SC101570

IN THE SUPREME COURT OF MISSOURI

ELIZABETH HEALEY, et al.,

Appellants,

v.

STATE OF MISSOURI, et al.,

Respondents.

From the Circuit Court of Jackson County, Missouri
The Honorable Adam L. Caine, Circuit Judge

APPELLANTS' REPLY BRIEF

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INTRODUCTION

The fundamental question in this case is whether the compactness requirement enshrined in article III, section 45 of the Missouri Constitution and interpreted by this Court in *Pearson v. Koster*, 367 S.W.3d 36 (Mo. banc 2012) ("*Pearson II*"), has any teeth. If so, then District 5 is as clear a violation of compactness as could be imagined. Appellants presented exactly the types of evidence contemplated by this Court in *Pearson II* and *Johnson v. State*, 366 S.W.3d 11 (Mo. banc 2012), demonstrating that the 2025 Plan transformed a small, visually compact urban district that united areas of similar population density, demographics, and representational needs into a historically unprecedented monstrosity that carves out a third of Kansas City and spans fifteen counties across the state. There is no dimension on which District 5—or any of the challenged districts—comprise closely united territory. These deviations from compactness are extreme and—as demonstrated by the undisputably lawful 2022 Plan—do not result from compliance with any recognized redistricting factors.

Respondents' only hope is to nullify the compactness standard altogether. They contend that deference to lower courts and the legislature renders this Court powerless to evaluate the districts' compliance with the Missouri Constitution; that the *Pearson II* standard is so flexible as to impose no restraint on legislative will; and that election calendars freeze in place an unlawful map. But contrary to Respondents' attempts to whittle away at the constitutional standard, Missouri courts "must uphold the mandatory language of the constitution," *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012) ("*Pearson I*"). Accordingly, this Court must reject Respondents' invitation to "abandon[] its constitutional

duty to be the final arbiter as to what the law is in Missouri," *Pearson II*, 367 S.W.3d at 55 n.19.

"The purpose of" section 45's mandatory compactness requirement is "to guard . . . against a legislative evil, commonly known as 'gerrymander,'" by curbing the ability of lawmakers to carve up populations and political subdivisions in nonsensical and haphazard ways that undermine the right "of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Pearson I*, 359 S.W.3d at 38-39. But the 2025 Plan does just that: it carves up Kansas City—and a century's worth of Missouri redistricting tradition—not in service of any mandatory or permissible redistricting criteria, but in service of raw legislative power. Whatever the extent of its legislative redistricting authority, the General Assembly has no power to violate the Missouri Constitution.

The circuit court committed a series of legal errors in holding otherwise. This Court should reverse the circuit court's judgment and enter judgment for Appellants.

ARGUMENT

I. Deference standards do not nullify this Court's authority to review constitutional challenges to redistricting plans.

State and Intervenor Respondents anchor their case in "two levels of deference," State Br. 1, Int. Br. 1—deference to the circuit court's factual findings and deference to the General Assembly's role in redistricting. By Respondents' logic, these deference standards render the circuit court's conclusion effectively unreviewable. But neither displaces this Court's authority to review challenged redistricting plans and ensure lower courts have properly interpreted and applied the law.

A. This Court defers to the circuit court on factual findings, not on the application of law to facts.

Attempting to insulate the circuit court's opinion from any meaningful judicial review, Respondents characterize nearly the entirety of the order as a factual finding. Int. Br. 16-19, 29, 33-34; State Br. 16, 21-22, 33, 48-49, 52-53. But this Court must "segregate the parts of the issue that are dependent on factual determinations from those that are dependent on legal determinations." *Pearson II*, 367 S.W.3d at 44. Reviewing courts defer to the lower court's factual findings "so long as they are supported by competent, substantial evidence, but will review de novo the application of the law to those facts." *Id.* Questions of law are likewise reviewed "independently, without deference." *Id.* (quotation omitted).

The meaning of section 45 "is a question of law to which de novo review applies." *Id*. at 47. This Court has already defined the constitutional compactness requirement to require districts be composed of "closely united territory with practical and minimal deviations from compactness resulting from application of recognized factors." *Id.* at 55. Any application of section 45 that does not comport with this articulation of the law is not entitled to deference and is wrong as a matter of law. Accordingly, no deference is afforded to an application that does not assess whether a district comprises closely united territory, App. Br. Point Relied On ("Point") I, II, III; does not consider whether deviations are more than practical or minimal, *id.* Point IV; or does not examine whether deviations result from recognized factors, *id.* Point V, VII. Nor does the circuit court have discretion to flatly contradict the constitutional standard by crediting hypothetical justifications deemed "not

relevant" under the governing legal standard. *Id.* Point VI; *Faatz v. Ashcroft*, 685 S.W.3d 388, 406 (Mo. banc 2024); *see also infra* I.B.

In fact, *none* of Appellants' Points Relied On turn on the validity of the circuit court's findings of fact. Appellants do not dispute the "Statistical Measures of Compactness" calculated by the parties' experts, D31 pp.6-8 ¶¶ 1-26; App 6-8 ¶¶ 1-26.[1] Rather, they maintain the circuit court erred in relying *solely* on those statistical measures to evaluate compactness deviations (Point I), and in prioritizing statewide measures to elide deviations in the challenged districts (Point II). *See* D31 pp.23-24; App 23-24 (stating that "the 2025 Plan is not unusually non-compact compared to the 2022 Plan"). Similarly, Appellants do not challenge the circuit court's findings of fact as to "County and Municipality Splits," D31 pp.8-10 ¶¶ 27-48; App 8-10 ¶¶ 27-48. Instead, they challenge the court's decision to expand the list of permissive factors and its reliance on statewide splits to justify specific districts' compactness deviations (Point V). Nor do Appellants challenge the circuit court's factual findings related to Plaintiffs' undisputed evidence showing the challenged districts violate closely united territory; rather, they challenge the circuit court's erroneous *dismissal* of that evidence as "legally irrelevant" (Point III). D31 p.27-28; App 27-28.[2] Likewise, the circuit court erred as a matter of law in proceeding to

[1] The circuit court did commit a factual error in its "Grounds for Decision" by stating that "the three districts Plaintiffs challenge are more compact in the 2025 Plan than the previous versions of those districts." D31 p.23; App 23. Experts on both sides agreed that District 5 in the 2025 Plan scores worse on every measure of compactness as compared to District 5 in the 2022 Plan. *See* IX215 tbls. 3-4; Tr. 602:3-6; 675:17-22. Notably, that erroneous statement is not found in the circuit court's "Findings of Fact."

[2] Contrary to Respondents' contentions, Int. Br. 38, 58-59, State Br. 20, 51-52, Appellants do not challenge any of the circuit court's credibility determinations, as the court never

consider the mandatory and permissive justifications *without* determining that the compactness deviations were both "minimal *and* practical," (Point IV). *Compare* D31 p.25; App 25, *with Pearson II*, 367 S.W.3d at 53. And finally, Appellants do not dispute the circuit court's findings of fact that their experts and lay witnesses did not "consider wh[at] Missouri legislators might have wanted," or "speak with any Missouri legislator," D31 pp.10 ¶ 50, 12 ¶ 67; App 10 ¶ 50, 12 ¶ 67. They instead contend such evidence is wholly divorced from this Court's legal standard (Points VI, VII).

Indeed, the only "findings of fact" that Appellants dispute are those that are more properly characterized as legal conclusions, or reimagined versions of what the compactness legal standard should be. *See, e.g.*, D31 ¶ 84, App 14 (stating that "homogeneity is not and should not be a significant factor in the Court's evaluation of . . . compactness"), D31 ¶¶ 110-11, App 17 (concluding that Appellants' "alternative maps should not be the threshold for finding the 2025 Plan unconstitutional" because they had higher numerical compactness scores than the 2022 Plan). Even Appellants' dispute as to the circuit court's ultimate determination on District 5 turns not on disputed factual findings but on the court's erroneous weighing of the evidence stemming from the cascade of legal errors outlined above, which resulted in the court wholly ignoring categories of legally relevant evidence in favor of irrelevant or legally insufficient evidence (Point VIII). In short, this Court need not revisit or unwind the circuit court's factual findings to exercise

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found Appellants' expert Dr. Rodden or any of the fact witnesses' testimony to lack credibility; instead it erroneously *dismissed* that evidence as "legally irrelevant," D31 p.27-28; App 27-28, contrary to the "totality of the evidence" standard, *Pearson II*, 367 S.W.3d at 48.

its authority to "apply[] de novo review in determining how the law applies to those facts." *Pearson II*, 367 S.W.3d at 44.

The circuit court's compactness analysis is not a black box that receives unconditional deference. To the contrary, this Court has provided extensive instruction on how to apply section 45, and it is this Court's right and obligation to independently review "the propriety of the trial court's construction and application of the law," *id.* at 43, 47-51. When a trial court misapplies that law, "[t]his Court [cannot] simply defer to the trial court, an expert, or anyone else as to [those] legal questions without abandoning its constitutional duty to be the final arbiter as to what the law is in Missouri." *Id.* at 55 n.19. The Court should reject Respondents' invitation to do so here.

B. This Court has authority to enforce section 45's mandatory restraint on the General Assembly.

"[T]here is no discretion to violate mandatory provisions of the Constitution." *Preisler v. Doherty*, 284 S.W.2d 427, 435 (Mo. banc 1955). Yet Respondents would have legislative discretion override section 45's mandatory compactness requirement—and this Court's authority to enforce it. Intervenor Respondent claims, for example, that section 45 places "only minimal restraint" on the General Assembly, Int. Br. 25, while State Respondents shrug it off as a "somewhat vague" standard whose primary utility is to free legislatures from having to craft a "perfect map," State Br. 1; *see also id.* at 47 (arguing the Court's definition of compactness as closely united territory emphasizes that "absolute precision is not required"). According to Respondents, the constitutional compactness requirement imposes no requirement at all. The Court should reject this interpretation.

The compactness requirement "show[s] conclusively that it was not the intention of the framers of the Constitution to confer upon the Legislature the unlimited power and discretion to form the districts in such shapes and dimensions as it might, in its own opinion, deem proper." *State ex rel. Barrett v. Hitchcock*, 146 S.W. 40, 54 (Mo. 1912). Instead, "[c]ourts have jurisdiction and authority to pass upon the validity of legislative acts apportioning the state . . . and to declare them invalid for failure to observe non-discretionary limitations imposed by the Constitution." *Pearson I*, 359 S.W.3d at 39. Because the compactness requirement is "mandatory and objective, not subjective," *id.* at 40, the circuit court's repeated efforts to elevate legislative preferences constitute legal error. *See* D31 pp.20-21, 27-29; App 20-21, 27-29; *see also* App. Br. Point VI.

Respondents compound this error in their defense of the order below. Prior to trial, Respondents insisted that the General Assembly's intent in enacting the 2025 Plan was "irrelevant." Wise D87 pp.12-13. But they now change their tune to echo the circuit court in exalting legislative intent above all else. *E.g.*, Int. Br. 10-12, 41-43 (faulting Appellants' experts for not speaking with members of the General Assembly); State Br. 27 (claiming Appellants' experts should have "consider[ed] all the factors that the General Assembly weighed in enacting the 2025 Plan"). Intervenor Respondent goes so far as to argue that "it is *essential* . . . to assess the General Assembly's priorities in enacting th[e] Map" and that "only by controlling for those factors could expert evidence or alternative maps supply a baseline for determining whether the challenged [districts] departed from the principle of compactness or were not as compact as may be in the circumstances." Int. Br. 42; *id.* at 56-

57 (claiming Appellants' alternative maps are "feasible" only if they "reflect the General Assembly's priorities").

This approach flatly contradicts this Court's clear instruction that a constitutional compactness challenge "require[es] no proof of [] subjective intent." *Johnson*, 366 S.W.3d at 30; *see also Faatz*, 685 S.W.3d at 406 (the legislature's "deliberations, thought processes, or other potential redistricting maps considered *are not relevant* in determining whether [a map] violates the constitution"). Applying Respondents' newly-preferred "subjective test to a mandatory constitutional duty" is "troublesome," particularly where General Assembly members' "respective motives may be several and divergent." *Pearson I*, 359 S.W.3d at 39. Indeed, if this Court's "mandatory and objective test," *id.*, were replaced with an evaluation of legislative intent, it would require courts to "wade into the political mire," *see* State Br. 46-47. That is why this Court crafted a standard that "respect[s] the political determinations of the General Assembly" by "allow[ing] for minimal and practical deviations required to" account for specific "mandatory and permissive factors." *Pearson I*, 359 S.W.3d at 40; *Pearson II*, 367 S.W.3d at 41, 51.

The circuit court's and Respondents' prioritization of hypothetical legislative preferences and policies would effectively nullify the mandatory compactness standard. Were the unknown priorities of Missouri legislators to automatically trump objective evidence of a compactness violation, Missouri voters would never be able to bring a successful challenge, and this Court would be rendered powerless on such issues. *See Paster v. Tussey*, 512 S.W.2d 97, 99 (Mo. banc 1974) (explaining that this Court is charged "with the duty of ruling on the constitutional validity of the legislative enactments").

Contrary to Respondents' suggestion, this Court's respect for the General Assembly's redistricting authority is neither an abdication of judicial authority nor a blank check for the legislative will to run roughshod over the constitutional rights of Missouri citizens.

II. Respondents' defense of the circuit court's erroneous conception of the compactness standard has no basis in law.

A. Respondents advance erroneous standards for assessing departures from compactness.

The Court has consistently emphasized that the compactness inquiry must be assessed based on the totality of the evidence on a district-by-district level. *See Pearson II*, 367 S.W.3d at 48-49, 49 n.10, 55; *Johnson*, 366 S.W.3d at 24 n.7. Appellants satisfied their burden at trial by presenting multiple forms of evidence—including visual inspection, compactness metrics, expert analysis, and witness testimony—that directly speak to how the challenged districts fracture the historically closely united territory of the Kansas City area. But the circuit court selectively relied on methodologically unsound compactness metric comparisons—to the exclusion of the remainder of Appellants' evidence—to conclude that Appellants failed to show departures from constitutional compactness. *See* D31 pp.21-24; App 21-24.

Respondents attempt to defend that erroneous ruling by inventing a numerical threshold for compactness, *but see Pearson II*, 367 S.W.3d at 49, and waving away the circuit court's erroneous numerical comparisons as irrelevant to its conclusions, *but see* D31 pp.23-24; App 23-24. Neither defense can rehabilitate the circuit court's legal errors.

Respondents first advance a novel "compactness" definition that turns on whether the challenged districts fall within "historical tolerances" of past compactness metrics.

State Br. 14-19; Int. Br. 28-29. But this interpretation is completely untethered to the existing case law. Neither the circuit court nor Respondents point to a single decision in which this Court adopted—or even endorsed—their proposed approach, which would seemingly insulate any district that performs better on any compactness metric than any prior historical district.[3] Respondents never explain what historical maps should comprise the relevant comparison universe—the immediately preceding map, maps from prior decades, all prior congressional plans, all prior congressional and state legislative plans, or something else entirely. Nor do they articulate what threshold of differential in compactness scores would suffice. And they certainly do not reconcile their numerical "tolerance" approach with this Court's clear and repeated instruction that "these statistical measures do not establish a threshold for determining when a district is or is not compact." *Pearson II*, 367 S.W.3d at 55 n.18. In reality, it is Respondents—not Appellants—who seek to establish a new compactness standard "as a matter of law," State Br. 20—one that would recognize only a district less compact than the least numerically compact district in Missouri history as a potential violation.

This Court squarely rejected Respondents' approach in *Pearson II*, explaining that compactness is defined by whether a district constitutes "closely united territory," a concept not "limited to physical dimensions." *Pearson II*, 367 S.W.3d at 40, 48. Accordingly, the numerical safe harbor that Respondents and the circuit court stake out is based on statistical

[3] The only support State Respondents muster to try to justify the circuit court's reliance on comparative measures is the *dissenting opinion* in a century-old case. *See* State Br. 19 (citing *State ex rel. Gordon v. Becker*, 49 S.W.2d 146, 160 (Mo. banc 1932) (Atwood, C.J., dissenting)).

metrics that this Court has already made clear *cannot* "alone . . . demonstrate that a map is or is not compact," *id.* at 49 n.10. Nonetheless, the entirety of the circuit court's opinion devoted to assessing whether "Plaintiffs have [] shown that the 2025 Plan or any of the challenged districts 'depart from the principles of compactness,'" is focused *exclusively* on comparisons of statistical compactness metrics. D31 pp.23-24; App 23-24 (quoting *Pearson II*, 367 S.W.3d at 48).

Had Appellants adopted the circuit court's approach, they would have failed *Pearson II*'s test. *See* 367 S.W.3d at 54 (finding the parties' stipulations to "statistical evidence regarding compactness . . . do not prove, as a matter of law, that district 5 does not meet the constitutional standard for compactness"); App. Br. 21-22. That is precisely why Appellants presented extensive additional evidence—including visual assessments, population density patterns, and historical, social, and economic data demonstrating cohesion within the Kansas City area—to demonstrate that the challenged districts do not constitute "closely united territory." *See* App. Br. 28-32, 49-60. Contrary to State Respondents' suggestion, State Br. 18-19, Appellants do not contend that "closely united territory" can be reduced to or defined by a single characteristic, as the inquiry demands consideration of the "totality of the evidence." *Pearson II*, 367 S.W.3d at 48. And Respondents cannot cabin "closely united territory" to refer *only* to the redistricting factors this Court has said can justify minimal and practical deviations from compactness, *see* State Br. 18, 41-44, as this would be entirely circular. It would make no sense to define "closely united territory" in terms of deviations from closely united territory.

Apparently recognizing that the circuit court's reliance on statewide average compactness metrics is doctrinally indefensible, Respondents attempt to recast those portions of the circuit court's opinion as incidental to its conclusion. *See* State Br. 19. Critically, the parties do not dispute that, under this Court' precedent, the compactness inquiry is district-specific. *See id.*; Int. Br. 25; *see also Pearson II*, 367 S.W.3d at 48, 55; *Johnson*, 366 S.W.3d at 24 n.7. The circuit court, however, operated under a different assumption.

The circuit court discussed three categories of metric comparisons before concluding that Appellants failed to show a departure from compactness: comparisons between (1) the 2025 and 2012 Plans; (2) the 2025 and 2022 Plans; and (3) plans from 1972 to 2025. *See* D31 pp.23-24; App 23-24. The circuit court began its discussion of the first two categories with explicit references to statewide averages. *See* D31 p.23; App 23 ("The 2025 Plan is more compact statewide than the 2012 Plan on both the Reock and Polsby-Popper measures."); D31 p.24; App 24 ("[T]he 2025 Plan is more compact statewide on both the Polsby-Popper measure and the Reock measure as calculated by Maptitude."); *id.* ("The 2025 Plan across [Convex Hull, IKIWISI, and Schwartzberg measures are] on average more compact than the 2012 Plan and 2022 Plan."). Likewise, the third category references Dr. Trende's analysis, which presented only statewide averages. *See* DX101 p.19, tbl.2. And the circuit court made repeated findings about statewide averages throughout its opinion. *See* D31 pp.6-8 ¶¶ 4-5, 9-10, 16-17, 19-20, 22-26; App 6-8 ¶¶ 4-5, 9-10, 16-17, 19-20, 22-26. Respondents' attempt to portray the circuit court's analysis as divorced from statewide averages is therefore demonstrably incorrect.

Indeed, by arguing that those averages ultimately made no difference to the circuit court's decision, State Respondents concede that the circuit court should not have relied on them at all.[4]

Ultimately, even under the proposed "historical tolerances" framework, Appellants' evidence still demonstrates that the challenged districts—particularly District 5—depart from constitutional compactness when compared with prior districts *and* plans. *See* App. Br. 48-49. District 5 is the least compact district in the 2025 Plan on every metric, IX215 pp.5-7; is dramatically less compact than its predecessor district in the 2022 Plan across *all* metrics, *id.*; is less compact than the average scores for the 2012, 2022, and 2025 Plans, *id.*; and is one of the least compact districts in Missouri's history, PX28 p.4.

B. Respondents defend a faulty conception of *Pearson II*'s consideration of recognized factors.

This Court has interpreted the "as may be" portion of section 45's compactness mandate to mean that "[i]f a district seems not to be composed of closely united territory because of minimal and practical deviations, the district is still 'as compact . . . as may be' if those deviations are due to mandatory and permissive factors." *Pearson II*, 367 S.W.3d at 51. The Court provided a "definitive list of factors" that "may justify variances" from compactness in a district, drawing on federal case law regarding population equality that "permits 'minor variations which are based on legitimate considerations incident to the

[4] Reliance on statewide compactness scores to assess individual district compactness is also methodologically flawed because they obscure departures within particular districts—a point on which Respondents' experts agreed, Tr. 633:6-9 (Dr. Trende); *id.* 757:20-23 (Dr. Hood), but to which Respondents fail to respond. *See* App. Br. 24-25.

effectuation of a rational state policy.'" *Johnson*, 366 S.W.3d at 29-30 (quoting *Swann v. Adams*, 385 U.S. 440, 444 (1967)); *id.* at 29 n.10. This Court's precedent invites plaintiffs to present alternative maps to show that greater compactness "is feasible in one or more districts" and "that federal laws or other recognized factors did not affect the district boundary." *Id.* at 30-31. "This showing is not burdensome" as "the plaintiff needs only to submit maps or other evidence that objectively shows that the county lines, political subdivisions, or historical boundary lines were not a basis for the district boundary *or* that it goes beyond a 'minimal and practical deviation[.]'" *Id.* (emphasis added). The circuit court misapplied this standard at every step, and Respondents only double down on those errors.

First, the circuit court ignored that deviations from compactness that are more than "minimal and practical" are unconstitutional "as a matter of law." *See Pearson II*, 367 S.W.3d at 55. No one looking at District 5 in the 2025 Plan could classify its dramatic reconfiguration as "minimal." District 5 transforms from a small, compact district grounded in Kansas City's urban center for over a century, PX41; App 176; *see also* PX44, PX27 p.8, fig.1, into a sprawling behemoth that slices through the city's central business district to draw together downtown Kansas City with Osage County and Maries County over 200 miles away, PX27 p.10, fig.2; *see also* PX41; App 176. While the circuit court deemed District 5's deviations "practical," it made no mention of whether they were "minimal" before skipping to examine factors that could justify the district's contorted shape. D31 p.25; App 25. Respondents argue that requiring courts to determine whether deviations are minimal would "add an additional step to the *Pearson* analysis." State Br.

23-24. Not so—it is precisely the inquiry *Pearson II* demands. *See* 367 S.W.3d at 55 ("This test 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.") (emphasis added). Under this Court's precedent, *none* of the mandatory or permissive factors can excuse deviations from closely united territory that are anywhere near as stark, egregious, and disruptive as the district lines challenged here.

Second, both the circuit court and Respondents sidestep the requirement that any minimal and practical deviations from compactness must be "*due to*" recognized factors, *id.* at 51 (emphasis added); *id.* at 53 (explaining the standard "includes whether any minimal and practical deviations were *a result of* recognized factors") (emphasis added); *Faatz*, 685 S.W.3d at 404 (requiring plaintiffs "to show [a] violation is not a minimal and practical deviation *necessary* to comply with other constitutional requirements") (emphasis added).[5] The circuit court never found—and Respondents never argued—that District 5's distorted shape was "due to" the 2025 Plan's reduction in political subdivision splits statewide or in Jackson County. Indeed, Appellants established subdivision splits could be reduced from the 2022 Plan without egregious deviations from compactness in the

[5] Intervenor Respondent claims the *Faatz* "necessary" phrasing is specific to state legislative redistricting, *see* Int. Br. 44-45, but ignores that in the very same paragraph of *Faatz* this Court explained that the 2020 amendment of section 3 "did not alter the standard articulated in *Johnson*." *Id. Johnson*'s framing of the standard is in turn virtually identical to *Pearson II*'s. *Compare Johnson*, 366 S.W.3d at 24, with *Pearson II*, 367 S.W.3d at 42. These indistinguishable articulations in all cases impose a cause-and-effect relationship between the recognized factors and any minimal deviations.

challenged districts. Several of Dr. Cervas's alternate maps, for instance, *increased* the compactness of the challenged districts while ensuring the same or fewer subdivision splits as the 2025 Plan, demonstrating that the districts' deviations are not "due to" the 2025 Plan's reduction in political subdivision splits. *See* App. Br. 44-46; D30 ¶¶ 227-87. In keeping with *Johnson*, those maps show that greater compactness is feasible in one or more districts and that any minimal and practical deviation from compactness in a district "does not result from application of recognized factors." *See* 366 S.W.3d at 30-31.

Intervenor Respondent attempts to rewrite this Court's standard, suggesting that any deviation from compactness is permissible so long as a recognized factor merely "affect[s]" a district boundary. Int. Br. 45. In Respondent's view, an egregiously noncompact district is constitutional if the redistricting plan improves on any recognized factor, whether or not the deviation in compactness had any relation to that improvement. The General Assembly could draw, for example, a district that is one census block wide and shaped like a spiral as long as it unites a city split on its border. This Court should not sanction the creation of such a glaring loophole to the compactness requirement.

Third, despite *Johnson*'s clear roadmap for plaintiffs to establish compactness violations via alternative maps, the circuit court improperly disregarded Appellants' alternative map evidence. *See* App. Br. 44-46. Respondents have little to offer to justify this glaring error. They complain that not all of Appellants' alternative maps were drawn by the Missouri General Assembly, State Br. 49, Int. Br. 14, but this Court has never imposed such a requirement. To the contrary, it has instructed that the mapdrawing entity's "deliberations, thought processes, or *other potential redistricting maps considered are not*

relevant in determining whether [a given district] violates the constitution." *Faatz*, 685 S.W.3d at 406 (emphasis added). Furthermore, Appellants *also* put forth an alternative map that *was* enacted by the Missouri General Assembly, based on the same Census population data, including equally populated, contiguous districts never subject to any legitimate constitutional challenges: the 2022 Plan.

Respondents try to find fault with the 2022 Plan as well. They revert back to statewide averages, objecting that the 2022 Plan is "less compact" overall on quantitative metrics than the 2025 Plan, Int. Br. 7. That critique fails on Respondents' own terms. *See* State Br. 19 (disclaiming the relevance of statewide averages); *supra* Argument II.A. Respondents boast that District 5 in the 2025 Plan is more numerically compact than District 6 in the 2022 Plan. State Br. 16. But this comparison fails to recognize that the natural geography of states means that different districts invariably have different shapes—which necessarily leads to different baseline compactness scores. PX28 pp.3, 5; App. Br. 26-27. Notably, Respondents do not dispute that District 5 in the 2025 Plan is dramatically *less* numerically compact than District 5 in the 2022 Plan. This Court does not need to look at historical configurations of *District 6* to determine whether *District 5* is "as compact as may be"; the 2022 Plan makes plain that District 5 "may be" far more compact without running afoul of any mandatory or permissive factors.

Respondents also point out that the 2022 Plan had a greater number of county and municipality splits than the 2025 Plan. State Br. 22. But the 2022 Plan is relatively consistent with previous district maps in terms of county splits. *See* DX101 p.19 (noting the 2012 Plan split eight counties nine times, whereas the 2022 Plan split nine counties ten

times). Even so, Respondents' tallying exercise fails to account for the degree and impact of those splits. *See* PX22 pp.2-5; PX28 p.12; App. Br. 66. The uncontested record demonstrated that the 2025 Plan split of Jackson County affected more than *three times* as many Jackson County residents when compared with either the 2022 or 2012 Plans. PX28 p.11. Likewise, the number of residents affected by municipality splits *increased* by over 45,000 between the 2022 and 2025 Plans. PX28 p.12. And Mayor Lucas's testimony made clear that *where* a county is split matters, noting that a Kansas City split at the border of Jackson County and Cass County is nowhere near as disruptive—to Missouri's residents, infrastructure, and economy—as a split through the heart of Kansas City's central business district. *See* App. Br. 66. While Respondents lament that the 2022 Plan split the Kansas City portion of Clay County, State Br. 50, Int. Br. 9, they ignore that the 2022 Plan united the densest parts of the Kansas City portion of Clay County with the rest of the city. *See* PX27 p.17, fig.7. And they once again repeat the specious claim that the 2025 Plan's split of Kansas City is "longstanding," State Br. 36, when it is in fact the first map to split the central business district and heart of Kansas City in over a century, PX27 pp.6-8, fig.1, let alone combine *any* portion of Kansas City with rural counties hundreds of miles across the state.

Fundamentally, Respondents misrepresent the compactness requirement under section 45. Whether or not the 2025 Plan "better conform[s]" to traditional redistricting criteria than the 2022 Plan, State Br. 14, is of no moment; as Intervenor Respondent emphasizes, redistricting is not a game of maximization, Int. Br. 36. Because the constitutionality of the 2022 Plan is not at issue here—and has never been at issue—there

is no need to assess its adherence to the *Pearson* factors. Appellants' burden is not to show that the 2025 Plan collectively performs worse than any other plan on "mandatory and permissive factors." *Pearson II*, 367 S.W.3d at 51. Appellants' burden instead is to demonstrate that the challenged districts' deviations from compactness cannot be explained by adherence to those recognized factors. *See Faatz*, 685 S.W.3d at 404 n.10. Appellants have met that burden.

III. This Court can and should grant relief in time for the 2026 primary election.

Respondents' timing argument collapses several principles into a single, sweeping claim: that once the candidate filing deadline has passed, Missouri courts are powerless to remedy an unconstitutional redistricting plan. But Respondents' reliance on *Purcell v. Gonzalez*, 549 U.S. 1 (2006)rests on an expansive theory that no Missouri court has adopted and that even federal courts have refused to apply. Respondents' reliance on *Hadley* is similarly misplaced because that case arose under materially different circumstances, including imminent election administration deadlines and the absence of a legislatively-enacted alternative map. Here, by contrast, the duly-enacted 2022 Plan that has governed multiple elections remains a viable option for the remainder of the decade. Accordingly, neither equitable principles, *Purcell*, nor *Hadley* bar this Court from enjoining the 2025 Plan and declaring the 2022 Plan the operative map for the 2026 election.

A. An injunction against the 2025 Plan is within this Court's equitable powers and will preserve the status quo.

To avoid the irreparable harm of holding an election under an unconstitutional map, this Court can use its equitable powers to ensure "full justice" by enjoining the 2025 Plan

and declaring the 2022 Plan the operative map for the 2026 election. *Phelps v. Scott*, 30 S.W.2d 71, 75 (Mo. 1930); *Willman v. Beheler*, 499 S.W.2d 770, 778 (Mo. 1973) ("Equity will not suffer a wrong to be without a remedy, and seeks to do justice and avoid injustice."), *abrogated on other grounds by State ex rel. Leonardi v. Sherry*, 137 S.W.3d 462 (Mo. banc 2004). Respondents' preferred alternative—allowing the legislature to redraw a new map after the upcoming election, State Br. 54-55—would subject Appellants to an irreparable loss of their constitutional rights during the 2026 elections, and would be considerably more burdensome than operating elections under an existing, enacted map that no party contests is unconstitutional. "[B]eing subject to an unconstitutional statute, for even minimal periods of time, unquestionably constitutes irreparable injury." *Rebman v. Parson*, 576 S.W. 3d 605, 612 (Mo. banc 2019) (quotation omitted). And once an election occurs under an unlawful map, "there can be no do over and no redress" for voters. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016); *see also Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 461 (8th Cir. 2025) ("Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." (quotation omitted)).

Missouri courts confronting unconstitutional districting plans have favored the use of existing, lawful maps to promote convenience, even while permitting subsequent legislative action if desired. For example, in *State ex rel. Lashly v. Becker*, this Court held that executive officers lacked the ability to redistrict in 1921 after a constitutional amendment vested redistricting authority exclusively in the General Assembly. 235 S.W. 1017, 1023 (Mo. banc 1921). Rather than requiring a new map to be devised, this Court

directed the Secretary of State to revert to the senate district lines of the 1901 map, treating the earlier map as the remedy. *Id.* at 1024.

That remedial approach aligns with Appellants' requested relief. D2 pp.30-31. Missouri lawmakers exercised their legislative authority to enact the 2022 Plan. At the time of its passage, the Governor publicly praised the 2022 Plan as one that "meets our constitutional requirements." PX50. Throughout the 2022 redistricting process, lawmakers likewise described the proposed configuration of districts as "fair and constitutional" with "common-sense boundaries that everyday Missourians can recognize," drawn in careful compliance with both Missouri and federal law. PX45, PX46, PX47 (lawmakers praising the 2022 Plan options as "keeping communities of interest and like-mindedness together"); PX48 at 1:06:20 p.m. (member of the House Special Committee on Redistricting describing the 2022 Plan as "constitutional" with regard to population equality, compactness, and contiguity). Even after the 2022 Plan was replaced, no one claimed it was unconstitutional. PX30. Even if the General Assembly had the prerogative to revisit its congressional map three years later, *see Luther v. Hoskins*, 730 S.W.3d 567, 571 (Mo. banc 2026), it had no authority to replace a constitutional plan with an unconstitutional plan. And Respondents can hardly cry foul at the continued implementation of a legislatively-enacted plan.

B. *Purcell* does not bar relief here.

Respondents remain unable to point to *any* Missouri court that has adopted the *Purcell* doctrine for elections—much less applied it to prevent implementation of remedies for an unconstitutional map. Instead, Respondents contend that "*other* courts" have applied

the *Purcell* doctrine under similar conditions. State Br. 59; Int. Br. 64-65 (urging this Court to follow the "settled approach of the United States Supreme Court"). But in advocating for this novel approach under Missouri law, Respondents ignore three key distinctions that make *Purcell* inapplicable here.

First, the federalism concerns animating the *Purcell* doctrine are simply not at issue. *Purcell* reflects the U.S. Supreme Court's desire to prevent federal decisionmakers from overriding state election rules on the eve of voting, not an intent to veto all judicial remedies in the lead-up to election day. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) ("[F]ederal courts should ordinarily not alter the election rules on the eve of an election.") (citing *Purcell*). That is because states retain primary authority for prescribing the "Times, Places and Manner" of elections. U.S. Const. art. I, § 4, cl. 1; *see also Growe v. Emison*, 507 U.S. 25, 34 (1993) (noting that reapportionment is "primarily the duty of the State … rather than of a federal court"). State courts are thus well-positioned to assess the competing interests at stake in election litigation and pose no threat of encroaching on sovereign territory. *Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022) ("The *Purcell* doctrine cautions *federal* courts . . . and does not limit state judicial authority."); *State ex rel. Ohio Democratic Party v. LaRose*, 257 N.E.3d 130, 137 (Ohio 2024) ("*Purcell* is a federal case and therefore not binding on this Court"); *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020) (Appel, J., concurring) ("*Purcell*, of course, is infused with federalism concerns, arising from the notion that federal courts should show a degree of caution before they intervene in state-created election procedures[.]"). This matter thus poses no threat of a federal court

"swoop[ing] in and re-do[ing] a State's election laws," *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of application for stays).

Second, even if *Purcell* constrained sovereign state court systems, it has never constituted a per se bar to relief, particularly where a jurisdiction's highest appellate court has issued a final judgment.[6] Just this week, and without any mention of *Purcell*, the U.S. Supreme Court issued its judgment in *Louisiana v. Callais*, fast-tracking a final injunction against Louisiana's current congressional map *amid* early voting. *See* Order on Application to Issue the Judgment Forthwith, *Louisiana v. Callais*, No. 25A1197, at 1 (U.S. May 4, 2026). Even federal courts recognize that *Purcell*'s reach is not unyielding in the face of an unconstitutional redistricting plan. Respondents' contention that *Purcell* controls whenever an election is "imminent," or even underway, is not true, whether in the U.S. Supreme Court or Missouri Supreme Court. State Br. 60.

Third, *Purcell* is an equitable doctrine that turns on considerations of fairness. 549 U.S. at 4-5. Here, any alleged timing concerns are entirely of Respondents' own making. The parties were originally scheduled to go to trial on January 26, 2026. Respondents then moved for a three-week continuance of trial, which the circuit court denied. D40, 43. Thereafter, the parties proceeded according to a scheduling order with trial beginning on

[6] Respondents' cited cases emphasize that *Purcell* has primarily constrained preliminary injunctions issued by lower courts. *See, e.g.*, *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (stating that "lower federal courts should ordinarily not alter the election rules on the eve of an election"); *Milligan*, 142 S. Ct. at 881 (staying district court's preliminary injunction shortly before an election); *Democratic Nat'l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 31 (2020) (declining to vacate stay of district court's preliminary injunction shortly before election); *Moore v. Lee*, 644 S.W.3d 59, 65–66 (Tenn. 2022) (vacating trial court's preliminary injunction due to concerns of election-related disruption).

January 26. D44. But on January 7, 2026—28 days after intervention was granted and just three weeks before a bench trial was to begin—Intervenor Respondent applied for a change of judge, D17, despite its prior assurances to the circuit court that it would not delay the case, Wise D20 ¶ 22. The matter was then reassigned and trial delayed until February 17, 2026. D53. Where any delay is attributable to Respondents' own actions, they cannot now invoke equitable principles to preclude relief.

C. *Hadley* does not control because it pre-dates *Purcell* and is factually distinct.

Undeterred by *Purcell*'s jurisdictional limits, Respondents dust off a pre-*Purcell* case and insist that Missouri courts are bound by its holding. State Br. 57 (citing *Hadley v. Junior Coll. Dist. of Metro. Kan. City*, 460 S.W.2d 1 (Mo. banc 1970)). But *Hadley* involved an election set to occur just six weeks after remand from the U.S. Supreme Court, at a point when absentee ballots had already been printed and voting machines adjusted. *Hadley*, 460 S.W.2d at 3. By contrast, Respondents identify no such urgent upcoming events in Missouri's congressional primary election, which is nearly three months away. Instead, they only note that the candidate-filing period ended in March. State Br. 5-6; Int. Br. 61. But this bureaucratic milestone did not prevent the State from enacting and implementing a new congressional district map six weeks after that date in 2022. PX87 ¶¶ 32-24, 37. Respondents cannot credibly contend that the candidate filing deadline acts as an absolute bar to implementing new redistricting maps when it imposed no bar whatsoever for the 2022 Plan.

Hadley is readily distinguishable on yet another ground: it involved a junior college district's statutory scheme for electing trustees, not a congressional redistricting plan. 460 S.W.2d at 2. On remand, this Court confronted the application of a newly announced constitutional rule to an electoral system which had never been designed for equal apportionment compliance. *Id.* Instead of "hastily" attempting to implement the new rule, this Court concluded that the "overriding public interest" favored temporary adherence to the unconstitutional plan. *Id.* at 2-3. Congressional redistricting in Missouri, by contrast, is subject to longstanding constitutional constraints such as compactness. And this Court is well-experienced in deciding whether that requirement has been met. *See, e.g.*, *Pearson II*, 367 S.W.3d at 40, 48; *Johnson*, 366 S.W.3d at 30-31. The 2022 Plan is neither hasty nor ad hoc; it has governed elections throughout this decade, and Missouri residents have voted under it continuously since its enactment.

Finally, the *Hadley* Court permitted an election to proceed under an unconstitutional scheme because there was no time to implement an *alternative*. 460 S.W.2d at 2-3 (noting that it would be "wholly inequitable and impracticable to attempt at this late date to apply the principles" of the Supreme Court). By contrast, the 2022 Plan has now governed two election cycles and, as of trial, was the *only* operative map in place within the counties' election systems. Tr. 129:1-10; Zorich Dep. Designations 35:2-21; Brown Dep. Designations 35:12-36:1; Tr. 128:18-20. Local election officials further testified that they can make changes to district lines in their systems "up until at least May 26." Tr. 702:9-11; Brown Dep. Designations 21:14-24; PX87 ¶ 64. Respondents' paltry attempt to

manufacture an exigency akin to that presented in *Hadley* cannot be reconciled with the record and should be rejected.

CONCLUSION

Appellants respectfully request that this Court reverse the judgment of the circuit court and enter judgment as outlined in Appellants' opening brief.

Date: May 11, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that a copy of the above Appellants' Reply Brief was served electronically by Missouri CaseNet e-filing system on May 11, 2026, to all parties of record.

I also certify that the foregoing brief contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b) and that the brief contains 7,722 words.

/s/ J. Andrew Hirth
J. Andrew Hirth