

SC101572

IN THE SUPREME COURT OF  
MISSOURI

TERRENCE WISE, et al.,

Appellants,

v.

STATE OF MISSOURI, et al.,

Respondents,

and

MISSOURI REPUBLICAN STATE COMMITTEE,

Intervenor-Respondent

Appeal from the Circuit Court of Jackson County, Missouri

The Honorable Adam L. Caine

Case No. 2516-CV29597

APPELLANTS' REPLY TO BRIEF OF INTERVENOR-RESPONDENT

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## INTRODUCTION

Appellants' opening brief chronicles the numerous ways the Circuit Court misapplied the law in reaching its erroneous conclusion that Congressional Districts ("CDs") 4 and 5 in the 2025 Plan do not violate Article III, § 45's command that districts be "as compact . . . as may be." The brief from Intervenor-Respondent ("Intervenor") misunderstands the legal standard for this Court's review and misstates the legal framework for analyzing the Constitution's mandatory compactness requirement.

Intervenor characterizes the Circuit Court's errors as factual, not legal, to insulate them from this Court's review. But the Circuit Court consistently applied the wrong legal standard, conducted the wrong legal analysis, and ignored whole categories of probative evidence by claiming they were legally irrelevant. These are dispositive legal errors that this Court must review *de novo*.

Intervenor paints a picture of redistricting in which the General Assembly faces no meaningful restraints and can depart from the Constitution's requirements for virtually any reason it sees fit. But this flies in the face of the constitutional text and a century of this Court's precedents which say clearly that the compactness requirement is "mandatory and objective" and "must be satisfied." *Pearson v. Koster*, 367 S.W.3d 36, 48 (Mo. banc 2012) ("*Pearson II*") (emphasis added). And for good reason—districts "must be closely united territory" to "guard, as far as practicable . . . against the legislative evil commonly known as the 'gerrymander.'" *State ex rel. Barrett v. Hitchcock*, 146 S.W. 40, 65 (Mo. banc 1912).

Intervenor also gets the compactness standard wrong, defending the Circuit Court's legally incorrect analysis that focused nearly exclusively on state-wide mathematical measurements of shape rather than conducting the required holistic compactness analysis district-by-district. Intervenor attempts to refute the Constitution's requirement that deviations from compactness be minor and result from compliance with recognized factors, but the text and this Court are clear on this point. The deviations from compactness in the 2025 Plan do not result from any recognized factors, and the Circuit Court was wrong not to analyze this. Intervenor joins the Circuit Court in wrongly accepting new justifications for the map's lack of compactness or even speculating about additional ones. But again the law is clear: only recognized factors can justify a lack of compactness.

Intervenor and the Circuit Court also incorrectly reject probative evidence. The Circuit Court committed legal error when it disregarded the alternative map evidence this Court has said is particularly relevant. Intervenor tries to defend this legal error and to denigrate the evidence, but the reality is inescapable: the alternative maps demonstrate that the General Assembly could have accomplished its purported goals without the drastic reduction in compactness in CDs 4 and 5.

Intervenor also joins the Circuit Court in rejecting probative evidence from expert and lay witnesses that goes directly to the fundamental compactness question in this case. While Intervenor concedes that the definition of district compactness goes beyond mathematical measures of shape and size, Intervenor nonetheless rejects all evidence that would shed light on the key "closely united territory" analysis. Intervenor bizarrely faults Appellants' witnesses for not speaking to legislators and divining their intent in enacting

the 2025 Plan. But the compactness analysis is objective, not subjective, and the desires of individual legislators play no role in the analysis.

Unable to defend the Circuit Court’s numerous errors, Intervenor instead offers retorts to arguments Appellants do not make, and resorts to denigrating the 2022 Plan, constitutionally enacted by the General Assembly just four years ago. And like State Respondents, Intervenor thinks that even if this Court reverses the flawed decision below, Missourians should still vote under the new unconstitutional districts in this year’s elections. But by all indications, the election administration status quo remains the 2022 Plan, making it simple to enjoin use of the 2025 Plan and remedy the grave constitutional violation.

## ARGUMENT

### **I. The Standard of Review Does Not Insulate Misapplications of Law.**

Like State Respondents, Intervenor leans heavily on the deferential standard of review applicable to factual determinations to insulate a judgment premised on misapplications of law. *E.g.*, Int. Br. at 1, 17, 25-26, 36, 56. But for the reasons explained in Sec. I of Appellants’ reply to State Respondents—which Appellants incorporate here in full—that move and Intervenor’s additional standard-of-review points provide no basis to affirm.

Intervenor first suggests that whether a challenged district is “as compact as may be” is solely a question of fact. Int. Br. at 2. But that interpretation contradicts this Court’s precedent. In *Pearson II*, this Court made clear that assessment of a district’s compliance with Article III, § 45 involves “a mixed question of law and fact,” where the meaning of

constitutional terms are legal determinations and whether “the characteristics of a particular map satisfy” that meaning involves questions of fact. *Pearson v. Koster*, 367 S.W.3d 36, 47 (Mo. banc 2012) (“*Pearson II*”).

But even if the ultimate question here were solely factual, the assessment of evidence underlying that determination is not insulated from review when it is premised on *misapplications* of law—which are reviewed *de novo*. *Singleton v. Singleton*, 659 S.W.3d 336, 339 (Mo. banc 2023). The rule Intervenor seems to press is that any evidentiary weighing baked into a “factual” judgment is unreviewable, but that would insulate every legal error in assessing evidence from meaningful review. This Court has rejected that approach in reviewing misapplications of law *de novo*. *See, e.g., Zweig v. Metro. St. Louis Sewer Dist.*, 412 S.W.3d 223, 231 (Mo. banc 2013). And where, as here, the Circuit Court’s judgment states a legal premise—like declaring evidence “legally irrelevant” or not “useful” under the standard—that is a *legal ruling*, not a factual or credibility determination. *See* D108 p.17, 18, 24, 27, App. 17, 18, 24, 27. Legal errors cannot be reframed as unreviewable just because they appear in a judgment deciding a question that has factual components.

Intervenor also invokes Rule 73.01(c), contending that because Appellants did not request findings on each controverted fact issue with enough specificity, “any factual gap Appellants identify on appeal must be resolved in favor of the judgment.” Int. Br. at 2, 26. This misunderstands the rule and Appellants’ claims of error. Rule 73.01(c) says “[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). It does not insulate a

judgment from reversal where its stated grounds display legal errors on the face of the judgment itself. Though the Circuit Court did not see Appellants’ and State Respondents’ requests as sufficient to trigger a duty to issue factual findings or grounds of decision, it nevertheless did so. *See* D108; App. 1-31; Opening Br. 1-32. That is, the court explained its view of the governing standard and its application of that view to the evidence—and on its face appear misapplications of law in weighing the evidence. This Court is not required to shield its eyes from legal errors the Circuit Court openly committed in reaching its judgment.

Intervenor likewise invokes Rule 84.13(b), stating that this Court cannot reverse unless the legal error “materially affected the merits of the action.” Int. Br. at 26. True enough. But as Appellants have demonstrated, numerous misapplications of law on the face of the Circuit Court’s judgment led it to dismiss huge portions of the evidentiary record as “legally irrelevant” and forgo the district-by-district, totality-of-the-evidence inquiry *Pearson II* requires. *See* Opening Br. at 51-103. These errors, individually and collectively, not only “materially affected” the merits but compelled the opposite result. *See id.* at 97-102 (Points VIII-IX). Rule 84.13(b) thus requires reversal, not affirmance.

## **II. Intervenor Mischaracterizes the Legal Standard for Compactness.**

Intervenor, like State Respondents, contends that the General Assembly’s “broad discretion” in redistricting means compactness imposes only “minimal restraint” on its redistricting choices, Int. Br. at 27; that “closely united territory” is undefined, *id.*; and that the factors permitting departure from closely united territory are not exclusive, *id.* at 38. Appellants addressed these contentions in Sec. II of their response to State Respondent’s

brief, which Appellants incorporate here in full by reference. Intervenor’s fundamental error, shared with State Respondents, is to forget that compactness is a “*mandatory and objective*” requirement that “*must* be satisfied.” *Pearson II*, 367 S.W.3d at 48 (emphasis added). It is a constitutional limit on the General Assembly’s discretion. And it must be evaluated according to the standards and principles this Court has articulated in precedent, which already balance deference to legislative discretion with the need to enforce a defined, purposeful mandate of the state constitution. *See Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012) (“*Pearson I*”). The Circuit Court did not do so here.

Intervenor also mischaracterizes the governing standard in other ways. First, Intervenor emphasizes that Missouri courts have not yet held a congressional district to violate Article III, § 45. Int. Br. at 1, 25. But this says nothing of the General Assembly’s duty to obey the compactness mandate in every congressional redistricting, including this one. When the Constitution articulates restrictions on redistricting using words like “shall,” as does Article III, § 45, it means the General Assembly’s discretion over drawing lines is cabined. *State ex rel. Barrett v. Hitchcock*, 146 S.W. 40, 54 (Mo. banc 1912). And when the General Assembly wholly ignores and completely disregards compactness in exercising that discretion—as it did here in CDs 4 and 5—it is as if its “discretion has not been exercised and the action is an arbitrary exercise of power without any reasonable or constitutional basis.” *Preisler v. Hearnese*, 362 S.W.2d 552, 555 (Mo. banc 1962) (“[I]n the matter of [congressional] districting, as well as in other matters, the Legislature has no authority to enact unconstitutional laws.”) (citing *In re Sherill*, 81 N.E. 124, 128 (N.Y. 1907)).

Second, Intervenor claims that this Court’s identification of plaintiffs’ burden as “not burdensome” in *Johnson* refers only to the burden of production. Int. Br. at 1, 59. But the relevant passage describes the overall burden of proof, including both production and persuasion, that plaintiffs must satisfy “[t]o meet the objective standard.” *Johnson v. State*, 366 S.W.3d 11, 30-31 (Mo. banc 2012) (citing *Pearson I*, 359 S.W.3d at 40). In any event, such parsing does not help Intervenor. Appellants have never disputed that that they bear the burden of proof at all times and that they must meet this burden “clearly and undoubtedly.” See Opening Br. at 10. This burden, applicable to all constitutional challenges to legislative enactments, did not free the Circuit Court to misapply the objective standard by disregarding relevant evidence as legally irrelevant.

Third, Intervenor objects to what it calls a “necessity” requirement, contending that *Faatz*’s articulation of the standard refers only to a causation analysis under Article III, § 3 rather than § 45. Int. Br. at 45-46. There is no effective distinction here. *Faatz* reaffirmed the basic principle articulated in *Johnson* and *Pearson II* that plaintiffs must not only prove a departure from a constitutional requirement qualified by words like “as may be,” but also show the departure is not caused by application of recognized factors, including both mandatory factors (e.g., contiguity, equal population, and federal law) and permissive factors (e.g., avoiding political subdivision splits, continuity with historical boundary lines, and abiding natural boundaries). *Faatz v. Ashcroft*, 685 S.W.3d 388, 404 (Mo. banc 2024) (citing *Johnson*, 366 S.W.3d at 30); see also *Johnson*, 366 S.W.3d at 25; *Pearson II*, 367 S.W.3d at 51. Whether the operative phrase is “due to,” “result from,” or “necessary to comply with,” the question is whether the level of non-compactness can be explained by

application of a recognized factor.

Intervenor is also wrong to claim that such a causation analysis renders the permissive factors “a nullity” because the legislature is not required to pursue them. Int. Br. at 46. Whether the *legislature* is obligated to pursue any particular factor is beside the point; under *Pearson II*, a plaintiff’s burden runs to mandatory and permissive factors alike. And because a map’s permissive factors are objective and a plan’s adherence to them is observable or measurable, this inquiry is not intractable, as this Court showed in *Pearson II*, 367 S.W.3d at 53-56 (assessing whether permissive factors could explain departures from compactness). For example, respect for political subdivisions can be measured by counting the number of political subdivision splits, and respect for historical lines by core retention. *See* Opening Br. at 40, 42. Here, the analyses of Dr. Cervas and Dr. Stern objectively showed that the level of non-compactness in CDs 4 and 5 could not be the result of, due to, or necessitated by the 2025 Map’s performance on these or any combination of recognized factors because thousands of alternative maps can be produced that match or exceed the 2025 Map’s performance on recognized factors while substantially improving the compactness of CDs 4 and 5. *Id.* at 19-20, 39-44.

Finally, Intervenor’s account of Dr. Cervas’s methodology on this score is incorrect. Int. Br. at 45. Dr. Cervas did not consider only whether recognized factors necessitated the level of compactness in CDs 4 and 5; he also considered whether any recognized factor “resulted” in or explained the level of non-compactness in CDs 4 and 5 and determined they do not. *See* Tr. 137:8-138:9. Consistent with and meeting their burden under *Pearson II*’s standard, Appellants presented the Circuit Court with objective evidence that the

departures from compactness in CDs 4 and 5 could not be explained by any recognized factor. The Circuit Court’s misapplication of this and other aspects of the governing compactness standard render its judgment reversible on appeal.

### **III. The Circuit Court’s Determination Regarding Departure from Principles of Compactness in CDs 4 and 5 is Premised on Misapplications of Law.**

With respect to the Circuit Court’s assessment of departures from compactness in CDs 4 and 5, Intervenor makes several meritless arguments. First, Intervenor seeks to knock down a strawman of its own making: that “the circuit court committed legal error by relying on . . . statistical measures to evaluate compactness.” Int. Br. at 31. That has never been Appellants’ argument. As Appellants have explained, the Circuit Court erred in relying *exclusively* on quantitative shape-based scores, including both plan-wide and scant district-level scores, because doing so contravenes *Pearson II*’s rule that such scores are not dispositive. State Reply, Sec. III; Opening Br. at 58.

Intervenor next claims that the Circuit Court did not give these measures “‘decisive’ weight” in violation of *Pearson II*. Int. Br. at 31-32. But the entire two pages of the Circuit Court’s assessment of departures from compactness make no mention of any evidence *other* than a handful of shape-based metrics. D108 p.23-24, App. 23-24. The Circuit Court did not even consider measures of size in its analysis. Opening Br. 60-61. And, Appellants have explained, *id.* at 79-83, the Circuit Court disregarded as “legally irrelevant” virtually all non-quantitative district-specific evidence of compactness.

Third, Intervenor asserts that the Circuit Court’s emphasis on “plan-wide average” compactness scores was justified because it reflects the “common-sense point” that

“redistricting inevitably involves tradeoffs.” Int. Br. at 32. But the Circuit Court’s error lies in placing *primary emphasis* on plan-wide compactness scores when *Pearson II* ruled that the inquiry must be conducted under the totality of the evidence on a district-specific level, and “compactness of the Map as a whole . . . has limited relevance.” 367 S.W.3d at 54 n.16; *see* Opening Br. at 53-58.

Finally, Intervenor claims that the Circuit Court did not treat prior maps, namely the 2012 map, as a quantitative safe harbor and merely found them useful among other considered evidence of compactness. Int. Br. at 32-33. But the Court’s analysis speaks for itself: evidence beyond mathematical shape-based scores appears nowhere in its analysis of departures from compactness in CDs 4 and 5. *See* D108 p.23-24, App. 23-24. Instead, the Circuit Court premised its conclusions on how the 2025 Plan compares in terms of irrelevant plan-wide averages and otherwise determined that CDs 4 and 5 are compact simply because they score better on a handful of shape-based measures compared to the worst district in past plans. *Id.* *Pearson II* bars this bright-line approach. *See* 367 S.W.3d at 48-49, 49 n.10, 54 n.16, 56.

#### **IV. The Circuit Court Failed to Analyze Whether Recognized Factors Could Explain a Departure from Compactness.**

Intervenor claims that “the [C]ircuit [C]ourt 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.” Int. Br. at 33 (internal quotations omitted). Intervenor is wrong, and its arguments

in support of this claim demonstrate a persistent misunderstanding of how this aspect of the legal standard applies in this case.

Intervenor begins by claiming that “the General Assembly’s preference for a Missouri First Map that better performs on traditional principles [such as county, municipal, and VTD splits] . . . over the Kansas City First Map favored by Appellants was well within its broad legislative discretion.” *Id.* at 34. Intervenor’s inaccurate nickname for its own state’s previous congressional map notwithstanding, this argument is in error. As explained thoroughly in Appellants’ reply to State Respondents, Sec. IV, according to this Court’s precedent, the basic fact that a plan complies with requirements or improves on various recognized factors as compared to the previous plan *is not* an analysis of whether that compliance or those improvements *resulted* in a deviation in compactness, which is what is required. *See Pearson II*, 367 S.W.3d at 53.

Nor do Appellants seek “special treatment” of any area of the state, as Intervenor suggest. *See Int. Br.* at 34. Appellants focus on Kansas City and Jackson County because that is where the compactness violation occurred. Appellants seek equal, not elevated, protection for these areas under the Missouri Constitution’s compactness requirement. And, as Appellants’ alternative map evidence clearly showed, *see Opening Br.* at 39-44, it was not necessary to “sacrifice performance on traditional districting principles statewide,” *see Int. Br.* at 34, in order to satisfy that constitutional standard.

Intervenor next claims that Appellants have “mischaracterized” the Circuit Court’s analysis in multiple ways. First, Intervenor argues that the Circuit Court applied the correct legal standard because it “concluded that had any [compactness] 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.” *Id.* at 35 (quoting D108 p.25; App. 25). The Circuit Court in fact committed legal error and *misapplied* the standard, as Appellants have explained. *See* Opening Br. at 83-89.<sup>1</sup>

Second, Intervenor contends that the General Assembly was free to combine areas of different population density in the 2025 Plan. Int. Br. at 36-37. But this contrary reading is inconsistent with the unifying logic of other recognized factors, which operate by *uniting* rather than dividing areas that share similarities—*e.g.*, preserving counties, cities, and VTDs. *See Healey* Opening Br. at 41-43. Allowing the population density factor to be defined so loosely, so that *any* treatment of population density could justify a departure from closely united territory would render the compactness requirement no longer mandatory. Intervenor is correct in saying that “the General Assembly had authority to consider and pursue” the combination of areas of differing population density, *see* Int. Br. at 37, but they are wrong that such considerations can justify a deviation from Art. III, § 45’s mandatory compactness requirement.

Third, Intervenor claims that the Circuit Court did not err in considering local legislative boundaries in its compactness analysis because “*Pearson II* never purported to enumerate an ‘exclusive’ list of recognized factors that the General Assembly could consider.” Int. Br. at 38. In support, they cite the *dissent* in that case, which is not binding

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<sup>1</sup> Intervenor also claims that “Appellants ignore that they bear the heavy burden of proof ‘at all times.’” Int. Br. at 36. Appellants do not dispute their burden; rather, Intervenor misunderstands the legal standard in the same way as the State. *See* State Reply, Sec. IV.

law. And they ignore this Court’s precedent, which even State Respondents agree identifies these factors as exclusive. *See* D87 p.27; *Johnson*, 366 S.W.3d at 28 n.10. Again, Intervenor is correct in saying that the General Assembly is not “precluded from pursuing the efficiencies in election administration available from using the same district boundaries in overlapping plans,” *see* Int. Br. at 39, but it is wrong that such considerations can justify a deviation from the mandatory compactness requirement. To consider this factor in a compactness analysis is legal error, *see* Opening Br. at 90-93, not a factual issue of weight and certainly not “harmless” error as Intervenor claims, *see* Int. Br. at 39.

In all of these ways, Intervenor’s claim that the deviations in compactness of the 2025 Plan are explained by the adherence to recognized factors is patently incorrect.

#### **V. The Circuit Court Misapplied the Law in Disregarding Alternative Map Evidence.**

Intervenor argues the Circuit Court was correct to disregard Appellants’ alternative map evidence and attempts to recharacterize the Circuit Court’s legal error as a factual finding. *See* Int. Br. at 20, 43-44. But the Circuit Court’s own words leave no doubt that it committed reversible legal error: “Plaintiffs’ experts generally asserted that the General Assembly could have created better maps from Plaintiffs’ perspective. *That is not the standard under Missouri law.*”<sup>2</sup> D108 p.26, App. 26 (emphasis added). Intervenor’s defense of the lower court repeatedly mischaracterizes the record and betrays further errors of law.

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<sup>2</sup> The Circuit Court then proceeded to fault Dr. Cervas’ maps for being *too* compact. *Id.* p.27. But providing more compact alternatives is exactly the type of evidence this Court repeatedly held to be probative. *See* Opening Br. at 67-69 (Point III).

First, Intervenor contends that Dr. Stern's maps are invalid comparisons because his algorithm permits a slight population deviation, Int. Br. at 54, but it omits that the State's own expert, Dr. Trende, agreed that such population deviations are standard practice and that this Court in *Faatz* relied on the same kind of analysis performed by Dr. Trende himself. See Opening Br. at 72-75 (Point III); e.g., Tr. 663:6-15 (Dr. Trende confirming that population deviation is "typically 1 percent" in his work). And this Court's approach in *Faatz* makes sense, because, as Dr. Cervas showed, such slight deviations can be easily adjusted by hand without affecting the compactness properties of the map and the comparisons that can be drawn. Opening Br. at 74 n.16. Intervenor misleadingly suggests that Dr. Cervas was unsuccessful in adjusting thousands of Dr. Stern's simulated maps, Int. Br. at 55, but Dr. Cervas provided three *examples* and of course did not attempt to revise tens of thousands of maps by hand, which would defeat the purpose of using a computer algorithm.

Second, both the Intervenor and the Circuit Court fault Dr. Stern's algorithm because it allegedly "prioritizes" compactness, but the *legislature* is constitutionally required to prioritize compactness under Article 45. The goal of providing an alternative map is to show that significantly greater compactness is "feasible" while respecting the redistricting factors recognized by this Court. *Johnson*, 366 S.W.3d at 31; see Opening Br. at 72-73. As the State's own expert conceded, there is nothing improper about looking for more compact maps to serve as comparators. Tr. 658:2-8 (Trende). Moreover, the undisputed record shows that Dr. Stern did not have to look very hard. Despite Intervenor's claim that Dr. Stern "rigged" his algorithm, the State's expert, Dr. Trende, confirmed that

Dr. Stern’s algorithm “did not . . . draw the maximally compact districts possible” and instead only had a “soft” preference for avoiding “absurd[ly]” non-compact maps that no legislature has drawn. Tr. 657:5-13, 659:5-20. At bottom, if the only way to make the 2025 Plan appear compact is by comparing it to absurdly non-compact maps, then that is a clear sign that the 2025 Plan violates the compactness mandate.

Next, without acknowledging this Court’s holding in *Faatz* that computer-simulated maps are probative, Intervenor misconstrues federal caselaw to suggest that such maps are unhelpful. Rather, as the U.S. Supreme Court recently reaffirmed in *Louisiana v. Callais*, computer-simulated maps of the kind that Dr. Stern drew are precisely what courts should use to evaluate legislative maps. *E.g.*, *Louisiana v. Callais*, No. 24-109, 2026 WL 1153054, at \*15 (U.S. Apr. 29, 2026); Opening Br. at 70-71.

In defending the Circuit Court’s ruling, Intervenor inexplicably claims that Dr. Stern and Dr. Cervas’ alternative maps failed to control for the General Assembly’s redistricting considerations. *See* Int. Br. at 53-54. But neither Dr. Stern nor Dr. Cervas needed to interview legislators, because this Court has set forth an exclusive list of recognized redistricting factors, and Appellants’ experts controlled for *all of them*—exhaustively and painstakingly detailing every such factor in their trial testimony. Opening Br. at 90-92 (Point VI), 93-97 (Point VII); *e.g.*, Tr. 202:10-206:15 (Stern summarizing every factor accounted for in his analysis). Moreover, as all parties have and must acknowledge, this Court has held that the subjective intent of the legislators is irrelevant. Opening Br. at 93-97 (Point VII). And whatever policy considerations the General Assembly may have had, Dr. Stern controlled for them to the maximum extent possible by directing his algorithm to

change only the single boundary between CD4 and CD5, which ensures that his simulations are exactly like the 2025 Plan in every other respect; the same is true of four of Dr. Cervas's maps that keep six of the eight congressional districts identical to the 2025 Plan. Tr. 265:18-266:1 (Stern); Opening Br. at 23-24. The State's expert agrees on that point and further confirmed that he is unaware of any General Assembly considerations that Appellants' experts have not accounted for. Tr. 663:22-664:9, 664:13-16 (Trende). And despite that minimal change, CD4 and CD5 can be made significantly more compact while also outperforming the 2025 Plan on the exclusive list of factors that this Court has recognized. Opening Br. at 83-89 (Point V).

Both Intervenor and the Circuit Court attempt to circumvent this Court's precedents by repeatedly mischaracterizing Appellants' position as requiring the General Assembly to "maximize" compactness. Int. Br. at 22, 40-42, 56. That is not true. What this Court's binding precedent does require is that any deviation from compactness be "minimal and practical." *E.g., Pearson II*, 367 S.W.3d at 48-49; Opening Br. at 10, 68, 70. Neither of Appellants' map-drawing experts sought to maximize compactness, and this Court should reject that strawman. Opening Br. at 70. Because a map is susceptible to challenge only if it inexplicably and significantly departs from compactness, the Circuit Court and Intervenor's claim that a never-ending series of marginally more compact maps would destabilize districting maps, D108 p.27, App. 27, Int. Br. at 22, misconstrues the law and is misplaced. *See* Opening Br. at 71-72.

Finally, both Intervenor and the Circuit Court fault Appellants for not submitting their tens of thousands of alternative maps to the Missouri legislature for consideration, but

such a requirement has no legal basis. D108 ¶102, App. 16; Int. Br. at 58. This Court in *Faatz* did not require that computer simulations be submitted to the legislature either, nor has this Court indicated otherwise. *See Faatz*, 685 S.W.3d at 404. Nor does such a requirement appear in any of the U.S. Supreme Court cases endorsing the use of alternative maps. Intervenor’s (and the Circuit Court’s) contrary rule makes no sense—there is no question that the legislature could have drawn maps as compact as Appellants’ alternatives, and there is no practical reason to require the legislature to review tens of thousands of alternative proposals.

In short, none of Intervenor’s wide-ranging arguments in support of the Circuit Court’s decision to disregard Appellants’ alternative map evidence is persuasive.

#### **VI. The Circuit Court Erred in Dismissing All Evidence of the Districts’ Territorial Unity Beyond Measures of Shape as Legally Irrelevant.**

Intervenor claims that Appellants “invoke[e] their own notions of compactness,” and conflate “closely united territory” with “communities of interest,” and that the Circuit Court was thus right to categorically disregard whole categories of evidence. Int. Br. at 45-47. Not so. While “communities of interest” is not one of the enumerated factors that can justify a departure from compactness, Intervenor is wrong that any evidence describing where and how Missourians live is constitutionally irrelevant. Rather, such evidence is essential to the mandatory “closely united territory” analysis.

As Appellants have explained, *Pearson II* makes clear that the compactness inquiry is a totality-of-the-evidence test asking, in part, whether the district exhibits close unity along dimensions other than its physical size and shape, including whether it is “conductive

to communication and interaction among representatives and constituents.” *Pearson II*, 367 S.W.3d at 48-49; see also *People Not Politicians v. Hoskins*, No. WD88795, 2026 WL 1175290, at \*13 (Mo. App. W.D. Apr. 30, 2026) (noting as relevant a district’s “interconnectedness in terms of transportation and communication” and a district’s “chief lines of travel and commerce”); *Preisler v. Doherty*, 284 S.W.2d 427, 467-68 (Mo. banc 1955) (considering such evidence). Intervenor does not dispute this definition but then claims the Circuit Court was correct to wholesale reject all evidence related to it. It was not.

Intervenor follows the Circuit Court in claiming (wrongly) that all lay witness testimony had “no relevance or probative value.” Int. Br. at 47. On the contrary, the testimony from actual Missourians—including Mayor Lucas—helps illuminate whether the district is configured such that it is “conducive to communication and interaction among representatives and constituents,” a consideration that factors into the “closely united” analysis. Opening Br. at 79-80; State Reply, Sec. II.B. The Circuit Court’s legally incorrect focus only on mathematical measures of district shape could not shed light on this key part of the analysis.

Neither was the testimony of Dr. Cromartie or Dr. Rodden “legally irrelevant” as Intervenor claims. Int. Br. at 48. Dr. Cromartie provided objective data about how CDs 4 and 5 treat areas connected by commuting patterns, and Dr. Rodden analyzed characteristics including transit networks in the same area. PX25 at 20; PX27 at 20-21. While any “value judgment” about this data indeed belongs to the General Assembly, the expert analysis itself is relevant because it illustrates ways in which the districts are or are

not “closely united” in ways that size-and-shape metrics cannot, including whether the districts are conducive to interactions among and between constituents and representatives.

Intervenor follows the Circuit Court in its irrelevant observation that Dr. Rodden did not “know” what factors any specific legislator or map drawer may have considered. Int. Br. at 49. But the analysis must be “objective, not subjective,” and the subjective intent of the General Assembly is not the focus of the inquiry. *Pearson I*, 359 S.W.3d at 39-40. Intervenor’s reference to the “three majority-urban districts in Kansas City,” Int. Br. at 49, is misleading. The only way that CDs 4, 5, and 6, which each contain a roughly equal slice of Kansas City, can be considered “majority-urban” is by combining the population of a slice of the Kansas City metro area with that of other cities and towns hundreds of miles away. PX23 at 18-19, 20-21. Whether fragmenting Kansas City to combine portions of it with dissimilar municipalities halfway across the state is good policy is indeed up to the General Assembly. And it is perhaps “possible,” as the Circuit Court surmised, that the General Assembly thought this was a good idea. But whether such a district comprises closely united territory is an objective determination that a court can (and must) make. And the Circuit Court and Intervenor get it wrong when they reject all compactness evidence beyond mathematical measures of shape that could have helped answer this question.

Nor is Intervenor successful in its attempts to characterize Appellants’ arguments as conflicting with *Johnson*. Appellants agree that maintaining communities of interest is not a recognized redistricting factor in Missouri, as they have stated. *See* Opening Br. at 82-83. But Appellants’ closely united territory analysis does not result in the “asymmetry” Intervenor fears. Int. Br. at 50. The General Assembly is free to weigh whatever factors it

wishes and make whatever trade-offs it prefers, so long as each district comprises closely united territory under *Pearson II*. The “as may be” language affords it breathing room to deviate in service of recognized factors, and the burden remains on the challenger to prove noncompactness. But it is indisputable that, given this Court’s “reject[ion]” of limiting the compactness analysis to “physical shape or size,” *Pearson II*, 367 S.W.3d at 48, Intervenor is wrong to justify the Circuit Court’s having done just that.

In any event, this case does not present an instance where the only deviations from closely united territory are along dimensions beyond district size and shape. Even if Intervenor were correct and all evidence from Dr. Rodden, Dr. Cromartie, and lay witnesses was ignored as it was by the Circuit Court, CD 5 *still* does not present a close case. The record shows, and no expert disputed, that the General Assembly reduced the compactness of CD 5 on every shape-based metric the Circuit Court found most informative—and on many other metrics accounting for size, shape, population density, political subdivisions, and natural boundaries—to a degree that does not result from applying any recognized factor. *See* Opening Br. at 24, 28-30, 39-42.

Intervenor’s arguments about the Northland and resolution of certain municipality splits, Int. Br. at 51, are also unavailing. Unifying the Northland is not a recognized factor under *Pearson II*, and alternative maps show the General Assembly could have achieved its unification in CD 6 without making CD 5 any less compact. Opening Br. at 85. Intervenor’s appeal to Jackson County municipalities unified under the 2025 Plan assumes a zero-sum trade-off the record does not support: numerous alternative maps show that nearly all Jackson County municipalities could have been made whole without further

carving up Kansas City by simply uniting a greater share of Jackson County in CD 5. *See, e.g.*, PX86 at 2-5, 6-9, 12-23.

### **VII. The Circuit Court’s Judgment is Against the Weight of the Evidence.**

Intervenor misunderstands Appellants’ weight-of-the-evidence challenge. Appellants’ weight-of-the-evidence challenge is premised on the cascade of legal errors on the face of the judgment that led the Circuit Court to misapply the law in assessing the evidence. The Circuit Court did not determine Appellants’ witnesses not credible or find their analysis or assertions untrue. Instead, the court disregarded entire categories of evidence as having limited usefulness, utility, or relevance to the constitutional analysis, *see, e.g.*, D108 p.17, 18, 24, 27; App. 17, 18, 24, 27, and otherwise misapplied this Court’s *Pearson II* standard in assessing the record.

Once those legal errors are aggregated and corrected, and the record viewed under the correct standards, the imbalance is decisive. *See* Opening Br. at 97-101 (Point VIII). On one side is a mountain of probative evidence that CDs 4 and 5 depart from compactness in ways no recognized factor can explain. This evidence includes the map of the district’s themselves (as Intervenor’s note), the measures of district shape the Court found most informative; several other measures of district size and shape analyzed by Dr. Stern, including measures accounting for population density, political subdivisions, and natural boundaries; alternative and simulated maps demonstrating the extreme rarity of the districts’ non-compactness; and a mountain of qualitative evidence the Circuit Court erroneously dismissed as legally irrelevant demonstrating a lack of close unity. On the other side is plan-wide compactness averages of a handful of shape measures, which this Court has said

hold limited relevance, *Pearson II*, 367 S.W.3d at 54 n.16, and cross-decade comparisons. The scale is not close.

### **VIII. H.B. 1 Assigns KC 811 to CDs 4 and 5 in Violation of Article III, § 45's Equal Population and Contiguity Mandates.**

Like State Respondents, Intervenor claims that this Court or executive branch officials can construe away H.B. 1's facial constitutional defects and that Appellants did not put on any evidence in support of its malapportionment and non-contiguity claims. Appellants respond to these arguments in their response to State Respondents' brief, incorporated here by reference. *See* State Reply, Sec. VII. Additionally, both Intervenor and State Respondents conflate the legal and factual issues relevant to these claims. Whether H.B. 1 double assigns KC 811 is a *legal* question of statutory interpretation that this Court reviews *de novo*. *Treasurer of State v. Parker*, 622 S.W.3d 178, 180-81 (Mo. banc 2021). Whether CDs 4 and 5 are malapportioned and CD 5 is noncontiguous as a result of that double assignment is a factual question, which was established on the record and State Respondents' expert conceded. PX23 at 25; Tr. 590:20-24 (Trende). The Circuit Court failed to engage whatsoever with the legal question, while erroneously stating that no evidence was put on as to the latter.

### **IX. Appellants' Proposed Injunctive Relief is Appropriate in this Case.**

Intervenor's objections to Appellants' requested remedy mirror those of State Respondents and are addressed in Appellants' reply to State Respondents' brief, incorporated by reference here. *See* State Reply, Sec. VIII.

CONCLUSION

For the forgoing reasons, the Circuit Court’s judgment should be reversed and judgment entered in Appellants’ favor. Enforcement of H.B. 1 (the 2025 Plan) should be enjoined and the 2022 Plan declared the operative congressional map for the 2026 election.

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Respectfully Submitted,

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### Certificate of Service and Compliance

The undersigned hereby certifies that on May 11, 2026, the foregoing brief was filed electronically and served automatically on the counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06(b); and (3) contains 6220 words (excluding the cover, signature block, and this certificate of service and compliance), as determined using the word-count feature of Microsoft Office Word. Finally, the undersigned certifies that the electronically filed brief was scanned and found to be virus-free.

/s/ Gillian R. Wilcox