

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 STATE RESPONDENTS

GILLIAN R. WILCOX, #61278
JASON A. ORR, #56607
ACLU of Missouri Foundation
406 West 34th Street, Suite 420
Kansas City, Missouri 64111

KRISTIN M. MULVEY, #76060
JONATHAN D. SCHMID, #74360
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, Missouri 63101

Phone: (816) 470-9933
gwilcox@aclu-mo.org
jorr@aclu-mo.org

Phone: (314) 652-3114
kmulvey@aclu-mo.org
jschmid@aclu-mo.org

MARK P. GABER*
ASEEM MULJI**
SIMONE LEEPER*
BENJAMIN PHILLIPS*
ISAAC DESANTO*
Campaign Legal Center
1101 14th St NW Suite 400
Washington, DC 20005
Phone: (202) 736-2200
mgaber@campaignlegalcenter.org
amulji@campaignlegalcenter.org
sleeper@campaignlegalcenter.org
bphillips@campaignlegalcenter.org
idesanto@campaignlegalcenter.org

MING CHEUNG*
DAYTON CAMPBELL-HARRIS*
SOPHIA LIN LAKIN*
ACLU Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
mcheung@aclu.org
dcampbell-harris@aclu.org
slakin@aclu.org

ANNABELLE E. HARLESS**
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
Phone: (202) 736-2200
aharless@campaignlegalcenter.org

** Admitted pro hac vice in this Court and in the trial court in *Wise v. State*, 2516-CV29597
* Of counsel and admitted pro hac vice in the trial court in *Wise v. State*, 2516-CV29597

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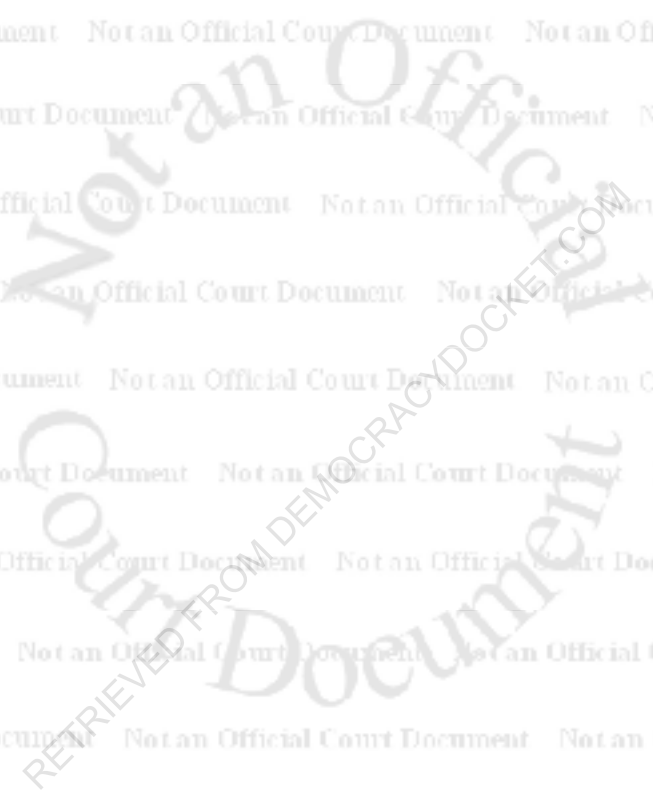
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INTRODUCTION

Appellants’ opening brief meticulously articulates 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.” Respondents’ brief, for its part, demonstrates a fundamental misunderstanding of the legal standard both for this Court’s review *and* for the Constitution’s mandatory compactness requirement.

Regarding the former, Respondents attempt to frame the Circuit Court’s errors as factual errors that should be given significant deference by this Court. But the Circuit Court did not find Appellants’ witnesses or evidence not credible or untrue; instead, the court disregarded whole categories of evidence and testimony as not useful or relevant to its faulty understanding of the constitutional analysis. Such misapplication of the law to the facts is legal error, plain and simple. This Court’s only proper course is to review these determinations *de novo*.

Respondents then attempt to double dip on this flawed argument and suggest a *second* layer of deference owed to the General Assembly because of its “predominate role” and “flexibility” in redistricting. To be sure, redistricting is within the province of the legislature, but Respondents’ anything-goes conception of the legal standard misses a critical point this Court has emphasized repeatedly: compactness is a “*mandatory and objective*” requirement that “*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).

Respondents would have this Court believe that any and all policy preferences of the General Assembly can be used to explain deviations from compactness, but this would render the provision toothless. To balance the complexities of redistricting with ensuring that Article III, § 45 serves its clear purpose of *restricting* legislative discretion, this Court recognized that Section 45’s “as may be” qualifier allows “minimal and practical deviations” from compactness, but *only* on the basis of a *limited and exclusive* list of *objective* factors. *Pearson II*, 367 S.W.3d at 51. In other words, this Court’s compactness standard itself incorporates the full extent of deference this Court has determined is owed to the legislature in congressional redistricting. The legislature and trial court were wrong to ignore it.

Even if this Court agrees, Respondents insist that Missouri voters should still cast ballots in unconstitutional districts based on a warped view of what would be most disruptive to election officials, candidates, and voters. By all indications, Respondents still have not implemented the 2025 Plan. The most disruptive course would be to implement an unconstitutional map rather than adhere to the 2022 Map, which voters, candidates, and election officials have used for years and has not even yet been displaced. A permanent injunction of the 2025 Map would restore the effective status quo by operation of law and ensure that Missourians across the state are not denied their fundamental right to vote in constitutional districts. With voters protected in the meantime, Respondents can have their

opportunity to adopt a different preferred remedy after the 2026 election.

ARGUMENT

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

In articulating the level of deference this Court should apply, Respondents have either misunderstood Appellants' points on appeal or have misstated the standard of review applicable to reviewing a case for a misapplication of law. *See* State Br. at 1, 49-50, 87. "When considering whether the court misapplied the law, we review the court's legal conclusions and application of law to the facts *de novo*." *Cullen v. Bernstein*, 694 S.W.3d 494, 498 (Mo. App. E.D. 2024). "With respect to questions of law, we conduct an independent review, without deference to the court's conclusions." *Id.* While deference is given to factual determinations, this Court "reviews *de novo* both the [circuit] court's legal conclusions and its application of law to the facts." *See Singleton v. Singleton*, 659 S.W.3d 341 (Mo. banc 2023) (internal quotation marks omitted).

For example, in *Zweig v. Metropolitan St. Louis Sewer District*, this Court rejected the parties' suggestion that it is bound by the trial court's application of law to facts. 412 S.W.3d 223, 231 (Mo. banc 2013). Instead, application of the legal criteria "(and other relevant considerations) are not facts to be determined solely by the factfinder and deferred to on appeal. Instead, such criteria are a means of evaluating those facts and are intended only to shed what light they can on the application of . . . a question of law." *Id.*

Here, the Circuit Court committed numerous misapplications of law: (1)¹ failing to conduct a district-by-district analysis; (2) relying on a narrow set of geometric shape metrics assessed through statewide averages; (3) disregarding alternative map evidence for reasons premised on a misreading of controlling precedent; (4) disregarding as “legally irrelevant” facts relevant to how compactness is constitutionally defined; (5) failing to conduct an analysis of whether any compactness deviation resulted from a recognized factor; (6) considering factors beyond the exclusive factors enumerated in *Pearson II*; (7) considering legally irrelevant subjective legislative goals; and (10) failing to engage with the plain text of H.B. 1.

Notably, the trial court did not find Appellants’ witnesses or evidence not credible or any asserted facts or analysis untrue. Instead, the court frequently characterized evidence in terms of its usefulness, utility, or relevance to the constitutional analysis. *See, e.g.*, D108 p.17, 18, 24, 27; App. 17, 18, 24, 27. These are not factual determinations entitled to deference but quintessential determinations about how to apply law to facts subject to *de novo* review. And where any determination is found to be premised on an error of law—including assessment of evidence contrary to the governing standard—that evidence must be reevaluated under the correct standard. This Court is empowered to do so and should enter judgment in Appellants’ favor under Rule 84.14.

Finally, it is true it is Appellants’ burden to prove that H.B. 1 “clearly and undoubtedly contravene[s] the constitution.” *Pearson II*, 367 S.W.3d at 43 (alteration in

¹ Numbers refer to the corresponding points relied on in Appellants’ Opening Brief.

original) (citation omitted). This burden, however, does not prohibit this Court from “review[ing] the propriety of the trial court’s construction and application of the law.” *Id.*

II. Respondents Mischaracterize the Legal Standard for Compactness.

Respondents repeatedly describe compactness in terms of the “deference” owed to the General Assembly’s “predominate role” and its “flexibility” in redistricting. *See* State Br. at 1, 3, 55, 57, 62. But for over one hundred years, this Court has held that the compactness requirement is “mandatory and objective” and “must be satisfied.” *Pearson II*, 367 S.W.3d at 48 (emphasis added). It is a constitutional *limit* on legislative discretion in redistricting, not an expression of it.

A. Compactness is mandatory.

Article III, § 45 provides that congressional districts “*shall* be composed of contiguous territory as compact and as nearly equal in population as may be.” Mo. Const. art. III, § 45 (emphasis added). It uses “words of restriction.” *Barrett*, 146 S.W. at 54. Thus, it does not “confer upon the Legislature the unlimited power and discretion” to draw districts as it pleases. *Id.* “Had the framers . . . intended that the Legislature should apportion the state into districts according to its own free and untrammelled will, then they would not have used . . . words of restriction.” *Id.*

Compactness is mandatory for a reason: to guard, “as far as practicable . . . against the legislative evil commonly known as the ‘gerrymander.’” *Id.* at 65. Given this critical purpose, “[s]uch constitutional mandate and standards cannot be broken down or rendered inoperative on the theory of discretionary power.” *Preisler v. Doherty*, 284 S.W.2d 427, 435 (Mo. banc 1955) (“There is no discretion to violate mandatory provisions of the

Constitution . . .”). Indeed, where the General Assembly has failed to comply, this Court has not hesitated to strike down offending districts. *See Barrett*, 146 S.W. at 54, 65; *Doherty*, 284 S.W.2d at 467-71. Compactness thus operates as a *limit* on the legislature’s authority over redistricting.

In its *Pearson* decisions, this Court developed the now-applicable standard of review for courts to determine whether a district is “as compact as may be.” *Pearson v. Koster*, 359 S.W.3d 35, 40 (Mo. banc 2012) (“*Pearson I*”); *Pearson II*, 367 S.W.3d at 49. That standard, based on the constitutional language itself, incorporates the necessary “deference to the predominate role of the General Assembly” and the “inability of anyone to draw compact districts with numerical precision” as recognized in the words “as may be”—while still upholding “the mandatory language of the constitution that the ‘districts shall be . . . as compact . . . as may be.’” *Pearson I*, 359 S.W.3d at 39 (emphasis in original). Respondents lean on the first idea (deference) while papering over the mandatory language and legal standard—as did the Circuit Court.

B. Closely united territory has substantive meaning beyond a district’s physical size and shape.

Respondents claim “closely united territory” has effectively no meaning beyond legislative flexibility. *See State Br. 57-58, 59 n.7*. That is not the law.

In *Pearson II*, this Court considered two competing definitions of “compact”—one limited to “physical shape or size,” and the other extending to “closely united territory, a phrase not necessarily limited to physical dimensions.” 367 S.W.3d at 48 (quoting Kurtis

A. Kemper, Annotation, *Application of Constitutional “Compactness Requirement” to*

Redistricting, 114 A.L.R.5th 311 (2003)). The Court recognized that it had “adopted the latter definition” explicated in the Kemper treatise, thereby “rejecting the proposition that ‘compact’ refers solely to physical shape or size.” *Id.* In adopting the broader definition, the Court necessarily held that “closely united territory” carries substantive content beyond district geometry, as the cited treatise explains, and is not just an expression of legislative discretion.

Respondents’ citation to *Barrett* for their contrary view is puzzling. State Br. at 57 (citing *Barrett*, 146 S.W. at 62). Their pincite refers not to *Barrett*’s own reasoning but to language *Barrett* block-quotes from another source having nothing to do with its definition of compactness as closely united territory. 146 S.W. at 62. Where *Barrett* itself adopted “closely united territory,” it did so *not* as an indication of legislative breathing room but as a constitutional limit designed to guard against the legislative evil of gerrymandering. *Id.* at 65.

The Western District recently confirmed this understanding. In *People Not Politicians v. Hoskins*, the court explained that “closely united territory” calls for “districts which are ‘conducive to communication and interaction among representatives and constituents,’” and is satisfied where a district’s territory is “‘situated along the chief lines of travel and commerce’” and “‘compact in interests as well as in means of intercommunication.’” No. WD88795, 2026 WL 1175290, at *13 (Mo. App. W.D. Apr. 30, 2026) (quoting 114 A.L.R.5th 311 § 3(b)). Determining the relative compactness of districts can involve considering different types of evidence: “the various mathematical and statistical measures of compactness, as well as other facts which ‘closely unite’

territories (such as the areas' interconnectedness in terms of transportation and communication, and other geographic and demographic factors).” *Id.*

That is also how this Court has applied “closely united territory” in practice. In *Doherty*, the Court held certain senate districts were not “as compact as may be” where one district had precincts split by a railroad yard, another was “separated into three parts” by a large park, a third “divid[ed] the main business section of the City” in an L-shape, and a fourth featured “a long narrow strip”—configurations that were neither “due to” physical features or works of man (per topographical maps) nor explainable by population equality. 284 S.W.2d at 432-33.²

C. “As may be” allows only minimal and practical deviations from compactness that result from application of a closed set of traditional recognized factors.

The qualifier “as may be” recognizes that “compactness . . . cannot be achieved with absolute precision.” *Pearson I*, 359 S.W.3d at 39. It therefore allows some flexibility to depart from closely united territory to satisfy “other recognized factors that affect the ability to draw district boundaries with closely united territory.” *Pearson II*, 367 S.W.3d at 49. But that flexibility is cabined in two ways.

² Contrary to Respondents’ contention (at 59 n.8), *Shayer v. Kirkpatrick*, 541 F. Supp. 922, 931-33, 934 (W.D. Mo. 1982), *aff’d sub nom. Schatzle v. Kirkpatrick*, 456 U.S. 966 (1982), confirms this understanding of closely united territory. The federal court “drew compact districts” comprising “closely united territory” in part by “concentrating one district in the Kansas City area” and others in the St. Louis area, noting that the “grouping of urban interests is to some extent necessary to meet the compactness requirement”—not a mere policy choice.

First, the recognized factors are limited and *exclusive*. They include the other constitutional mandates (contiguity and population equality), federal law (*e.g.*, the Voting Rights Act), and a closed set of “permissive” factors identified in Missouri precedent: “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 82. Other factors, like alignment with state and local legislative boundaries, are not included. “Nothing . . . should be construed as expanding th[at] list . . . beyond those recognized in this Court’s precedent.” *Johnson v. State*, 366 S.W.3d 11, 28 n.10 (Mo. banc 2012).

Second, these factors permit no more than “minimal and practical deviations” from closely united territory. *Pearson II*, 367 S.W.3d at 51; *Johnson*, 366 S.W.3d at 30; *Barrett*, 146 S.W. at 53 (the legislature has only “a limited degree of discretion”). This is to say compactness itself “cannot be . . . disregarded” in pursuit of only permissive goals. *Pearson II*, 367 S.W.3d at 51.

Thus, in assessing whether a district is “as compact as may be,” a trial court must consider whether plaintiffs have proven that it deviates from principles of compactness (*i.e.*, closely united territory not limited to physical shape and size) and, if so, whether the deviation is a minimal and practical result of applying the recognized factors. *Pearson II*, 367 S.W.3d at 53 (identifying factors). Because the requirement applies to each district, courts must assess the constitutionality of each challenged district individually and do so under the “totality of the evidence.” *Id.* at 48, 55; *Johnson*, 366 S.W.3d at 24 n.7; *Pearson I*, 359 S.W.3d at 39. Evidence about the map as a whole “has limited relevance” to the

inquiry. *Pearson II*, 367 S.W.3d at 54 n.16. And the test is objective: subjective intent of the legislature is not relevant. *Id.* at 48; *Pearson I*, 359 S.W.3d at 39-40.

D. The burden of proof does not excuse a failure to apply the governing legal standard.

Respondents repeatedly suggest that Appellants seek to flip the burden of proof. State Br. at 4, 45. They do not. Appellants do not question that they bear the burden to prove that each challenged district clearly and undoubtedly violates the compactness mandate. *See Pearson II*, 367 S.W.3d at 45. But the burden of proof only describes who is required to present evidence to persuade the court. It does not give a court license to disregard the legal standard or misapply the law in considering the evidence. And, as this Court has noted, the showing required of plaintiffs “is not burdensome:” “the plaintiff needs only to submit maps or other evidence that objectively shows that [recognized factors] were not a basis for the district boundary *or* that it goes beyond a ‘minimal and practical deviation.’” *Johnson*, 366 S.W.3d at 31 (quoting *Pearson I*, 359 S.W.3d at 40).

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

Respondents argue that because the challenged districts “fall within historical tolerances” derived from past Missouri maps, the challenged districts must be constitutional. State Br. at 40. But this is a misapplication of law that *Pearson II* forecloses. *Pearson II* expressly rejected any quantitative bright-line standard, holding that quantitative measures of shape and size, though relevant, *are not dispositive*. 367 S.W.3d at 48-49, 49 n.10, 54 n.16, 56. Yet the Circuit Court constructed a hypothetical “range” of

permissible districts from historical districts drawn under different conditions and relied on the 2012 congressional districts' compactness scores as a numerical safe harbor. Opening Br. at 64-65. In effect, it determined a district is compact so long as no quantitative score is less than the least compact district in the historical range it constructed. *Pearson II* bars this approach.

Next, Respondents contest a strawman: that Appellants contest the Circuit Court's *exclusive* reliance on statewide averages. State Br. at 41. That is not Appellants' argument. In Point II, Appellants argue the Circuit Court erred in relying exclusively on quantitative shape-based scores, including both plan-wide and district-level scores, because doing so contravenes *Pearson II*'s rule that such scores are not dispositive. Opening Br. at 58. The Circuit Court also legally erred in placing *primary emphasis* on statewide averages above the mountain of district-specific evidence in this case, as *Pearson II* ruled that the inquiry must be conducted under the totality of the evidence and "compactness of the Map as a whole . . . has limited relevance." 367 S.W.3d at 54 n.16. That rule makes sense because, as Respondents' and Intervenor's experts agree, statewide averages can camouflage the non-compactness of individual districts and Section 45's text requires a district-specific analysis. Opening Br. at 25 (citing record).

Respondents also mischaracterize the Circuit Court's judgment as performing the district-by-district analysis *Pearson II* requires when it does not. State Br. at 42. *Pearson II* required the Circuit Court to consider whether each district is "compact as may be" under the "totality of the evidence" for that district. Indeed, *Pearson II* walked district-by-district through its analysis and considered the evidence available to the Circuit Court for each

challenged district. 367 S.W.3d at 53-56. But here, the Circuit Court disregarded as “legally irrelevant” all district-specific evidence other than a handful of shape-based metrics, Opening Br. at 79-83. Indeed, the Circuit Court faulted Appellants for focusing *too heavily* on CD 5. D108 p.29, App. 29. By excluding relevant evidence and centering its analysis on map-wide evidence, the Circuit Court failed to analyze whether each challenged district “comprises closely united territory,” thereby misapplying Missouri law.

IV. The Circuit Court Failed to Properly Consider Whether Recognized Factors Could Explain a Departure from Compactness.

Respondents claim that “[t]he trial record [] shows that to the extent the challenged districts deviate from principles of compactness, the deviations are both practical and justified by the General Assembly’s adherence to the recognized factors.” State Br. at 43. Respondents are wrong, and their arguments in support of this claim demonstrate a persistent misunderstanding of how this aspect of the legal standard applies.

Respondents begin by stating that their “clearest evidence” in support of this argument is that the 2025 Plan splits fewer counties, municipalities, and VTDs than the 2022 Plan. *Id.* at 43-44. Appellants do not dispute the 2025 Plan’s slight improvement over the 2022 Plan on these metrics. However, the reductions in compactness in the challenged districts *did not result from* these improvements, as the law clearly requires. *See supra*, Sec. II.

Respondents claim this argument has two flaws. First, they claim it “presumes that the challenged districts depart from the principle of compactness.” State Br. at 45. In fact, Appellants presented extensive evidence at trial exposing the 2025 Plan’s departure from

compactness. While the Circuit Court determined that no departure occurred, that determination was based on numerous errors, including a misapplication of the law as explained *supra*, see Sec. III. Respondents' disagreement on whether a departure from compactness occurred does not mean that Appellants skipped a step in meeting their burden, and the trial record and Appellants' thorough briefing in this case confirms as much.

Second, Respondents claim that "Appellants' argument attempts to flip the burden." State Br. at 45. This misunderstands Appellants' argument, which in reality is a simple request for the legal standard to be applied correctly. *See supra*, Sec. II.

Respondents also take issue with Appellants' alternative maps. According to Respondents, Appellants' alternative map evidence is not methodologically sound because it "do[es] not take into account all the recognized factors the General Assembly considered when enacting the 2025 Plan." State Br. at 46. This argument suffers from multiple flaws.

To start, this claim directly contradicts Respondents' own expert, Dr. Trende, who testified at trial that "[his] report does not identify any other considerations the [General Assembly] may have had that are not accounted for in Dr. Stern's ensembles." Tr. 664:13-16. Respondents never identify what these other "recognized factors" considered by the General Assembly are that Appellants' experts did not. That is because there are none.

This Court has provided an *exclusive* list of recognized factors that may justify minimal and practical deviations from compactness, *see supra*, Sec. II, which both of Appellants' experts, Drs. Cervas and Stern, accounted for in creating their alternative maps. *See* PX23 at 12-24; PX21 at 3. Respondents thus seek to undermine the validity of Appellants' alternative map evidence by arguing they did not take into account

unrecognized factors, such as political or policy considerations, that were considered by the General Assembly. While the General Assembly is free to consider these factors in drawing a congressional map, it is not allowed to do so *at the expense of* the mandatory constitutional compactness requirement. *See Pearson II*, 367 S.W.3d at 46, 48.

Respondents' argument that Appellants' alternative maps lack utility because they split different municipalities in different ways than the 2025 Plan suffers from a similar misunderstanding of the legal standard. *See State Br.* at 46-47. Practically, any map drawn with identical municipal splits to another map would not be a comparator so much as a replica. But legally, Appellants were not required to replicate the *same* municipal splits to satisfy their burden.

The General Assembly is free to make any municipal splits it sees fit in the creation of a congressional map *as long as* the map satisfies Article III, § 45's compactness requirement. If a district departs from compactness, a plaintiff need only show that *Pearson II*'s exclusive list of recognized factors do not explain that deviation. While reducing municipal splits is one of those factors, a preference for splitting specific municipalities is not a traditional redistricting criterion. *See, e.g., Allen v. Milligan*, 599 U.S. 1, 34 (2023). What is relevant for a compactness analysis then is that Appellants' alternative maps show it is possible to achieve the same or even fewer municipal splits as the 2025 Plan *without* reducing compactness, *see* PX23 at 15; PX21 at 15.

Respondents' next claim that "[an]other problem with Appellants' [alternative map] evidence is that the 2022 Plan—Appellants' proposed remedy—performs no better" than Appellants' alternative maps, and in fact often performs worse. *State Br.* at 47. To

Appellants’ (correct) response that the 2022 Plan was not challenged in this case, Respondents argue that “Appellants made the 2022 Plan an appropriate comparator when they requested as relief the reinstatement of the 2022 Plan.” *Id.*

This conflates remedy and liability. Appellants have never contended that they would accept no remedy other than reinstatement of the 2022 Plan. That remedy is simply one of multiple options that could be adopted to correct the 2025 Plan’s constitutional violation. Regardless, neither the fact that some number of Appellants’ alternative maps outperform the 2022 Plan on some quantitative metrics, nor the map or process chosen as a remedy, is relevant to the Court’s liability inquiry. The question is, once Appellants have shown that the 2025 Plan deviated from compactness, whether that deviation can be explained by adherence to recognized factors. The alternative maps show it cannot.³

Finally, Respondents object to Appellants’ contention that the Circuit Court relied on non-recognized factors, such as keeping State Senate and City Council districts whole, to justify the 2025 Plan’s departures from compactness. *See id.* at 48. Respondents claim that both are subcategories of the recognized factor of historical boundary lines that the Circuit Court properly considered.

This claim is at best erroneous and at worst disingenuous. As this Court made clear in *Pearson II*, which Respondents bafflingly cite in support of their claim, the term refers to historical *congressional* boundary lines. In discussing a potential compactness violation

³ Respondents’ observation that “there is no such thing as a perfect map,” and it could always be more compact, State Br. at 47-48, while undisputed (if somewhat obvious), is of no legal import.

of then-District 5 in that case, this Court wrote that “[t]here was also evidence produced at trial disputing whether the boundaries for district 5 were affected by historical district boundaries. This evidence consisted of the prior redistricting maps shown in Appendix A.” *Pearson II*, 367 S.W.3d at 56. A quick glance at Appendix A reveals it consists solely of images of Missouri’s *congressional* maps from 1921 through 2012. *Id.* at 57-66. Nothing in *Pearson II* or any other case suggests that Respondents’ interpretation of historical boundary lines is accurate. That interpretation is also inapposite to how the concept of historical boundary lines, a well-trodden traditional redistricting criterion, is commonly used in other redistricting contexts. *See, e.g., Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 3-4 (2024).

Nor is it the case, as Respondents claim, that “even if the legislative maps did not qualify as a recognized factor on their own,” they retain their “utility” because they can “inform the Circuit Court about the weight it should place on facts related to [other] factor[s].” State Br. at 49. Because this Court has delineated an exclusive list of recognized factors that may justify deviations from compactness—a list that does not include respect for State Senate or City Council boundaries—to consider those unrecognized factors is a misapplication of the standard and thus legal error.

In all these ways, Respondents’ 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 Appellants’ Alternative Map Evidence.

Respondents claim the Circuit Court was right to disregard Appellants’ alternative map evidence. Yet Respondents concede that alternative maps *are* relevant evidence. State Br. at 50. They also attempt to recast the Circuit Court’s legal error as a factual finding, State Br. at 45, 49-50, but this Court need only look at the lower court’s own words when it categorically rejected Appellants’ alternative maps: “Plaintiffs’ experts generally asserted that the General Assembly could have created better maps from Plaintiffs’ perspective. *That is not the standard under Missouri law.*” D108 p.26, App. 26 (emphasis added).⁴

Respondents next criticize Dr. Stern’s ensemble methodology, State Br. at 51-54, but this Court previously endorsed the same kind of analysis in *Faatz*. See Opening Br. at 72-75 (Point III). Indeed, even Respondents’ own expert, Dr. Trende, disavowed those critiques because Respondents criticize standard features of map-drawing algorithms which *he used* in *Faatz* (and which this Court credited). *Id.* Tellingly, Respondents argue that Dr. Stern’s maps are a bad comparison for the 2025 Plan because his algorithm “cuts off the most extreme maps.” State Br. at 51. If the only way to make the 2025 Plan appear compact is by comparing it to the “most extreme” maps, that is a clear sign that the 2025 Plan *is not compact*.

⁴ The Circuit Court proceeded to fault Dr. Cervas’ maps for being *too* compact. D108 p.27, App. 27. But providing more compact alternatives is exactly what this Court repeatedly held to be probative evidence. See Opening Br. at 67-69 (Point III).

The Circuit Court, like Respondents here, also wholly ignored several alternative maps, and in doing so failed to consider whether the 2025 Map's deviations from compactness can be explained by adherence to *Pearson II*'s recognized factors. For instance, the Circuit Court noted that some of Dr. Cervas's maps split different counties than the 2025 Plan, but the Courts completely disregarded Dr. Cervas' maps 3 and 4, D108 ¶¶104-10, App. 16-17, which split the same counties the same number of times as the 2025 Plan without that plan's reduction of compactness in CDs 4 and 5. *See* Opening Br. at 40, 86-87. Similarly, Respondents misleadingly argue that Dr. Stern failed to prioritize minimizing municipal splits in his algorithm. State Br. at 53. But even without such a preference built into his code, his randomly drawn maps *still* outperform the 2025 Plan on municipality splits *and* are more compact. *See* PX21 tbl.2.

Finally, the Circuit Court inexplicably tethered the constitutionality of the 2025 Plan to the constitutionality of the 2022 Plan, holding that an alternative map is inadequate proof of non-compactness if it would also outperform the 2022 Plan. *See* D108 ¶110, App. 17. The 2025 Plan dramatically reshaped the 2022 Plan—the compactness of one has nothing to do with the other, and none of Appellants' claims depend on proving the compactness or non-compactness of a map they have not challenged. *See also supra*, Sec. IV.

VI. The Circuit Court Improperly Disregarded Evidence Bearing on Closely United Territory.

Respondents claim that Appellants “infuse a host of non-recognized factors” regarding communities of interest into the compactness inquiry, and that the Circuit Court was right to set it aside as “legally irrelevant.” State Br. at 60-61. But in doing so they

conflate two different things: evidence that a district departs from closely united territory, and the closed set of factors that allow a departure from that standard.

As Appellants have explained, the *Pearson II* standard asks the challenger to prove a departure from closely united territory that is not a minimal and practical result of a recognized factor. 367 S.W.3d at 48, 53. It is a totality-of-the-evidence test asking, in part, whether the district exhibits close unity along dimensions other than physical size and shape, including whether it is “conducive to communication and interaction among representatives and constituents.” Kemper, 114 A.L.R. 5th 311, Part II, § 3(b); *see also People Not Politicians*, 2026 WL 1175290, at *13 (noting as relevant a district’s “interconnectedness in terms of transportation and communication”); *Doherty*, 284 S.W.2d at 467-68 (considering such evidence). Evidence about these dimensions goes to what compactness *itself* means and is therefore relevant.⁵

This does not create a “heads I win, tails you lose” test, as Respondents claim. State Br. at 62. 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*. And “as may be” affords breathing room to deviate in service of recognized factors. Nor does the General Assembly have any burden to justify its choices; as Respondents correctly emphasize, the test is objective and the burden remains on the challenger to prove a non-minimal departure or a minimal and practical deviation not resultant from a recognized factor.

⁵ *Johnson* does not say otherwise, as Appellants have explained. *See* Opening Br. at 82-83.

Regardless, 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 Respondents were correct that *only* size-and-shape evidence and the recognized factors may be considered under a totality-of-the-evidence standard (not so), CD 5 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 trial 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.

Next, Respondents wrongly fault Appellants for focusing on “one community” while ignoring “benefits experienced elsewhere in the challenged districts.” State Br. at 65. Appellants’ evidence correctly focused on the challenged districts, spanning the entire territory of CDs 4 and 5. Dr. Cervas addressed population density patterns in both CDs 4 and 5, PX23 at 16-18; Dr. Cromartie identified rural interests and the 2025 Map’s disregard for commuting patterns linking rural counties to Kansas City, PX25 at 20; and Dr. Rodden addressed the fragmentation of regional transit networks across the same area, PX27 at 20-21. The alternative maps do not undermine this evidence, as Respondents suggest. State Br. at 65. Some maps drawn by Dr. Cervas combined populations of varying density by pairing Jackson County with an immediately neighboring county—but they did so without sacrificing compactness on the same metrics the Circuit Court favored. *See* PX86 at 6-9, PX23 at 7. That is a far cry from CD 5’s ill-compact expanse across half the state. Ultimately, the point is not that urban and rural areas can never share a district; it is that *no*

recognized factor explains the 2025 CD 5’s extreme reduction in compactness.

Respondents’ Northland and municipality arguments, State Br. at 66-67, 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 less compact. Opening Br. at 85. Respondents’ appeal to Jackson County municipalities unified under the 2025 Plan—Blue Springs, Lake Lotawana, Lee’s Summit, Independence, and Sugar Creek—assumes a zero-sum trade-off the record does not support: numerous alternative maps show that nearly all these municipalities could have been made whole without further fragmenting 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. H.B. 1 Unambiguously Assigns KC 811 to Both CDs 4 and 5 in Violation of Article III, § 45’s Equal Population and Contiguity Mandates.

Respondent’s argument that HB 1 unambiguously distributes “VTD: KC 811” between CDs 4 and 5 contradicts HB 1’s plain text and the parties’ joint stipulations. State Br. at 70. Before trial, Respondents stipulated that HB 1’s text states that CDs 4 and 5 “shall be composed of several geographic units including ‘VTD: KC 811’” without mentioning GEOIDs. D86 (Joint Stips.) ¶¶87-89, App. 43-44. Now, Respondents argue that HB 1’s definition of “voting districts” implicitly includes GEOIDs because it references the Census Bureau. But HB 1 defines “voting districts (VTD[s])” to match *VTDs* “as reported . . . by the United States Bureau of the Census,” again, without referencing GEOIDs. PX40 at 1; App. at 48. Respondents cannot override this defined term and write GEOIDs into HB 1. *Am. Nat’l Life Ins. Co. of Tex. v. Dir. of Revenue*, 269 S.W.3d 19, 21

(Mo banc. 2008). Nor can they use the definition's reference to Census designated VTDs or executive officials' promises to ignore H.B. 1's text to manufacture ambiguity and save the bill through constitutional avoidance. See *Goodman v. Saline Cnty. Comm'n*, 699 S.W.3d 437, 440 n.5 (Mo. banc 2024); *State v. League of Women Voters of Mo.*, 730 S.W.3d 591, 600 n.9 (Mo. banc 2026).

Respondents also misrepresent the evidence Appellants adduced at trial. The parties submitted stipulations that HB 1 doubly assigns KC 811 to CDs 4 and 5. D86 (Joint Stips.) ¶¶87-89, App. 43-44. Dr. Cervas and Dr. Trende both stated in their reports, and Dr. Trende testified at trial, that if State officials assign KC 811 according to HB 1's plain text, CDs 4 and 5 become malapportioned and CD 5 is rendered noncontiguous. PX23 at 25-26 (Cervas); DX101 at 16 (Trende); Tr. 590:4-8, 590:20-24 (Trende). This un rebutted evidence is sufficient to hold that HB 1's double assignment of "KC 811" violates Art. III, § 45.

VIII. Appellants' Proposed Injunctive Relief is Appropriate in this Case.

If this Court agrees that H.B. 1 is unconstitutional, it should ensure that a constitutionally valid map is in place for the 2026 election. A permanent injunction of H.B. 1's enforcement—which would restore the 2022 Map by operation of law—is the most sensible, least disruptive remedy. See Opening Br. at 107-08; *State v. Thomas*, 39 S.W. 481 (1897).

The 2022 Map has governed two election cycles without constitutional challenge, and likely remains the operative plan in MCVR, the state's voter database. Respondents' own witness testified that implementation of the 2025 Map could not begin before April

21, 2026, and Respondents' brief is noticeably mum on whether it *has* since begun. *See* State Br. at 30.⁶ Indeed, there is nothing in the record indicating that the 2025 Plan has been implemented. Even if the 2025 Map is implemented prior to a May injunction, reversion to the 2022 Map would take “very little to no time,” Tr. 698:25-699:3 (Kansas City LEA), and could be done “up until at least May 26,” Tr. 702:9-11; *see also* D90 21:14-24 (Jackson County LEA). LEAs would have about as much implementation time as they had in 2022.

Respondents make much of the candidate filing deadline, but this is a red herring. Candidates regularly declare and begin campaigning before congressional lines are set. Indeed, the candidate filing deadline had long passed in 2022 before congressional lines were set in May of that year. D86 (Joint Stips.) p.6-7, App. 38-39. This was not an issue, and would again be no issue, because congressional candidates need not reside in the district they seek to represent. *Id.* To the extent any confusion or uncertainty hangs over the elections, it is due to the General Assembly's passage of an unconstitutionally non-compact mid-decade map. This is not a basis for an unconstitutional map to remain in place.

Respondents object that an injunction reinstating the 2022 Map would be overbroad because it would interfere with the General Assembly's “legitimate and proper activity.” State Br. at 76. But this objection rests on cases involving restrictive property covenants, police-officer conduct, and church-property disputes—none of which address the propriety

⁶ Intervenor-Respondent asserts that Appellants “admit” that steps to implement the plan *began* on April 21. This assertion misstates the opening brief and is unsupported by the record. *See* Opening Br. at 108.

of an injunction in this context. *See* State Br. at 76 (citing cases). No legitimate or proper legislative activity is threatened by voiding an unconstitutional map and restoring the prior presumptively constitutional one.

Respondents would instead have the map resubmitted to the General Assembly to be remedied after the 2026 election, *see* State Br. at 77, while thousands of Missourians are left to vote and be represented for the next two years in unconstitutional districts. This is neither necessary nor appropriate under the circumstances. In redistricting cases, courts routinely enjoin the unconstitutional map and afford the legislature an opportunity to enact a remedial plan in recognition of the legislature's predominate role in redistricting; however, where there is a "possibility that the legislative process may not result in remedial maps . . . it is the court's role to adopt valid remedial maps." *Clarke v. Wis. Elections Comm'n*, 998 N.W.2d 370, 396 (Wis. 2023); *see also* *Grove v. Emison*, 507 U.S. 25, 33 (1993) (encouraging the state judiciary to ensure unconstitutional redistricting plans are remedied).

Here, there is insufficient time and no reason to expect the legislative process to produce a remedy before the 2026 election. But there *is* time for LEAs to implement an interim remedy and run an orderly 2026 election under the prior enacted map, one drawn under the same decade's census data that remains easy to implement. *See* *Legis. Rsch. Comm'n v. Fischer*, 366 S.W.3d 905, 917 (Ky. 2012) (reinstating prior plan after invalidating successor to ensure orderly election). The General Assembly can have its turn to enact a remedy after the voters are afforded their right to vote under a constitutional map.

Respondents’ appeal to the federal *Preisler* decisions is unavailing. Those cases arose from a court’s “disincl[ination] to rule on matters peculiarly and primarily of state concern”—a concern absent here. *Priesler v. Sec’y of State of Mo.*, 238 F. Supp. 187 (W.D. Mo. 1965) (citation omitted). In any event, *Preisler* confirms a court’s authority to determine which map governs when the General Assembly fails to draw a constitutionally sound one in time. *See Preisler v. Sec’y of State of Mo.*, 279 F. Supp. 952, 969-70 (W.D. Mo. 1967).

If this Court is not inclined to reinstate the 2022 Map, it could order one of the other numerous maps in the record as the interim remedy.⁷ Cervas Map 4, for instance, cures the violations in CDs 4 and 5 while leaving every other district in the 2025 Plan untouched, reducing municipal splits, and splitting the same counties the legislature sought to split the same number of times. *See* Tr. 67:8-12; PX23 at 7, 9; PX24 at 5, 8, 9; PX86 at 8-9. Respondents should welcome this result, given their newfound concern that reductions in quantitative compactness from one map to the next can “potentially injure[] voters.” *See* State Br. at 79. Cervas 4 would preserve the quantitative compactness improvements they cite to oppose the 2022 Map, while restoring constitutional compactness to the only two districts that need it.⁸

⁷ Appellants’ requested relief was not limited to reinstating the 2022 Map. *See* D2 p.45 (requesting “other and further relief as is proper under the circumstances”).

⁸ CDs 4 and 5 are the *only* districts in 2025 whose Reock and/or Polsby-Popper compactness scores reduced compared to 2022. PX23 at 9.

Finally, neither the *Purcell* principle nor this Court's decision in *Hadley* counsels postponing relief. The *Purcell* principle is animated by federalism concerns and the risk of voter confusion and disenfranchisement when lower federal courts alter state election rules where appeals may be pending or forthcoming—concerns not present here. *See* Opening Br. at 108-09.

Hadley v. Junior College District of Metropolitan Kansas City, 460 S.W.2d 1, 3 (Mo. banc 1970), addressed a different concern: “orderly operation” of elections in the face of administrative obstacles to implementing a remedy. There, upon receiving a mandate from the U.S. Supreme Court to redraw malapportioned junior college districts, the state was faced with elections just over one month away, where absentee ballots had already been printed. *Id.* at 2-3. Balancing the equities, this Court allowed the election to proceed under the existing (and unconstitutional) scheme to avoid disrupting election procedures that had already passed a point of no return. The same orderly-operation principle compels the *opposite* result here. The election administration status quo likely remains the 2022 Plan—not the 2025 Plan, whose implementation has not yet been confirmed. And even if the 2025 Map has been implemented, reversing course would be easy. The primary election is also months away, compared to *Hadley*'s single month. None of the administrative obstacles that prevented the *Hadley* Court from remedying a constitutional violation exist here. The equities favor Appellants, and the Court should enter Appellants' requested remedy. *See* Opening Br. at 109.

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,

/s/ Gillian R. Wilcox
Gillian R. Wilcox, MO #61278
Jason Orr, MO # 56607
ACLU of Missouri Foundation
406 W. 34th Street, Suite 420
Kansas City, MO 64111
Phone: (816) 470-9938
Fax: (314) 652-3112
gwilcox@aclu-mo.org
jorr@aclu-mo.org

Kristin M. Mulvey, MO # 76060
Jonathan D. Schmid, MO # 74360
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, MO 63101
Phone: (314) 652-3114
kmulvey@aclu-mo.org
jschmid@aclu-mo.org

Mark P. Gaber*
Aseem Mulji**
Simone Leeper*
Benjamin Phillips*
Isaac DeSanto*

Campaign Legal Center
1101 14th St NW Suite 400
Washington, DC 20005
Phone: (202) 736-2200
mgaber@campaignlegalcenter.org
amulji@campaignlegalcenter.org
sleeper@campaignlegalcenter.org
bphillips@campaignlegalcenter.org
idesanto@campaignlegalcenter.org

Annabelle E. Harless**
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
Phone: (202) 736-2200
aharless@campaignlegalcenter.org

Ming Cheung*
Dayton Campbell-Harris*
Sophia Lin Lakin*
ACLU Foundation
125 Broad Street, 18th Floor
New York, New York 10004
Phone: (212) 549-2500
mcheung@aclu.org
dcampbell-harris@aclu.org
slakin@aclu.org

***Admitted pro hac vice in this Court and
in the trial court in Wise v. State, 2516-
CV29597*

**Of counsel and admitted pro hac vice in
the trial court in Wise v. State, 2516-
CV29597*

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 7,723 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