson v. State, 366 S.W.3d 11 (Mo. banc 2012)

II. APPELLANTS FAILED TO CARRY THEIR HEAVY BURDEN ON THEIR EQUAL-POPULATION AND CONTIGUITY CLAIMS.

Liberty Oil Co. v. Director of Revenue, 813 S.W.2d 296 (Mo. banc 1991)

III. THE COURT SHOULD NOT ORDER ANY CHANGES TO THE GENERAL ASSEMBLY'S DULY ENACTED MAP FOR THE ONGOING 2026 ELECTION.

Abbott v. League of United Latin American Citizens, 607 U.S. ----, 146 S. Ct. 418 (2025)

Purcell v. Gonzalez, 549 U.S. 1 (2006)

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LEGAL STANDARD

Redistricting plans may "be drawn in multiple ways, all of which . . . meet the constitutional requirements." *Pearson I*, 359 S.W.3d at 39. Thus, like any statute, a redistricting plan enacted by the General Assembly "is assumed to be constitutional and will not be held unconstitutional unless the plaintiff proves that it 'clearly and undoubtedly contravene[s] the constitution.'" *Johnson*, 366 S.W.3d at 20 (quoting *Mo. Prosecuting Att'ys v. Barton Cnty.*, 311 S.W.3d 737, 740-41 (Mo. banc 2010)). This Court therefore must uphold a plan "unless it 'plainly and palpably affronts fundamental law embodied in the constitution.'" *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741). Any "'doubts will be resolved in favor of the constitutionality' of the plan." *Id.* (quoting *Barton Cnty.*, 311 S.W.3d at 741); *see also Liberty Oil Co. v. Director of Revenue*, 813 S.W.2d 296, 297 (Mo. banc 1991).

"Plaintiffs at all times have the burden of proving the Map is unconstitutional." *Pearson II*, 367 S.W.3d at 47. Accordingly, "[i]f the trier of fact does not believe" plaintiffs' evidence, "it properly can find for the other party." *White v. Director of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010). "The burden of persuasion and the burden of production never shift to the defendants." *Pearson II*, 367 S.W.3d at 47, 52.

"In addition to the burden of proof, [this Court] also must apply the proper standard of review for the error claimed on appeal." *Id.* at 43. For questions of fact, such as "whether [the challenged] districts are 'as compact . . . *as may be*,'" *Pearson I*, 359 S.W.3d at 40, this Court determines whether substantial evidence supports the judgment or whether the judgment is against the weight of the evidence, *Pearson II*, 367 S.W.3d at 43. In weighing the evidence, this Court will "defer to the trial court's assessment" of any contested factual issues; the "trial court is free to disbelieve any, all, or none of

th[e] evidence," and this Court's "role is not to re-evaluate testimony through its own perspective." *Id.* at 44 (quotations omitted). This Court "will overturn a trial court's judgment under these fact-based standards of review only when [this Court] has a firm belief that the judgment is wrong." *Id.* at 43.

Moreover, in a court-tried case, "[i]t is the parties' duty to specifically request findings of fact and conclusions of law, identifying the issues they wish the court to decide." *Hammons v. Ehney*, 924 S.W.2d 843, 849 (Mo. banc 1996). "Merely submitting proposed findings to aid the court does not trigger the court's duty to make findings of fact and law." *Id.* Appellants did not identify or specify any controverted fact issues. D108:P5. Therefore, "[a]ll fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached." Mo. R. Civ. P. 73.01(c); D108:P5.

This Court reviews questions of law *de novo*. *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006). However, the Court will not reverse any judgment "unless it finds" that the legal error "materially affect[ed] the merits of the action." Mo. R. Civ. P. 84.13(b); *accord* Mo. Rev. St. 512.160(2).

ARGUMENT

I. APPELLANTS FAILED TO CARRY THEIR HEAVY BURDEN ON THEIR COMPACTNESS CHALLENGE.

Section 45 directs that congressional districts "shall be . . . as compact . . . as may be." Mo. Const., art. III, § 45. To date, no Missouri court has held that a congressional district violates that direction. *See, e.g.*, *Pearson II*, 367 S.W.3d at 53-56. Appellants' Count II fails because they did not prove that either the 2025 Plan or any of the challenged districts "clearly and undoubtedly contravene[s]," *Johnson*, 366 S.W.3d at 20 (quotations omitted), Section 45's compactness direction.

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A. Section 45 Recognizes The General Assembly's Broad Discretion In Drawing Compact Districts.

Section 45 directs that congressional districts "shall be composed of contiguous territory *as compact . . . as may be*." Mo. Const., art. III, § 45 (emphasis added). Section 45 does not require the General Assembly to achieve maximum compactness, much less to sacrifice other traditional principles and redistricting goals to increase compactness in one area of the State. "A determination of whether a district fails to satisfy the [compactness] requirement cannot be accomplished solely by inquiring if it is 'compact,' because the modifier 'as may be' alters the meaning of that word." *Pearson II*, 367 S.W.3d at 48 (quotations omitted). In other words, both textual components—"compact" and "as may be"—underscore that the General Assembly wields broad discretion in how it complies with this constitutional direction. *See id.* at 48-49.

The first component, "compact," is "a vague standard" that places only minimal restraint on the General Assembly's redistricting choices. *Id.* at 49. This Court has "reject[ed] the proposition that 'compact' refers solely to physical shape or size" of a district. *Id.* at 48. So while a visual observation of a district's shape is "relevant," it "is not the decisive factor in determining whether a district departs from the principle of compactness." *Id.* at 48-49. Instead, this Court has held that the "vague" term "compactness" refers to "closely united territory," but has left that concept undefined. *Id.*; *see also State ex rel. Barrett v. Hitchcock*, 146 S.W. 40, 61 (Mo. banc 1912).

The second component—"as may be"—further underscores the General Assembly's broad discretion in drawing districts in accordance with this constitutional direction. That component recognizes the practical reality that "compactness . . . cannot be achieved with absolute precision." *Pearson II*, 367 S.W.3d at 49 (quotations omitted). For one thing, "[t]he existence of multiple

districts prevents absolute compactness . . . because the boundary of one district must fit the boundary of another district, all within state territory lines." *Id.*; *see also* Hood Report at 5 (IX 215) (explaining that "increasing the compactness of some districts within a geographically bounded area . . . may cause a diminishment in the compactness scores of surrounding districts").

For another, "[t]he 'as may be' standard also recognizes" that the General Assembly may—and indeed, must—consider and balance "other [ ] factors" when it "draw[s] district boundaries." *Pearson II*, 367 S.W.3d at 49. For example, the General Assembly must draw maps with "contiguous territory" and population equality, Mo. Const., art. III, § 45; *see also Pearson II*, 367 S.W.3d at 48-49, and federal law demands strict compliance with the one-person, one-vote mandate, *see, e.g.*, *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *see also Pearson II*, 367 S.W.3d at 46, 50.

The General Assembly may also consider "other recognized factors that inherently are included within the constitutional standards governing the reapportionment process, although not expressly articulated as a separate requirement in the constitution." *Pearson II*, 367 S.W.3d at 49. Those factors include traditional principles like "population density; natural boundary lines; the boundaries of political subdivisions, including counties, municipalities, and precincts; and the historical boundary lines of prior redistricting maps." *Id.* at 50; *see also Pearson I*, 359 S.W.3d at 39 (recognizing the importance of preservation of "the integrity of the existing lines of [Missouri's] various political subdivisions").

Because redistricting requires the General Assembly to weigh and trade off several competing variables, it is axiomatic that "maps [can] be drawn in multiple ways, all of which might meet the constitutional requirements." *Pearson I*, 359 S.W.3d at 39. "These decisions are political in nature and best

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left to political leaders, not judges." *Id.*; *see also Abrams v. Johnson*, 521 U.S. 74, 101 (1997) ("The task of redistricting is best left to state legislatures, elected by the people and as capable as the courts, if not more so, in balancing the myriad factors and traditions in legitimate districting policies."). That makes perfect sense. The Missouri Constitution charges the General Assembly, not the courts, with making the inevitable policy trade-offs inherent in redistricting. *See* Mo. Const., art. II, § 1; *id.* art. III, § 45.

Thus, the constitutional test of compactness "involves a determination of whether there is a departure from the principle of compactness in the challenged district and, if there are minimal and practical deviations, whether the district is nonetheless 'as compact . . . as may be' under the circumstances." *Pearson II*, 367 S.W.3d at 48. Absent such a showing, this Court "shall respect" and uphold the General Assembly's duly enacted map. *Pearson I*, 359 S.W.3d at 40; *see also Johnson*, 366 S.W.3d at 20.

B. APPELLANTS FAILED TO CARRY THEIR BURDEN TO SHOW THAT THE 2025 PLAN AND THE CHALLENGED DISTRICTS ARE NOT COMPACT.

The circuit court correctly concluded that Appellants failed to carry their heavy burden to prove a compactness violation. Objective data adduced by Appellants themselves buttresses that conclusion. Redistricting experts, including Appellants' experts, employ "various statistical measures . . . in determining compactness." *Pearson II*, 367 S.W.3d at 49. Each of these measures seeks to determine whether a district encompasses "closely united territory." *Id.* To be sure, this Court has declined to adopt a threshold of compactness under any of these measures and has stated that no single measure "alone" can demonstrate a lack of compactness. *Id.* at 49 n.10. But it has also deemed such measures relevant and itself relied on them as part of assessing and rejecting compactness challenges to the 2012 Plan, including a

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challenge to District 5. *See id.* at 49 n.10, 53-57.

As the circuit court found, the Reock and Polsby-Popper measures are reliable metrics of compactness. D108:P6 ¶¶ 1-3; *id.* at 23. Both measures have a long pedigree in redistricting litigation, which is precisely why both Appellants' and Respondents' experts relied upon them. D108:P6 ¶ 3. The 2025 Plan's Reock and Polsby-Popper scores reflect no departure from the principle of compactness. To the contrary, the circuit court found that the 2025 Plan as a whole and even the two challenged districts "compare favorably to predecessor plans, including the constitutionally compact 2012 Plan." *See* D108:P23.

As even Appellants' experts agreed, the 2025 Plan outperforms on compactness the 2012 Plan. D108:P23. Statewide, the 2025 Plan scores better on compactness than the 2012 Plan on both the Reock and Polsby-Popper measures. D108:P23. Moreover, the two challenged districts are each more compact in the 2025 Plan than both their counterparts, and than the least compact district, in the constitutionally compliant 2012 Plan. D108:P23. "The fact that the challenged districts in the 2025 Plan outperform their historical predecessors in a plan that passed constitutional muster provides a strong indication that the 2025 Plan does not 'plainly and palpably' violate the compactness standard." D108:P23-24 (quoting *Johnson*, 366 S.W.3d at 20) (quotations omitted).

In addition, as the circuit court found, the Missouri First Map "is not unusually non-compact compared to the 2022 Plan that Plaintiffs prefer." D108:P24. Both sides' experts agreed at trial that the 2025 Map is *more* compact statewide on both the Polsby-Popper measure and the Reock measure as calculated by Maptitude. *See* D108:P24; *see also id.* at 6 ¶¶ 4-5. The two challenged districts likewise "fall within historical norms," each outperforming

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the least compact district in the 2022 Plan on the Reock and Polsby-Popper measures. D108:P24; *see also id.* at 6 ¶ 6. For these reasons, the circuit court correctly determined that the challenged districts are "within the range of what's been draw[n] in Missouri in fairly recent maps" and that the 2025 Plan "is quantitatively compact statewide." D108:P8.

Appellants offer several arguments in an effort to avoid the circuit court's finding that Districts 4 and 5 are compact, all of which fail. *First*, Appellants argue that the circuit court committed legal error by relying on the statistical measures to evaluate compactness. *See* Opening Br. 58. But of course, Appellants' own experts invoked and endorsed these very measures. D108:P6 ¶ 3; *see also* Tr. 68:10-13 (Cervas); Tr. 366:17-21 (Rodden); Opening Br. 99-100 (continuing to rely on these metrics on appeal). As the trier of fact, the circuit court was entitled to agree with every expert witness who testified that these measures are probative of compactness. The circuit court was likewise entitled to credit the testimony of Dr. Hood and Dr. Trende that the 2025 Map "'fall[s] within the range of what's been draw[n] in Missouri in fairly recent maps.'" D108:P7 ¶ 15. Such reliance provides no reason for this Court to revisit the circuit court's factual determinations. *See Pearson II*, 367 S.W.3d at 43.

Second, Appellants mischaracterize the ruling below when they suggest that the circuit court gave these statistical measures "decisive" weight. *E.g.*, Opening Br. 59 (quotations omitted). The circuit court found statistical comparisons to prior maps "useful," much like this Court in *Pearson II*, but correctly explained that no "threshold" level of compactness exists and "no single measure 'alone' can demonstrate a lack of compactness." D108:P23-24. Moreover, the circuit court considered all of the other record evidence—including Appellants' experts' unprobative testimony and Respondents' experts' "helpful" testimony—before concluding that Appellants "did not carry

their heavy burden." *See* D108:P26-29; *infra* at 39-60.

Third, Appellants also assert that the circuit court erred in pointing to "plan-wide average" compactness scores in the 2025 Plan and predecessor plans. Opening Br. 52-58, 61-62. Yet again, however, Appellants' own experts invoked and endorsed plan-wide scores. *See, e.g.*, Cervas Report at 7 (PX 23). Such scores have obvious relevance to the compactness analysis. As Dr. Hood explained, redistricting inevitably involves tradeoffs; a mapmaker who improves the compactness of one district may, as a necessary consequence, reduce the compactness of a neighboring district. Hood Report at 5 (IX 215). The circuit court's consideration of plan-wide averages simply reflects this common-sense point. But the circuit court never suggested that map-wide averages were the whole ballgame. On the contrary, it devoted considerable attention to the entire record for each challenged district before concluding that each district did not depart from the compactness principle. *See, e.g.*, D108:P23-24.

Fourth, Appellants again misrepresent the circuit court's order when they say it treated "the 2012 districts as a safe harbor." Opening Br. 65. The circuit court did nothing of the sort; it found comparisons to prior maps "useful," not evidence of some kind of safe harbor. D108:P24. Moreover, its conclusion that statistical comparisons to "a plan that passed constitutional muster" were particularly probative and "provide[d] a strong indication that the 2025 Plan does not 'plainly and palpably' violate the compactness standard," D108:P23-24 (quoting *Johnson*, 366 S.W.3d at 20), makes obvious sense. But it did not say those comparisons were determinative; instead, it analyzed the remaining available evidence, including comparisons to other plans, before concluding that Appellants failed to prove that Districts 4 and 5 are not compact. D108:P23-24. That the circuit court after reviewing the full

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record—and based in part on Appellants' own evidence—reached a finding Appellants disfavor warrants this Court's deference, not reversal. *Pearson II*, 367 S.W.3d at 43; *Pearson I*, 359 S.W.3d at 39; *White*, 321 S.W.3d at 307; Mo. R. Civ. P. 73.01(c).

C. APPELLANTS FAILED TO CARRY THEIR HEAVY BURDEN TO PROVE THAT THE CHALLENGED DISTRICTS ARE NOT AS COMPACT AS MAY BE.

Even if Appellants had proved "a departure from the principle of compactness," their compactness challenge still would fail because they did not prove that any of the challenged districts is not "'as compact . . . as may be' under the circumstances." *Pearson II*, 367 S.W.3d at 48. Indeed, the circuit court found that any "deviations" from compactness in the challenged districts are "practical" and justified by the General Assembly's adherence to other requirements and traditional principles in the Missouri First Map. *Id.*; D108:P25.

To begin, the 2025 Plan complies with the requirement of "population equality" under both state and federal law. Mo. Const., art. III, § 45; *see also* D108:P29-30; *Pearson II*, 367 S.W.3d at 46, 49-50; *infra* Part II. For federal law, this means that the 2025 Plan achieves "*precise* mathematical equality," *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969) (emphasis added), of 769,364 persons in 7 districts and one extra person in District 7, *see* Hood Report at 10 (IX 215). The 2025 Plan also complies with the requirement that each district comprise "contiguous territory." Mo. Const., art. III, § 45; *see* D108:P29-30; *infra* Part II.

The General Assembly also pursued—and significantly improved performance compared to the 2022 Plan on—the important traditional principle of respecting "the boundaries of political subdivisions, including counties, municipalities, and precincts." *Pearson II*, 367 S.W.3d at 50; *see also*

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Pearson I, 359 S.W.3d at 40. When compared to the 2022 Plan that Appellants prefer, the Missouri First Map reduced the number of county splits, the number of municipal splits, and the number of split VTDs statewide. *See* D108:P8-9, 25. Statewide, the 2025 Plan has only 7 county splits, the "practical minimum" in an 8-district plan, compared to 10 county splits in the 2022 Plan. Tr. 620:6-621:1. In fact, the Missouri First Map outperforms the 2022 Plan on traditional principles even in the Kansas City area, where it fixed county splits and all 8 municipal splits in Jackson County other than the longstanding split of Kansas City itself, which has existed in every modern congressional map. *See* D108:P9. And the Missouri First Map respects other political subdivisions in Jackson County by tracking the State Senate map almost perfectly. *See* D108:P9 ¶ 36.

Appellants cannot show that any of these choices violated any districting principle the Constitution's compactness direction "implicitly permits" the General Assembly to consider. *Pearson II*, 367 S.W.3d at 50. Quite to the contrary: the General Assembly's preference for a Missouri First Map that better performs on traditional principles and better represents all Missourians—including in Kansas City and Jackson County—over the Kansas City First Map favored by Appellants was well within its broad legislative discretion in congressional redistricting. *See id.* at 48-50; *Pearson I*, 359 S.W.3d at 39-40. The Constitution does not require special treatment of any area of the State, does not freeze Appellants' favored district configuration in place, and does not require the General Assembly to sacrifice performance on traditional districting principles statewide, in Kansas City, or in Jackson County to suit Appellants' preferences. The circuit court properly deferred to the General Assembly's broad redistricting discretion when it found that the 2025 Plan and the challenged Districts 4 and 5 are "as compact . . . as may be"

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in the circumstances. D108:P26. This Court, in turn, is bound to defer to that factual finding. *Pearson II*, 367 S.W.3d at 43; *Pearson I*, 359 S.W.3d at 39; *White*, 321 S.W.3d at 307; Mo. R. Civ. P. 73.01(c).

Once again, Appellants resort to several mischaracterizations of the circuit court's analysis, but none withstands scrutiny. *First*, Appellants miss the point when they accuse the circuit court of "excus[ing] all deviations from compactness" because the 2025 Map improved performance on traditional districting principles, of "ignor[ing]" the requirement that "[m]inimal and practical deviations from compactness are only permitted if they are '*due to*' mandatory and permissive factors," and of failing to spell out why "[any] lack of compactness in CDs 4 and 5 was the result of" traditional districting principles. Opening Br. 84-85 (emphasis added). In the first place, the circuit court excused, ignored, and failed nothing because it found *no* deviations from compactness. D108:P23-24. In all events, the circuit court concluded that had any such deviations existed in District 4 or 5, they would have been "'practical' and *justified by* the General Assembly's adherence to other requirements and traditional principles in the 2025 Plan statewide." D108:P25 (emphasis added); *see also* D108:P22, 26 (explaining that deviations must be "*result of*" traditional factors) (emphasis added). Those are factual determinations made under the correct legal standard warranting the Court's deference and affirmance. *Pearson II*, 367 S.W.3d at 48.

Moreover, to the extent Appellants suggest the circuit court did not adequately justify its conclusions, any fault lies with Appellants, who failed to request factual findings or legal conclusions on that specific issue. *See* D108:P5. The circuit court had no obligation to fill in details that Appellants never requested, *see Hammons*, 924 S.W.2d at 849, especially when it found no compactness violation. If anything, this Court must conclude that the circuit

court found that any deviations from compactness were properly attributable to adherence to traditional principles. *Id.*; Mo. R. Civ. P. 73.01(c). It therefore must reject Appellants' assertion that "the evidence here did not show . . . any causal relationship between the plan-wide improvement . . . and the district-level compactness reductions in CDs 4 or 5." Opening Br. 86 (emphasis omitted).

If more were somehow needed, Appellants ignore that they bear the heavy burden of proof "at all times." *Pearson II*, 367 S.W.3d at 47. Respondents did not have to prove that any deviations resulted from traditional principles; Appellants had to prove that such deviations *did not* result from traditional principles. *Id.* The circuit court explained why Appellants did not meet their heavy burden. It agreed with both sides' experts that the 2025 Plan markedly improved performance on traditional districting principles compared to the 2022 Plan. *See* D108:P25-26. It rejected Dr. Stern's and Dr. Cervas's attempts to explain away those improvements with unprobative alternative maps that created "absurd" results at odds with constitutional requirements and traditional principles. *See, e.g.*, D108:P16-17. And the circuit court properly relied upon Respondents' experts' "helpful" testimony to conclude that Appellants failed to carry their heavy burden. D108:P24.

Second, turning to the circuit court's consideration of "population density," Appellants fault it for "rais[ing] the possibility that 'Missouri legislators might have wanted to unite areas with *different* population density in the same district,'" because, in their view, the "population density" factor referenced in *Pearson* mandates placement of areas of similar densities in the same district. Opening Br. 88-89 (quoting D108:P27). But Appellants do not contest the circuit court's legal conclusion that "[n]o Missouri precedent

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prohibits the General Assembly from making th[e] choice" to unite areas of different population densities in the same district. D108:P27. Instead, Appellants suggest there is "no evidentiary foundation" to support a finding that uniting areas with different density "*motivated*" the General Assembly. Opening Br. 88. If any "evidentiary foundation" of legislative intent were necessary to support the circuit court's decision, Rule 73.01(c) supplies it. But it is not. As Appellants themselves acknowledge, "the subjective intent of the General Assembly is not a permissible consideration in a compactness analysis." Opening Br. 93. The question therefore is not whether the General Assembly *intended to* combine areas of different density, *see Pearson II*, 367 S.W.3d at 46, but whether Appellants proved that the map is not consistent with the operation of a relevant factor the General Assembly had authority to consider and pursue.

They did not. On the contrary, the circuit court found that the 2025 Plan distributes Kansas City's population across Districts 4, 5, and 6, making Kansas City the largest municipality by population in all three districts. D108:P9-10 ¶¶ 41-44. The Missouri First Map also makes Jackson County the largest county by population in both Districts 4 and 5. D108:P10 ¶¶ 45-46. District 4, which was majority-rural under the 2022 Plan, became majority-urban under the 2025 Plan; Districts 5 and 6 remain majority-urban. D108:P10 ¶¶ 47-48. The result is three congressional districts in the Kansas City area, each containing a mix of urban and rural territory and each anchored by a substantial share of Kansas City's population. That configuration is consistent with the consideration of integrating areas of different density within the same districts rather than segregating them—a choice that no Missouri precedent forecloses. And as the circuit court concluded, the General Assembly could have concluded that the 2025 Plan's

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configuration of the three Kansas City-area districts as majority-urban, compared with only two such districts in the 2022 Plan, *better* serves the interests of Kansas City and its residents than the plan Appellants favor. D108:P28.

Appellants claim that a motive of uniting areas with different population densities "would be nothing more than a pretext for partisan advantage." Opening Br. 88. But Appellants themselves do not appear to believe that since they applaud Dr. Cervas for "sensibly combin[ing] areas of varying population density." Opening Br. 89. Indeed, there are legitimate, non-partisan reasons to distribute urban population across multiple districts—including enhancing urban representation by ensuring that multiple members of Congress have majority-urban constituencies with substantial Kansas City populations. D108:P28.

Third, Appellants also suggest that the circuit court erred by considering the Missouri First Map's placement of some congressional district lines on state senate districts and local legislative boundaries because such boundaries are not "among the *exclusive* set of recognized factors" in *Pearson II*. Opening Br. 90-93. But *Pearson II* never purported to enumerate an "exclusive" list of recognized factors that the General Assembly could consider. *Cf. Pearson II*, 367 S.W.3d at 75 (Price, J., dissenting) (noting that the majority did not "identif[y]" all of the factors that "plausibly might justify" a map). Rather, it recognized that the Constitution "implicitly permits" the General Assembly to weigh a variety of factors in its pursuit of compactness and recited a non-exhaustive list of such factors. *Pearson II*, 367 S.W.3d at 50. And for their part, Appellants do not consistently embrace the position that *Pearson II* pronounced an exhaustive list of factors because their version of compactness relies upon factors Appellants' experts conceded are not enumerated in

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Pearson II. *See infra* 48-49.

At any rate, *Pearson II did* enumerate "the boundaries of political subdivisions" as a recognized factor. 367 S.W.3d at 50; *see also Pearson I*, 359 S.W.3d at 40 (recognizing the importance of preservation of "the integrity of the existing lines of our various political subdivisions"). To be sure, this Court said that political subdivisions "includ[e] counties, municipalities, and precincts," *Pearson II*, 367 S.W.3d at 50, but it never said those are the only subdivisions entitled to consideration or that the General Assembly is precluded from pursuing the efficiencies in election administration available from using the same district boundaries in overlapping plans. *See* Tr. 608-11 (Trende).

Even if state and local legislative boundaries do not qualify as a recognized factor, any error would be harmless. *See* Mo. R. Civ. P. 84.13(b); *accord* Mo. Rev. St. 512.160(2). The circuit court noted that state and local legislative boundaries are "less significant than the municipal and county split" considerations and found it "clear" that "the 2025 Plan improved county and municipal splits." D108:P25. Moreover, the circuit court did not credit the alternative map evidence Appellants produced for reasons unrelated to state and local legislative boundaries. *See* D108:P16-17. Regardless of the circuit court's consideration of such boundaries, Appellants did not prove that any district, including District 4 or 5, is not "'as compact . . . as may be' under the circumstances." *Pearson II*, 367 S.W.3d at 48.

D. Appellants' Witnesses Failed To Establish A Constitutional Violation.

Appellants attempted to carry their heavy burden on their compactness claims through the testimony of four expert witnesses and several lay witnesses. The circuit court found that those witnesses failed to present

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credible or probative evidence that satisfied Appellants' demanding burden of proof. D108:P26. On appeal, Appellants cannot overcome the various methodological and legal flaws that the circuit court identified in their expert testimony, much less establish any reversible error in its rejection of that testimony.

At the threshold, Appellants make the baffling assertion that their experts' testimony was "uncontested" at trial. *See, e.g.*, Opening Br. 11, 14, 85-86. That could not be further from the truth. "Evidence is uncontested in a court-tried case when the issue before the trial court involves only stipulated facts" or facts "admitted" through pleadings or individual testimony, and "does not involve resolution by the trial court of contested testimony." *White*, 321 S.W.3d at 308. Far from being "stipulated" or "admitted," the testimony and reports of Appellants' experts were challenged at every stage of the proceedings. Respondents identified the various flaws in those experts' reports in their pretrial statements, *see, e.g.*, D71:P20-27, during their cross-examination of each witness, *see*, *e.g.*, Tr. 119-23 (Cervas); Tr. 219-21, 245-46 (Stern); Tr. 347-49 (Rodden); Tr. 451-53 (Cromartie); *cf. White*, 321 S.W.3d at 308, at closing, *see, e.g.*, Tr. 929-30, and in their posttrial briefs, *see, e.g.*, D97:P11-16, 18-20, 29-38.

In all events, the circuit court committed no error in concluding that Appellants' witness evidence was unprobative, unreliable, and unhelpful. That evidence invoked incorrect formulations of Missouri law, reflected a lack of understanding of Missouri redistricting principles, relied upon the experts' preferred notions of compactness, and exhibited fatal methodological flaws.

a. Section 45 Does Not Require The General Assembly To Maximize Compactness.

The circuit court's first basis for rejecting Appellants' expert testimony

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was those experts' postulation that the General Assembly was required to adopt the most compact map that achieves its other redistricting goals. *See, e.g.*, Cervas Report at 8, 12-16 (PX 23); Stern Report at 4 (PX 21); *see also* D2:P42-43 ¶¶ 200-02. That position is not the law. *See Pearson I*, 359 S.W.3d at 39 (explaining that "maps [can] be drawn in multiple ways" that comport with Section 45); *Pearson II*, 367 S.W.3d at 48-57; *id.* at 55 n.18 (there is no "threshold for determining whether a district is or is not compact"); D108:P26-27. Nor can Appellants seriously contend otherwise, since their own experts' analyses show that their preferred 2022 Plan did not maximize compactness, including compared to their experts' alternative maps. *See* Cervas Report at 7 (PX 23); *see also* Tr. 133:17-134:10 (Cervas) (agreeing that his alternative maps "are more compact than the 2022 plan"); D108:P27.

Moreover, given modern redistricting software, it is possible to draw an infinite number of potential plans. Dr. Stern generated 100,000 maps at the click of a button. *See* Trende Report at 16-17 (DX 101); *see also* Tr. 66:18-23 (Cervas) ("I could've drawn maps every day until today and had, you know . . . hundreds of thousands of maps. There's lots of potential maps out there."). If Section 45 required maximum compactness, then a stable map could never be achieved—"more simulations and exploration will eventually discover a more compact map." Trende Report at 17 (DX 101); *see also* Tr. 597:8-599:4 (Trende).

Appellants' belated attempt to distance themselves from a maximization standard is unavailing. Although they protest that they "have never contended" that Section 45 requires the General Assembly to maximize compactness, Opening Br. 70, their experts' methodology tells a different story. Dr. Cervas and Dr. Stern each generated alternative maps and then used those maps to argue that the enacted plan is constitutionally deficient because their alternatives achieved higher compactness scores. *See* D108:P27; Cervas

Report at 8, 12-16 (PX 23); Stern Report at 4 (PX 21). That is maximization in substance. D108:P26-27.

Nor does rejecting a maximization requirement render the compactness requirement "unenforceable." Opening Br. 70. Section 45 prohibits plans whose districts both depart from compactness and do so to a degree that cannot be justified by the application of other recognized redistricting factors. What it does not do is condemn an otherwise lawful plan simply because an expert with modern software can generate an alternative map that scores marginally higher on a compactness metric. *See Pearson II*, 367 S.W.3d at 55 n.18. The circuit court understood the law and correctly declined to adopt Appellants' experts' maximization standard.

b. Appellants' Witnesses Were Unfamiliar With Missouri Redistricting Principles And The Redistricting Process.

The circuit court's second basis for rejecting Appellants' experts' testimony was their lack of familiarity with redistricting in Missouri. As the circuit court recounted, *none* of Appellants' experts discussed the 2025 Plan with any member of the General Assembly. Appellants thus do not dispute that their experts "d[id] not know which traditional factors the General Assembly considered, how it balanced those various factors, which trade-offs it made among them, and how it decided to make those trade-offs." D108:P27; Opening Br. 94; *see also Pearson II*, 367 S.W.3d at 48-57; Tr. 94:1-11 (Cervas) (conceding he did not interview legislators or review the legislative history); Tr. 227:4-16 (Stern) (conceding he "didn't analyze" county or municipal split improvements from 2022 to 2025); Tr. 364:10-12 (Rodden) ("I don't have any knowledge of how legislators may have thought about the cost[s] and benefits of the districts.").

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In fact, Appellants' experts did not even look into whether their views regarding compactness and traditional principles reflect the views of "any Missouri legislator" or map drawer. *See* Tr. 121:11-13 (Cervas) (conceding that the General Assembly "may have had other goals" he was not aware of); Tr. 210-11 (Stern) (stating that he considered the factors that "counsel advised [him]" to); Tr. 365:3-6 (Rodden) (acknowledging he does not "know whether any member of the General Assembly believes" the factors he identified "b[ear] on the definition of closely united territory"); Tr. 482-83 (Cromartie) (conceding he is "not familiar" with traditional redistricting principles). Their various analyses therefore cannot control for or replicate the policy-laden, political, and discretionary judgments the Constitution entrusts to the General Assembly and that the General Assembly, in turn, made throughout the legislative process. *See, e.g.*, *Pearson II*, 367 S.W.3d at 48-57.

Appellants appear to think that *Pearson I* and *II* required the circuit court to ignore their experts' lack of familiarity with the legislative process. Opening Br. 94-97. Not so. As the circuit court recognized, it is essential to any meaningful expert analysis of the 2025 Map to assess the General Assembly's priorities in enacting that Map and be steeped in Missouri redistricting principles. *See Pearson II*, 367 S.W.3d at 49; D108:P27. Indeed, only by controlling for those factors could expert evidence or alternative maps supply a baseline for determining whether the challenged District 4 or District 5 departed from the principle of compactness or were not as compact as may be in the circumstances. *See* D108:P16 ¶¶ 103-04; *id.* at 27.

Absent such controls, Appellants offered analyses and alternative maps that are not useful comparators to the 2025 Plan—including especially their alternative maps that the General Assembly would have rejected for reasons having nothing to do with compactness. The circuit court identified this precise

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deficiency when it found that Dr. Cervas created "absurd" maps, including one that split Cooper County rather than splitting Jackson County twice, "even though Jackson County is more than 40 times larger and has been split in every congressional district plan for decades." D108:P17 ¶ 108. In similar fashion, the circuit court found that because Dr. Cromartie relied on nationwide statistics rather than familiarity with Missouri redistricting principles, he evaluated the 2025 Map based on an area he called "Western Missouri" that had no "credible explanation." D108:P11 ¶ 57. Likewise, the circuit court found that Dr. Stern did not even attempt to control for redistricting principles, betraying a fatal lack of familiarity with them. D108:P18. Experts who do not understand how these factors operate in Missouri—who create "absurd" county splits, invent geographic regions, or ignore redistricting principles altogether—cannot supply evidence sufficient to carry Appellants' heavy burden to establish a constitutional violation.

This does not mean—and the circuit court never suggested—that Appellants' experts had to divine the subjective motivations of individual legislators. *See Pearson I*, 359 S.W.3d at 39. The relevant question, after all, is not whether the General Assembly "made an honest and good faith effort" to comply with the compactness principle in drawing the districts. *Id.* But to make an objective assessment of the 2025 Map, Appellants' experts had to at least be aware of and control for the General Assembly's priorities and considerations in drawing it, as well as of the realistic possibilities that Missouri redistricting principles would permit the General Assembly to adopt. *Pearson I* and *II* nowhere suggest, much less establish, the contrary. Missouri law *prohibits*, rather than permits, the circuit court from burying its head in the sand at the evidence that Appellants' experts' analyses and alternative maps were not probative of the question presented.

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c. Appellants' Witnesses Invoked Their Own Notions Of Compactness, Which Lack A Basis In Missouri Law.

The circuit court's third criticism of Appellants' experts is that they invoked their own notions of compactness, traditional districting principles, and the law. D108:P26-29. Appellants' experts perhaps took this step, at least in part, because they were unable to replicate the General Assembly's priorities and discretionary decision-making. *See supra* 42-44. In any event, Appellants' witnesses' notions of compactness either lacked a basis in, or directly contravened, Missouri law.

First, Dr. Cervas's analysis is tainted by his erroneous premise that Missouri law requires any deviations from compactness to be "necessary to comply" with other redistricting principles. Cervas Report at 2 (PX 23); *compare Pearson II*, 367 S.W.3d at 48-57. Dr. Cervas agreed on the stand that he "may have asked different questions" or "reached a different conclusion" if he had the correct "understanding of Missouri law." Tr. 120:11-13. And he acknowledged that deviations from compactness in the 2022 Plan also were not "necessary to comply" with the equal population rule, the contiguity requirement, or other recognized factors. Tr. 132:10-14.

Appellants double down on the necessity standard, citing *Faatz* for the proposition that deviations from compactness are permissible only when "necessary to comply with other constitutional requirements." Opening Br. 67, 84-86 (citing *Faatz*, 685 S.W.3d at 404). But *Faatz* was applying the wholly separate constitutional provision applicable to state legislative redistricting, Article III, Section 3, rather than Section 45's directive for congressional redistricting. *See* 685 S.W.3d at 404. State legislative redistricting is conducted by commissions rather than the General Assembly and, thus, does not implicate the General Assembly's plenary authority to legislate except where expressly limited by the Constitution. *See Luther*, 730 S.W.3d at 573;

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State ex rel. Teichman v. Carnahan, 357 S.W.3d 601, 607 (Mo. banc 2012). Moreover, Section 3 commands the commission to follow a prescribed hierarchy of redistricting principles "in order of priority" when it draws state legislative plans. *See* Mo. Const. art. III, § 3. A necessity standard makes perfect sense in that context, where *Faatz* was adjudicating whether the commission had properly adhered to that "priority" in pursuing the mandates of equal population, minimizing political subdivision splits, and drawing compact districts. *See* 685 S.W.3d at 394, 404-05; *see also id.* at 404 (explaining that county "splits were often necessary to achieve population equality").

Faatz's necessity standard, however, is of no moment to congressional redistricting conducted by the General Assembly. As this Court already has made clear, there is no "necessity" requirement when the General Assembly weighs and pursues various factors against compactness. There are only "permissive" considerations within Section 45's "as compact . . . as may be" provision, and the balancing of all such factors is a "political" judgment entrusted to the General Assembly, not the judiciary or Appellants' experts. *See Pearson II*, 367 S.W.3d at 50; *Pearson I*, 359 S.W.3d at 39; *Johnson*, 366 S.W.3d at 28; *see also Luther*, 730 S.W.3d at 573.

Indeed, if strict necessity were the standard, the "permissive" factors the Constitution authorizes the General Assembly to consider in congressional redistricting would be a nullity. After all, any deviation from compactness can never be "necessary" to comply with a "permissive" consideration the General Assembly was not obligated to pursue in the first place. A necessity standard therefore would devolve into the very compactness-maximization regime the Court has already rejected. *See Pearson II*, 367 S.W.3d at 48-57; *Pearson I*, 359 S.W.3d at 39. Thus, it is unsurprising that the operative standard this Court has actually articulated asks whether deviations from compactness are

"due to" or "result[] from" permissive factors, *Pearson II*, 367 S.W.3d at 51, 53, or, in other words, whether recognized factors "affect" the district boundary, *Johnson*, 366 S.W.3d at 31. By instructing their experts otherwise, Appellants ensured that their analyses never engaged with the legal standard this Court actually applies, rendering those analyses incapable of proving that the General Assembly's choices violated the compactness mandate.

Second, Appellants and their witnesses conflate the Court's description of compactness as composed of "closely united territory" with their policy preference that districts preserve "communities of interest" in Kansas City. *See* D2:P13 ¶ 55 ("The 2022 Map's configuration of CD 5 respects the area's communities of interest."). But "Missouri law 'does not recognize . . . maintaining communities of interest' as a factor for the General Assembly to consider when redistricting." D108:P27 (quoting *Johnson*, 366 S.W.3d at 30). "The General Assembly therefore could *not* have pursued Plaintiffs' preferred policy of placing urban communities of interest" or *any* communities of interest, in Kansas City or otherwise, "in the same congressional district." D108:P27.

This error infected the testimony of Appellants' lay witnesses, which is why the circuit court (correctly) concluded that testimony has no relevance or probative value here. D108:P14-15. Each of those witnesses' testimony almost exclusively recited that they live in "communities" that share certain "interests" they believe the General Assembly should unite in a single district separate from rural communities. Tr. 147-49 (Bussey); *see also* Tr. 39:7-13, 43:10-25 (Wise); Tr. 281-84 (Fugarino); Tr. 393-95 (Anatol); Tr. 406:8-15 (Wright); Tr. 557:9-12, 566:4-23 (Esselman); Tr. 537:16-21, 548:18-22 (Lucas) (testifying that his "concern is [that the 2025 Plan is] going to divide communities of interest" in Kansas City).

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For their part, Dr. Cromartie and Dr. Rodden also offered only legally irrelevant communities of interest analyses. Dr. Cromartie acknowledged he is "not familiar with traditional redistricting principles[,] . . . the principle of contiguity[,] . . . or the principle of compactness." Tr. 483:7-14. He had never encountered the term "closely united territory" before this litigation. Tr. 453:23-454:17. Rather than apply recognized standards, Dr. Cromartie devised his own metric based on "the shared needs of communities that have been defined by [their shared] demographic history" that preordained his conclusion that rural and urban communities have different "interests" and therefore should be placed in different districts. Tr. 428:1-4, 473; *see also* D73:P12 (arguing that Kansas City is a "cohesive urban territory, distinct from outlying rural areas").

But as the circuit court found, this approach reflects nothing more than Dr. Cromartie's personal preference. D108:P12 ¶ 62. In fact, Dr. Cromartie himself acknowledged that "urban and rural areas can share a common interest." Tr. 467:2-5. And he "didn't draw any conclusions" about when it would be "appropriate[]" to "combin[e] rural and metro areas." Tr. 478:21-24. That value judgment, of course, belongs to the General Assembly, not Appellants' experts. *Pearson I*, 359 S.W.3d at 39.

Dr. Rodden likewise treated compactness as coterminous with uniting communities of interest as he defined them. In particular, he identified various factors that help "examine[] whether the district is composed of communities sharing common interest[s]," including population density, transit networks, rates of home ownership, and occupations and industrial sectors. Tr. 348:2-9, 364:21-24; *see also* Rodden Report at 18-22 (PX 27). But, with the exception of population density, *see supra* at 36-38, none of the factors Dr. Rodden evaluated are included in what Appellants label "the list of exclusive

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recognized factors" in *Pearson II*, Opening Br. 88—as Dr. Rodden himself conceded. *See* D108:P13 ¶¶ 71-75; Tr. 364-65. Dr. Rodden further conceded that he does not know whether any legislator or map drawer considered any of his preferred factors, Tr. 348-49, 361, that his preferred factors are not an exclusive definition of "closely united territory," and that Missouri legislators and courts could adopt a different definition entirely, Tr. 348:10-20, 365:3-6.

Dr. Rodden also asserted that the 2025 Plan's spreading of more Kansas City residents into Districts 4 and 6 "might . . . undermine[]" representation of Kansas City's interests, Rodden Report at 23 (PX 27), but never considered whether it might in fact *enhance* representation of those interests, *see* Tr. 364:5-16; D108:P12 ¶¶ 67-68. He did not consider, and the circuit court found it "possible," D108:P28, that the General Assembly could have reasonably concluded that creating three majority-urban districts in Kansas City would have enhanced Kansas City's representation. Tr. 364:5-16.

Appellants concede that *Johnson* held that "maintaining communities of interest" is not a recognized factor in Missouri redistricting law. Opening Br. 82 (quoting 366 S.W.3d at 30). They attempt to blaze a detour around that holding by suggesting that *Johnson*'s holding is limited to the question whether deviations from closely united territory are justified by recognized factors, but does not reach the question whether a district is composed of "closely united territory" in the first instance. Opening Br. 82-83. That rejoinder fails for several reasons.

For one, it is inconsistent with *Johnson* itself, which says in no uncertain terms that preserving "communities of interest" is not among the "factors [that] are inherently included within the constitutional standards governing the reapportionment process." 366 S.W.3d at 27-30. Given that the compactness standard is "a single inquiry" based on the "totality of the evidence," *Pearson*

II, 367 S.W.3d at 48, *Johnson*'s exclusion of communities of interest from those standards cannot be cabined to one component of the compactness inquiry.

Appellants' contrary argument makes no sense. They say that *Pearson II* defines "closely united territory" to *require* keeping communities of interest together. Opening Br. 82-83. Yet they contend that *Johnson*, which this Court issued the same day as *Pearson II*, *prohibits* justifying a variance from closely united territory by pointing out that the enacted map kept communities of interest together. *Id.* This Court did not impose that obvious asymmetry.

For another thing, interjecting communities of interest analysis into judicial review of compactness would erode the deference this Court affords the General Assembly in redistricting. *Pearson I* recognizes that "redistricting is predominantly a political question" involving "a number of sensitive considerations," and that "maps could be drawn in multiple ways, all of which might meet the constitutional requirements." 359 S.W.3d at 39. If "closely united territory" required courts to evaluate whether districts sufficiently unite communities of interest, *see* Opening Br. 37-39, then courts would have to decide which communities the General Assembly should have prioritized, which it was free to disregard, and how it should have traded off uniting or dividing competing communities. This is exactly the sort of policy-laden inquiry that *Pearson I* and *II* rejected.

Nor is there any limiting principle. Virtually any redistricting plan could be attacked by identifying shared interests among people who were placed in different districts, and virtually any plan could be justified by identifying shared traits among people who were combined. If anything, which interest groups to unite and which to divide are precisely the sort of "sensitive considerations" that *Pearson I* recognized are "political in nature and best left to political leaders, not judges." 359 S.W.3d at 39.

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Moreover, Appellants' reliance on *Pearson II*'s observation that the 2012 version of District 5 could have been "drawn in consideration of the legitimate factor of keeping a greater portion of Kansas City" in the same district, 367 S.W.3d at 56; Opening Br. 80, undermines their position. That passage addressed whether recognized factors—specifically, the boundaries of political subdivisions—could explain the configuration of District 5. *See Pearson II*, 367 S.W.3d at 56. "Kansas City" thus referred to the municipality as a political subdivision, not to the wide-ranging interests of some subset of its residents. *See id.* (noting that "district 5 divided certain political subdivisions" but "maintained the boundary lines of other subdivisions"). Appellants' attempt to read a communities-of-interest test into a passage about political subdivision boundaries reveals what their position ultimately requires: that this Court treat "communities of interest" as a recognized factor in the compactness analysis. But *Johnson* held that it is not.

Finally, in all events, even if communities of interest are a factor under Missouri law, Appellants still failed to meet their heavy burden because the circuit court found that the 2025 Plan connects communities of interest. D108:P28. As the circuit court explained, Appellants' witnesses "largely ignore[d] the fact that the 2025 Plan replaces a significant split of the 'Northland,'" which the circuit court found was a "community of interest" based on Appellants' own witnesses' testimony. D108:P28. The circuit court also found that the 2025 Plan connects communities of interest by "resolv[ing] splits of Claycomo, Pleasant Valley, Sugar Creek, Blue Springs, Lake Lotawana, Lee's Summit, and Independence." D108:P28. Appellants, by contrast, split several of these communities in their proposed maps. *See* D108:P16 ¶ 106. Thus, at any rate, Appellants' communities of interest approach cannot prove

that the Missouri First Plan "clearly and undoubtedly contravene[s] the constitution." *Johnson*, 366 S.W.3d at 20.

d. Appellants' Experts Relied Upon Unproven Methodologies.

The circuit court's final basis for rejecting Appellants' experts' analysis was their reliance upon unproven—and, in at least one instance, *disproven*—methodologies. D108:P28-29. Dr. Rodden invoked a "district sprawl" methodology that he invented for this case, has not been subject to peer review, and has not been accepted by any court. D108:P28; *id.* at 13 ¶ 76. The circuit court correctly determined that this methodology has "little value in comparison to the historically recognized compactness metrics." D108:P28. Appellants do not contend that the circuit court erred by rejecting Dr. Rodden's methodology. And, in fact, Appellants' own litigation choices confirm the metric's insignificance: they did not challenge District 6, which is more "sprawling" (and thus less compact) than Districts 4 and 5 under Dr. Rodden's methodology. Tr. 370:14-371:4.

Dr. Stern, meanwhile, used an "ensemble analysis" to generate thousands of alternative plans he thought were probative of whether the 2025 Plan is a statistical outlier on compactness compared to a hypothetical sample of plans. *See* Stern Report at 4, 7-8 (PX 21); *see also* D108:P17-18. But the U.S. Supreme Court has rejected precisely this type of ensemble analysis in two recent cases because it is "flawed in its fundamentals," *Allen v. Milligan*, 599 U.S. 1, 35 (2023), and "has no probative force," *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 33 (2024).

In fact, Dr. Stern's ensemble analysis is unprobative even under Appellants' own construction of this Court's caselaw. Appellants note that this Court rejected the plaintiffs' alternative map evidence in *Johnson* because it "failed to account for federal law and other recognized factors" and was

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"deemed analytically incomplete because it did not account for the full range of recognized factors." Opening Br. 68-69; *see also Johnson*, 366 S.W.3d at 32-33.

Dr. Stern's analysis exhibits precisely those same flaws. At the threshold, the algorithm Dr. Stern used to generate his ensemble is flawed because it inherently favors compact maps. *See* D108:P17-18 ¶ 116. Dr. Stern claimed he "did not introduce any artificial parameters or constraints that would cause the ensemble to prefer or require certain types of maps" and that "no compactness conditions were imposed to steer the algorithm toward compact maps." Stern Report at 10 (PX 21). But he agreed on the stand that the algorithm necessarily and unavoidably "prioritize[s] compactness, upweight[s] compactness" because those priorities are "baked into the mathematical calculation." Tr. 221:5-15; *see also* Trende Report at 29 (DX 101) (quotations omitted). Because the baseline for Dr. Stern's ensemble was rigged to favor compactness, his comparison of ensemble maps to the 2025 Plan proves nothing, except that the 2025 Plan was drawn by a General Assembly applying other traditional redistricting criteria rather than by an algorithm with a compactness priority "baked in[]." Trende Report at 29 (DX 101); *see also* Tr. 614:16-617:10 (Trende).

That is not the only way in which Dr. Stern failed to "accurately represent[] the districting process in" Missouri, *Milligan*, 599 U.S. at 34, and "failed to account for . . . recognized factors," Opening Br. 68. Dr. Stern conceded that he did not consider or weigh all of the factors the General Assembly used to create the 2025 Plan or how the General Assembly balanced them, so his ensemble could not simulate those principles or that balancing. Tr. 211:9-16 (acknowledging that "[c]ounsel advised [him] on which redistricting considerations [he] should look at in [his] report"); Tr. 214:8-16

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(conceding he did not examine "the preservation of political subdivisions such as counties and cities for any boundary line in the Missouri First Map outside of the boundary separating CD4 and CD5"). Accordingly, it is impossible to say which of Dr. Stern's maps—if any—satisfied the General Assembly's criteria. That alone made his opinion of "limited use," D108:P29; *see also Milligan*, 599 U.S. at 34; *Alexander*, 602 U.S. at 24-25, 33, and "analytically incomplete," Opening Br. 69.

Dr. Stern's analysis suffers from an additional flaw. Virtually every map in his ensemble is unconstitutional and, thus, never would—or could—have been enacted by the General Assembly. As Dr. Stern explained, his maps allow a ±1% deviation in total population and, accordingly, could have a variance of over 15,000 people across districts. D108:P17 ¶ 114. They therefore would violate the equal-population requirement of "*precise* mathematical equality" the U.S. Constitution demands for congressional plans. *Kirkpatrick*, 394 U.S. at 530-31 (emphasis added). The entire premise of Dr. Stern's "ensemble analysis" is to see "where [the 2025 Plan] ranks among the measurements of the ensemble maps" with respect to compactness. Stern Report at 7-8 (PX 21). But because the ensemble maps could never have been constitutionally enacted and were drawn to different parameters than the 2025 Plan, the circuit court reasonably concluded that any comparison between those maps and the 2025 Plan was of "limit[ed] . . . utility." D108:P18 ¶ 117; *see also Milligan*, 599 U.S. at 34. Appellants proved nothing by comparing a constitutional 2025 Plan drawn to precise equality with unconstitutional maps drawn to a looser concept of equality. *See, e.g.*, D108:P18 ¶ 117; *see also Milligan*, 599 U.S. at 34; *Alexander*, 602 U.S. at 33; Opening Br. 68 (failure "to account for federal law" renders alternative map unprobative).

Appellants tried to cure this defect by having Dr. Cervas correct the population inequality in Dr. Stern's plans. *See* Opening Br. 74 n.16. Appellants assert that those corrections show that "Dr. Stern's simulated maps can be readily adjusted to balance population without affecting their compactness properties." *Id.* To the contrary, Dr. Cervas's alternative maps further expose the flaws in Dr. Stern's report. Dr. Cervas managed to correct only *three* of Dr. Stern's plans. *See* Cervas Report at 24 (PX 23). That undermines the stated premise of ensemble analysis, which is to assess where the Missouri First Map ranks among "*tens of thousands*" of computer-generated configurations. *See* D73:P2. If Dr. Cervas could not adjust the vast majority of ensemble maps to meet a fundamental constitutional mandate, then the ensemble itself is useless as a benchmark for evaluating the 2025 Plan.

Making matters worse, Dr. Cervas's three alternative maps also fail to uphold the General Assembly's permissible policy preferences in the 2025 Plan. Two split more counties than the 2025 Plan; two split Cass County, which the 2025 Plan keeps whole; and one splits more municipalities than the 2025 Plan. *See* Cervas Report at 24, 39-41 (PX 23); PX 68. Dr. Cervas's lack of "control for redistricting principles" only underscores why the circuit court found that the alternative maps did "little to aid" its evaluation of the 2025 Plan. D108:P18 ¶ 118; *see also* Opening Br. 68 ("fail[ure] to account for … recognized factors" renders alternative map unprobative).

Dr. Cervas, in fact, recognized that his alternative maps did not replicate all of the General Assembly's permissible choices in drawing the 2025 Plan. He claimed in his rebuttal report that his plans retained only "82% of the choices the General Assembly made in 2025." D108:P16 ¶ 104. But on cross-examination, he "admitted this percentage referred to the General Assembly's

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choices in 2022, not 2025," that on his approach the General Assembly retained in the 2025 Plan only 76.9% of the choices it had made in the 2022 Plan, and that he "did not know what percentage of the General Assembly's choices in the 2025 Plan he retained in his alternative maps." D108:P16 ¶ 104; Cervas Report at 7 (PX 23); Tr. 123:5-8. In any event, there is no dispute that he did not retain 100% of the General Assembly's permissible choices, so his alternative maps are unprobative and unhelpful, as the circuit court concluded.

Moreover, at any rate, Appellants' alternative maps do not prove the Missouri First Map is unconstitutional. Appellants' reliance on these alternative maps again rests on the flawed legal premises that the General Assembly was required to maximize compactness and that any deviation from compactness must be "necessary" to comply with traditional redistricting principles. Opening Br. 94. No such requirements exist in Missouri law. *See supra* at 45-47; *see also Pearson I*, 359 S.W.3d at 39 (explaining that "maps [can] be drawn in multiple ways" that comport with Section 45); *compare* Cervas Report at 2 (PX 23).

More fundamentally, the alternative maps are beside the point because Appellants do not seek any of these alternatives as a remedy. Instead, they seek reversion to the 2022 Plan. *See* Opening Br. 107. The relevant question, therefore, is not whether some hypothetical alternative might score marginally better on compactness metrics, but whether the Constitution requires this Court to replace the 2025 Plan enacted by the General Assembly with the 2022 Plan favored by Appellants. For the reasons explained, the answer is no.

Appellants' various attempts to rehabilitate their alternative map evidence and to conjure legal error in the circuit court's rejection of it uniformly fail. *First*, Appellants' attempt to excuse the equal-population flaw in Dr. Stern's ensemble analysis falls flat. Appellants point out that use of a ±1% or

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±0.1% population deviation parameter is "standard" academic practice, Opening Br. 31, and that State Respondents' expert, Dr. Trende, used that same parameter in *Faatz*, *id.* at 73. Of course, "standard" academic practice is not law. *Faatz*, moreover, is inapposite. For one thing, it never purported to evaluate, let alone approve of, ensemble analysis or any population deviation parameter. Instead, this Court applied a deferential substantial-evidence standard of review to the circuit court's factual findings and concluded that the record as a whole—which included, among other evidence, testimony from Dr. Trende—supported the circuit court's judgment. *See Faatz*, 685 S.W.3d at 404-05.

For another thing, *Faatz* addressed state legislative redistricting, which is *not* subject to the precise mathematical equality standard that governs congressional redistricting. *Kirkpatrick*, 394 U.S. at 530-31. Rather, total population deviations of up to 10% (*i.e.*, ±5%) in state legislative plans are presumptively constitutional under the U.S. Constitution, *see Brown v. Thomson*, 462 U.S. 835, 842 (1983), and deviations of up to 1% are constitutional in Missouri, *see* Mo. Const. art. III, § 3(b)(1). Thus, while courts may believe that a properly construed ensemble analysis that controls for all relevant factors and uses a 1% (or lower) population deviation parameter may be instructive in the state legislative districting context, that parameter alone removes any probative value of ensemble analysis in the congressional redistricting context here, *see Kirkpatrick*, 394 U.S. at 530-31.

Second, nothing in this Court's caselaw recognizing that proper alternative map evidence may be probative in appropriate contexts, *see* Opening Br. 68-69 (discussing *Johnson* and *Faatz*), required the circuit court to credit the flawed alternative map evidence Appellants proffered here. Thus, Appellants' suggestion that the circuit court committed legal error because

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"[t]here is no evidence more probative of whether a district is as compact as may be than maps illustrating what feasible possibilities 'may be,'" fails. Opening Br. 68. Those are Appellants' words, not this Court's—and they only underscore Appellants' failures. As the circuit court found, Appellants failed to submit *feasible* alternative maps that the General Assembly could have enacted. Instead, the circuit court found that Appellants' alternative maps were *infeasible* because, among other glaring defects, they fail to equalize population, *see* D108:P17 ¶ 114, produce "absurd" county splits, D108:P17 ¶ 108, and do not reflect the General Assembly's priorities, D108:P17 ¶ 115; *see also* Opening Br. 68 (failure "to account for federal law and other recognized factors" renders alternative map unprobative). In other words, Appellants failed to submit what they label the most probative evidence of whether a district is as compact as may be. Far from demonstrating legal error by the circuit court, the record confirms the circuit court's conclusion that Appellants did not meet their heavy burden.

Third, Appellants' suggestion that the circuit court committed legal error by "disregard[ing] [their] alternative map evidence," Opening Br. 67, misstates the record. The circuit court did no such thing. It devoted considerable attention to Appellants' maps, *see* D108:P16-18, 26-27, but gave them little weight because they lacked essential "details," did not "control for redistricting principles," "focus[ed] on Kansas City only," and "lack[ed] . . . comparison[s] to prior plans," D108:P18 ¶¶ 117-18. The circuit court was entitled to disbelieve Appellants' evidence—in fact, it was required to *reject* it for failing to account for "federal law and other recognized factors," *Johnson*, 366 S.W.3d at 32-33; Opening Br. 68-69—and this Court will not revisit that evidence "through its own perspective." *Pearson II*, 367 S.W.3d at 44 (quotations omitted).

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Fourth, Appellants say it was legally erroneous for the circuit court to explain that the "standard under Missouri law" is not whether "'*better* maps' could have been drawn from Plaintiffs' perspective." Opening Br. 67. But the circuit court's analysis is precisely right. The question under Missouri law is not whether Appellants think better maps could be drawn, or whether they produced alternative maps that they prefer. *Pearson II*, 367 S.W.3d at 48. Alternative maps are probative only if they control for "federal law and other recognized factors," *Johnson*, 366 S.W.3d at 32-33, not if a plaintiff views them as "better"—particularly when such alternative maps never could have been lawfully enacted. Opening Br. 67.

Fifth, Appellants suggest the "relevant standard" is "'not burdensome on the plaintiff' . . . because a plaintiff '*needs only to submit maps* or other evidence . . . show[ing] that [recognized factors] were not a basis for the district boundary.'" Opening Br. 68 (quoting *Johnson*, 366 S.W.3d at 31). But Appellants quote selectively. In full, *Johnson* establishes that a plaintiff must "present evidence that greater . . . compactness is feasible," along with proving "that federal laws or other recognized factors did not affect the district boundary." 366 S.W.3d at 30-31. The "not burdensome" language describes *the manner* of making the second showing (the burden of *production*)—maps or other evidence will suffice—not the substance of the overall burden of *proof*, which remains that a plan "is assumed to be constitutional and will not be held unconstitutional unless the plaintiff proves that it clearly and undoubtedly contravenes the constitution." *Id.* at 20 (quotations omitted). At any rate, the circuit court found that Appellants *did not* submit maps that proved the recognized factors were not a basis for the district boundary. *See* D108:P18 ¶ 118. In fact, the circuit court found that the recognized factors *justified* the

district boundary. *See* D108:P25-26. That dooms Appellants' claims even under the portion of *Johnson* they prefer.

Sixth, Appellants argue the circuit court committed legal error by finding it relevant that many of Dr. Cervas's maps outperform the 2022 Plan on compactness metrics. Opening Br. 76-77; D108:P17 ¶ 110. Of course that comparison is relevant. Appellants seek reversion to the 2022 Plan, meaning they think that Plan is "as compact . . . as may be." Yet that Plan would flunk their own experts' compactness analysis. Those facts demonstrate that Dr. Cervas's analysis is either wrong or applies a standard stricter than what the Constitution demands—because if his methodology were sound and his standard were correct, it would call into question the very plan Appellants ask this Court to reinstate. The circuit court did not err in identifying Appellants' internal contradiction and concluding that Dr. Cervas's alternative maps "should not be the threshold for finding the 2025 Plan unconstitutional." D108:P17 ¶ 111.

Finally, Appellants also fault the circuit court for supposedly "ignor[ing]" Cervas Maps 1 through 4, which left all districts other than CDs 4 and 5 unchanged. Opening Br. 77-78. Rule 73.01(c) prevents this argument from getting any traction by instructing this Court to fill any evidentiary "gaps" in the circuit court's order. Moreover, the circuit court did address the deficiencies pervading *all* of Dr. Cervas's maps—specifically, that they did not reflect the General Assembly's priorities and produced "absurd" results. D108:P16-17. That reasoning applies with full force to Cervas Maps 1 to 4.

E. Appellants' Weight-of-the-Evidence Challenge Fails.

Appellants' final claimed point of error on their compactness challenge asks this Court to reweigh the circuit court's credibility and evidentiary determinations. *See* Opening Br. 97-101. Yet this point of error consists

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merely of cross-references to Appellants' prior arguments and does not meaningfully grapple with the significant deference owed to the circuit court's assessment of the evidence, which only compounds their already heavy burden. *See supra* at 25-26. Appellants come nowhere near producing a "firm belief that the judgment is wrong." *Pearson II*, 367 S.W.3d at 43.

At the outset, Appellants recycle their argument that the circuit court relied "exclusive[ly]" on statistical measures of compactness and say "there is no favorable evidence in the record to support" a factual finding that neither CD4 nor CD5 departed from compactness. Opening Br. 99. This argument fails on several levels. *First*, as already noted, the circuit court did not rely exclusively on statistical measures of compactness. *See supra* at 31-32. *Second*, Appellants' suggestion that there is "no favorable evidence" in the record ignores that they introduced statistical measures of compactness and the circuit court found that those measures indicate the Missouri First Map is compact. *See supra* at 29-31. *Third*, because the burden of proof rests exclusively on Appellants, Respondents did not need to produce "any [favorable] evidence" to prevail. *White*, 321 S.W.3d at 305 (quotations omitted). Respondents did so anyway, producing two experts who testified that the 2025 Plan improves compactness and compliance with recognized factors, both of whom the circuit court credited. *See supra* at 17. That evidence supports a finding that the 2025 Plan is as compact as may be.

Appellants cite a scattershot of facts that do not make a dent in the circuit court's well-supported finding that Appellants did not carry their heavy burden. Opening Br. 99-100. Ironically, Appellants rely principally on the same "shape-based measure[s]" that they elsewhere say do not constitute "favorable evidence," with their main thrust that Districts 4 and 5 "declined" on certain measures compared to the 2022 Plan they prefer. *Id.* at 100. But

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nothing in Missouri law freezes the 2022 Plan in place. *See Liberty Oil*, 813 S.W.2d at 297. Indeed, the circuit court found the 2012 map to be the more relevant comparison because this Court upheld that map. D108:P23-24. In addition, the circuit court found that the 2025 Plan is more compact than the 2022 Plan in several respects, with each challenged district "outperforming the least compact district in the 2022 Plan on the Reock and Polsby-Popper measures" and the 2025 Plan outperforming the 2022 Plan on the whole. D108:P24.

Appellants also briefly mention their expert testimony regarding their preference to separate urban Kansas City from "sparsely populated rural areas." Opening Br. 100. As the circuit court ruled, however, these witnesses failed to present credible or probative evidence that satisfied Appellants' burden of proof in demonstrating that the Missouri First Map "clearly and undoubtedly" contravenes the constitution. Specifically, the circuit court gave "little weight" to Dr. Cromartie's testimony, D108:P12 ¶ 62, did not find Dr. Rodden's testimony "persuasive," D108:P14 ¶ 84, labeled Dr. Cervas's results "absurd" and his maps of "limit[ed] . . . usefulness," D108:P17 ¶¶ 108, 110, and explained that Dr. Stern's ensemble analysis "does little to aid the Court in its evaluation of the 2025 Plan," D108:P18 ¶ 118. The circuit court also found that Appellants' fact witnesses merely testified to their "policy preferences," which have "little bearing on an objective review of the constitutionality of the 2025 Plan." D108:P15 ¶¶ 96-97.

The circuit court was "free to disbelieve [all] of" Appellants' testimony and this Court will not "re-evaluate [that] testimony through its own perspective." *White*, 321 S.W.3d at 308-09. Moreover, factual issues on which the circuit court made no findings are considered as having been found in accordance with the judgment below. *See* Mo. R. Civ. P. 73.01(c); *Hammons*,

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924 S.W.2d at 849; *see also supra* at 26. These principles leave Appellants with no evidence to rely upon—apart from a visual inspection of the map and the aforementioned compactness scores that they now disclaim—to meet their heavy burden on appeal to prove a constitutional violation. *Pearson II*, 367 S.W.3d at 43. That dooms their weight-of-the-evidence challenge.

Appellants again betray their disregard for their heavy burden by asserting that "there is no substantial evidence in the record supporting a finding that CDs 4 and 5 are 'as compact . . . as may be.'" Opening Br. 102. But again, Respondents did not have to prove that the districts are "as compact . . . as may be," and the circuit court was not required to make any such affirmative finding. *Pearson II*, 367 S.W.3d at 47, 52. The sole question is whether Appellants proved that the 2025 Plan "clearly and undoubtedly" violates the compactness standard. *Johnson*, 366 S.W.3d at 20. Substantial evidence supports the circuit court's determination that they did not. As set forth above, the circuit court disbelieved Appellants' testimony while crediting Respondents' testimony that the 2025 Plan improved compactness and adhered to recognized factors. And, if that were not enough, all missing factual premises must be resolved in accordance with the judgment. Mo. R. Civ. P. 73.01(c). Appellants did not meet their heavy burden. The Court should affirm.

II. APPELLANTS FAILED TO CARRY THEIR HEAVY BURDEN ON THEIR EQUAL-POPULATION AND CONTIGUITY CLAIMS.

Appellants put on no evidence to support their equal-population and contiguity claims, which rested on their allegation that HB 1 placed a single "KC 811" VTD in both Districts 4 and 5. D108:P18 ¶ 119; *id.* at 30. For good reason. The circuit court found that there are two VTDs called "KC 811," and each has a unique GEOID that allowed the Secretary of State to assign each

separately to the appropriate district in the shapefile. *See* D108:P18 ¶ 125; *id.* at 30. The circuit court agreed with Appellants' own expert that "the VTDs are separate," and found "no credible basis in the evidence to believe that the Board Defendants will misapply the new map." D108:P30. Appellants do not dispute that Districts 4 and 5 of the shapefile comply with the equal-population and contiguity requirements. *See* D86:P12 ¶¶ 90-95.

Appellants nevertheless contend that the circuit court's findings were irrelevant because HB 1 "unambiguously" assigns both VTDs to both districts by using the designation "KC 811" twice. Opening Br. 103-07. But the use of a shared designation does not make HB 1 *unambiguous*; it makes it *ambiguous*. The text presents two possible readings: Appellants'—that both VTDs must be "assigned to the same district," Opening Br. 105, creating a constitutional defect—or the straightforward alternative assigning one to District 4 and the other to District 5, creating equi-populous and contiguous districts. Appellants themselves admit which reading this Court must adopt. *See* Opening Br. 104. Where doubt exists as to the construction of a statute, "[d]eference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by any reasonable construction of" that statute. *Liberty Oil*, 813 S.W.2d at 297; *see also Luther*, 730 S.W.3d at 571.

Although Appellants could have attempted to produce evidence that their resolution of the ambiguity was somehow the only "reasonable construction," they did no such thing. And, in fact, the trial evidence confirmed that assigning each VTD separately to the appropriate district is not only reasonable, but also the construction every relevant state official has already adopted. This is what the circuit court meant when it found "no credible basis in the evidence to believe that the Board Defendants will misapply the new

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map." D108:P30. The circuit court was not, as Appellants suggest, ignoring the statutory text. It was recognizing that every piece of evidence in the record points to the constitutional construction. Appellants offered nothing to rebut that conclusion. They accordingly failed to carry their heavy burden on Counts III and IV.

III. THE COURT SHOULD NOT ORDER ANY CHANGES TO THE GENERAL ASSEMBLY'S DULY ENACTED MAP FOR THE ONGOING 2026 ELECTION.

In all events, this Court should not order any changes to the General Assembly's duly enacted map for the ongoing 2026 election. Candidate filing under the 2025 Plan commenced on February 24, 2026. Candidates have already filed to run, and have begun campaigning, in the 2025 districts. *See* Missouri Secretary of State, UNOFFICIAL Candidate Filing, 2026 Primary Election.[3] And, as even Appellants admit, steps to implement the 2025 Plan began on April 21. Opening Br. 108. Any judicially ordered changes to the map at this late juncture would harm candidates preparing for the upcoming primary elections, "result in voter confusion and consequent incentive to remain away from the polls," and erode the "[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy." *Purcell*, 549 U.S. at 4-5.

Indeed, the U.S. Supreme Court recently stayed a three-judge federal district court's order enjoining use of Texas's 2025 congressional redistricting plan and requiring the State to revert to its 2022 plan. *Abbott v. League of United Latin American Citizens*, 607 U.S. ----, 146 S. Ct. 418, 419 (2025). The district court issued its injunction shortly after the opening of candidate filing, approximately four months before the primary elections, and eleven months

[3] Available at https://s1.sos.mo.gov/candidatesonweb/.

before the November 2026 general election. *See League of United Latin Am. Citizens v. Abbott*, 809 F. Supp. 502 (W.D. Tex. 2025). The U.S. Supreme Court issued the stay because the district court had "improperly inserted itself into an active primary campaign, causing much confusion" with its late-breaking injunction. *Abbott*, 146 S. Ct. at 419; *see Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir. 2022) (per curiam), *stay issued sub nom.*, *Ardoin v. Robinson*, 142 S. Ct. 2892, 2892-93 (June 28, 2022) (staying injunction of congressional redistricting plan issued five months before primary elections); *Callais v. Landry*, 732 F. Supp. 3d 574, 613-14 (W.D. La. Apr. 30, 2024), *stay issued sub nom.*, *Robinson v. Callais*, 144 S. Ct. 1171 (May 15, 2024) (staying injunction of congressional redistricting plan issued more than six months before the next election).

It is a "basic tenet of election law" that "[w]hen an election is close at hand, the rules of the road should be clear and settled." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (mem.) (Kavanaugh, J., concurring). "[L]ate-breaking, court-ordered rule changes can 'result in voter confusion and consequent incentive to remain away from the polls,' and thus undermine the '[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy.'" *Bost v. Ill. State Bd. of Elections*, 607 U.S. ----, 146 S. Ct. 513, 521 (2026) (quoting *Purcell*, 549 U.S. at 4-5); *see also Abbott*, 146 S. Ct. at 419. After all, "running a statewide election is a complicated endeavor," involving "a host of difficult decisions about how best to structure and conduct the election." *Democratic Nat'l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). And those decisions must then be communicated to the "state and local officials" tasked with implementing them, who in turn "must communicate to voters how, when, and where they may cast their ballots through in-person voting on election day,

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absentee voting, or early voting." *Id.* When a "court alters election laws near an election," *id.*, candidates, voters, and even officials are left scrambling to understand the court-imposed alteration, "inviting confusion and chaos and eroding public confidence in electoral outcomes," *id.* at 30 (Gorsuch, J., concurring).

These considerations counsel judicial restraint and deference to the democratic process on the eve of an election. The General Assembly is responsible for redrawing the State's congressional districts. *See* Mo. Const., art. III, § 45; U.S. Const. art. I, § 4, cl. 1; *see also Ariz. State Legis. v. Ariz. Ind. Redistricting Comm'n*, 576 U.S. 787, 808 (2015). This allocation makes practical sense. Legislatures "enjoy far greater resources for research and factfinding" than courts, and "make policy and bring to bear the collective wisdom of the whole people when they do, while courts dispense the judgment of only a single person or a handful." *Democratic Nat'l Comm.*, 141 S. Ct. at 29 (Gorsuch, J., concurring). "It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a . . . court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent." *Id.* at 31 (Kavanaugh, J., concurring).

This case presents the exact scenario *Purcell* was designed to prevent. Candidates have already filed for election in the 2025 version of the districts and local election officials have begun implementing the 2025 Plan. Those candidates and officials—as well as the voters, campaigns, political parties, and volunteers who support them—are thus actively preparing for and working toward the July 8 voter registration deadline and the August 4 primary election. *See* Missouri Secretary of State, 2026 Missouri Election

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Calendar.[4]

Invalidating HB 1 at this juncture or even later would cause severe disruption. Candidates would find themselves running in redrawn districts against different opponents, potentially including incumbents or challengers they never anticipated facing. Support cultivated among volunteers and voters, and endorsements painstakingly secured from local officials and community leaders, might carry little weight, become useless, or even become liabilities among a new electorate. In short, candidates and their supporters would be forced to mount an entirely "new and different campaign in a short time frame." *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006) (quotations omitted). And voters would find themselves in new districts, facing confusion about which district they reside in and confronting unfamiliar candidates. *See Bost*, 146 S. Ct. at 521; *see also Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (explaining that "even heroic efforts likely would not be enough to avoid chaos and confusion"). Meanwhile local election officials would have "to reverse course"—in Appellants' own words—on implementing the 2025 Plan. Opening Br. 108. Appellants dispute none of this and in fact propose "adjust[ing the] election timelines," a tacit acknowledgment that judicial intervention would impose chaos at this late stage. *See* Opening Br. 108 n.26.

Appellants opine that neither federal nor state law requires congressional candidates to reside in the district from which they seek election. *See* Opening Br. 109. This argument is a red herring. Because the U.S. Constitution requires congressional representatives to be residents of the *State*, but not the *district*, they seek to represent, *see* U.S. Const. art. I, § 2, cl. 2 (Qualifications Clause), federal and state law could *never* require

[4] Available at https://www.sos.mo.gov/elections/calendar/2026cal.

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congressional representatives or candidates to be residents of the district they seek to represent, *see Cook v. Gralike*, 531 U.S. 510, 513 (2001) (federal and state law may not add qualifications for congressional representatives beyond those prescribed in the Qualifications Clause). The absence of a federal or state district-residency requirement therefore has no bearing on the *Purcell* analysis. *See, e.g.*, *Abbott*, 146 S. Ct. at 419 (staying lower court injunction against congressional districting plan without considering lack of district-residency requirement). And, as the unrefuted trial testimony shows, candidates have a strong interest in knowing the lines of the districts in which they seek election because those lines determine who their voters, opponents, and constituencies are. *See* Tr. 686-87 (Kieffer); *see also* Tr. 913-14.

This Court should follow the settled approach of the United States Supreme Court and decline to order any changes to the General Assembly's duly enacted map in the few months before the upcoming primary elections. *See Abbott*, 146 S. Ct. at 419; *Ardoin*, 142 S. Ct. at 2892-93. Such an injunction would "lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). To "protec[t] the State's interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election," *Democratic Nat'l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring), this Court should decline to order any changes to HB 1 for the 2026 election.

CONCLUSION

The Court should affirm the circuit court's judgment.

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a copy of Intervenor-Respondent's brief was filed by the Court's electronic filing system on May 5, 2026, for service electronically on all counsel of record. This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 20,318, excluding the cover, table of contents, table of authorities, signature block, and this certificate. The font is Century Schoolbook 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

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