

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

**REPUBLICAN NATIONAL)
COMMITTEE; REPUBLICAN PARTY)
OF VIRGINIA; BEN CLINE; H.)
MORGAN GRIFFITH; JENNIFER A.)
KIGGANS; JOHN J. MCGUIRE;)
ROBERT J. WITTMAN; MARK)
DANIEL; DENNIS FREE; MIKI)
MILLER; CAREY ALLEN; RICK)
BUCHANAN; JOHN MASSOUD; BEN)
HAZEKAMP; SUSAN VALENTINE;)
MATT BRAYNARD; CHRIS)
WINSLOW; WENDELL WALKER;)
MIKE ZIEGENFUSS; WILLIE)
DEUTSCH; LAIRD KNIGHTS;)
STEVEN STATZER; and CREAL)
FRENCH,)**

Plaintiffs,

v.

**VIRGINIA STATE BOARD OF)
ELECTIONS; VIRGINIA)
DEPARTMENT OF ELECTIONS;)
STEVEN KOSKI, in his official capacity)
as Commissioner of the Virginia)
Department of Elections; JOHN)
O'BANNON, in his official capacity as)
Chairman of the Virginia State Board)
of Elections; ROSALYN R. DANCE, in)
her official capacity as Vice Chair of the)
Virginia State Board of Elections;)
GEORGIA ALVIS-LONG, in her official)
capacity as Secretary of the Virginia)
State Board of Elections; and)
CHRISTOPHER P. STOLLE, in his)
official capacity as Member of the)
Virginia State Board of Elections.)**

Defendants.

Case No. CL26001208-00

**MEMORANDUM IN SUPPORT
OF MOTION
FOR PRELIMINARY INJUNCTION**

INTRODUCTION

This Court’s prompt intervention is necessary to protect the voting rights of millions of Virginians from a highly contorted redistricting map imposed without constitutional authority. In 2020, the public voted overwhelmingly to end partisan gerrymandering in the Commonwealth. But this February, a partisan monopoly in Richmond, eager to join a national political conflict, hurriedly attempted to amend the Constitution, repeal a lawful redistricting plan, and replace it with the most partisan map in Virginia’s memory. But the General Assembly had no authority to do this. Nor will the General Assembly’s actions become authorized, even if the now-pending redistricting amendment (the “2026 Amendment”) survives an ongoing referendum that ends April 21 and the ensuing scrutiny promised by the Virginia Supreme Court. The new plan plainly violates the Constitution’s command—also meant to curb gerrymandering—that districts be “compact.” The new plan is the least compact in the United States today and in Virginia history going back at least 74 years. The plan splits Northern Virginia five ways and bizarrely stretches these districts hundreds of miles into the Shenandoah Valley, central Virginia, and Tidewater. This ensures that voices of downstate Virginians are cancelled by the DC suburbs—Washingtonians sending Washingtonians to Washington. The point is partisan. The General Assembly announced it sought a 10–1 Democratic advantage and appears to have succeeded. No General Assembly since the era of the Byrd Machine has been so brazen.

A legislature indifferent to the Constitution is sure to violate more than one of its commands. A Circuit Court has already held that this General Assembly violated a series of constitutional constraints in its partisan fervor. But the violations challenged here have not been addressed. Without judicial intervention, the Virginia charter’s carefully calibrated directives will be negated. The Court should preserve the status quo with a preliminary injunction forbidding use of the new redistricting plan until trial is held on the merits.

BACKGROUND

1. The Virginia Constitution seeks to limit partisan gerrymandering, “the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power,” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791 (2015) (*AIRC*), in two ways.

The first, and most recent, is by means of an independent redistricting commission. Approved by a large majority of voters in 2020, Section 6-A of Article II establishes a redistricting Commission and vests it with authority to propose plans to the General Assembly. Va. Const. art. II, § 6-A(a)–(e). If that process fails, the Constitution directs that “the districts shall be established by the Supreme Court of Virginia.” *Id.* art. II, §§ 6-A(f) and (g).

The second means is much older. Since the 1800s, Virginia’s Constitution has mandated certain traditional districting principles, including that “[e]very electoral district shall be composed of . . . compact territory.” *Id.* art. II, § 6. This dictate is meant “to preclude at least the more obvious forms of gerrymandering.” A.E. Dick Howard, *Commentaries on the Constitution*, 415 (1974).

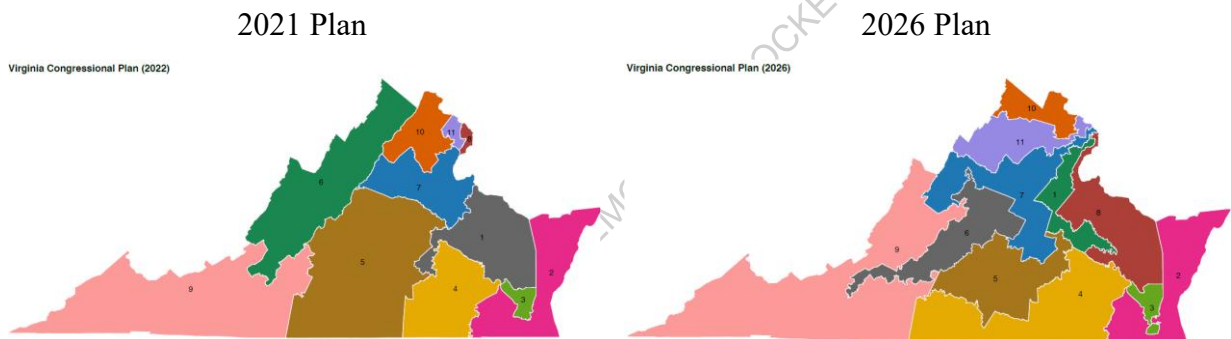
The Commonwealth adhered to these directives in the most recent decennial redistricting. Although the commission process was unsuccessful, the Supreme Court of Virginia unanimously approved legislative and congressional plans proposed by two special masters. Ex. A, 12/28/21, Final Order and Approved Maps 2; Compl. ¶¶ 60–61. The special masters built the congressional plan around “local needs.” *Vesilind v. Va. State Bd. of Elections*, 295 Va. 427, 445 (2018). Relying on various conceptions of the Commonwealth’s communities, including those presented in public comments, the special masters established two districts in the suburbs nearest to the District of Columbia (CD8 and CD11), two in outer Northern Virginia (CD1 and CD7), one in the Shenandoah Valley (CD6), one in Appalachia (CD9), two in Hampton Roads (CD2 and CD3), one

in north Tidewater (CD1), and two in Richmond and Southside (CD4 and CD5). Ex. B, 12/27/21, Memorandum of Special Masters (“Special Masters Rep.”) 12–16.

The special masters, whose plan the Supreme Court adopted, balanced concerns for community and other traditional principles with the compactness mandate, sometimes accepting configurations that “score relatively poorly” under mathematical measures to achieve other goals, *see id.* at 17, and sometimes rejecting other goals that would degrade district compactness, *see id.* at 12; Compl. ¶¶ 72–75. The special masters did not pursue partisan or regional advantage. They noted that the congressional plan would afford Democrats a 6–5 or 7–4 edge in the delegation, depending on the electoral environment. Special Masters Rep. 19–20. This “2021 Plan” governed the 2022 and 2024 elections. The delegation currently consists of 6 Democrats and 5 Republicans. The 2021 Plan is widely lauded as “one of the fairest district maps in the country.” *See* UpVote Virginia: Key Issue: Redistricting, <https://upvoteva.org/redistricting>.

2. In 2026, the Democratic Party won control of the Virginia government and promptly inserted a new redistricting plan (“the 2026 Plan”) into a general appropriations bill (HB29), which was signed into law by the Governor on February 20. Claiming an urgent need to join in with mid-decade redistrictings elsewhere (such as in New York, Texas and California), legislators were candid that they pursued a raw partisan goal of a 10–1 split favoring Democrats. Compl. ¶¶ 80–81; Ex. C, Expert Report of Dr. Barber (“Barber Rep.”) 37–39. When the Commonwealth’s two U.S. Senators, both Democrats, balked at this partisan overreach, the President Pro Tem of the Senate responded on social media: “we do not need ‘coaching’ on redistricting coming from a cuck chair in the corner.” Ex. D, 1/16/26, Post of Senator Louise Lucas, President Pro Tempore.

The General Assembly does not pretend that the 2026 Plan serves local needs. The plan’s defining feature is non-compactness. With thin strips of territory, the plan splits “communities with shared economic and political interests, or cultural, geographic, or historical ties” throughout the Commonwealth. Ex. E, Expert Report of Dr. Keena (“Keena Rep.”) ¶ 10. It splits Northern Virginia five ways and stretches each district over hundreds of miles into the Shenandoah Valley, Piedmont, and Tidewater to ensure that native Virginians in those places have no voice in Congress and that the DC suburbs control the delegation. *Id.* at ¶¶ 10, 24–26. The plan takes a similar approach in Richmond, diluting surrounding rural territory in Southside and central Virginia, as well as in Hampton Roads. The 2026 districts mark, even at a quick glance, a compactness plunge:



The singular 10–1 goal is brazen by any standard. Not since the Byrd era was the delegation so lopsided. Barber Rep. 39. The casualty was compactness and its democratic benefits, leaving a map that infringes the Virginia Constitution by “distort[ing] the political power of voters in Northern Virginia” and reducing legislators’ “incentive to represent geographically remote communities of interest that are divided by district boundaries.” Keena Rep. ¶ 26; *see* Va. Const. art. II, § 6. As shown below, the 2026 Plan is the least or second least compact in the United States and the least compact district plan in Virginia history at least back to 1952. Flouting constitutional restraint, HB29 directs Virginia’s election officials to “immediately implement the voting districts

[it] established” and declares that the 2026 Plan “shall apply to the November 3, 2026, general elections.” Ex. F, HB29 pt.16(1) § 5; pt.16(2) § 1; *see infra* note 3.

The General Assembly apparently believes its exercise of redistricting power will be authorized retroactively by the 2026 Amendment if it passes in a referendum that has begun with early voting and will conclude on April 21, 2026. The amendment’s language would authorize the General Assembly to “modify” congressional districts if “any State . . . conducts a redistricting of such state’s congressional districts” in certain circumstances.” Ex. G, HB1384(14) § 1. A Circuit Court has held that the General Assembly violated the Constitution in proposing the 2026 Amendment. Ex. H, *RNC v. Koski*, No. CL26-266, 2026 WL 496923 (Tazewell Feb. 19, 2026). And, though it permitted the referendum to proceed, the Virginia Supreme Court acknowledged “grave concerns” and “weighty assertions of invalidity,” which it will resolve if the proposed amendment receives a majority vote, Ex. I, *Koski v. RNC*, __S.E.2d__, 2026 WL 608588, at *4 (Va. Mar. 4, 2026). The General Assembly has neither put the 2026 Plan up to voters nor asked voters to abrogate the compactness requirement. The 2026 Plan is not among the materials voters receive when they cast ballots in the referendum.

3. Plaintiffs filed this lawsuit on March 3, 2026, challenging the 2026 Plan as a violation of the Constitution’s redistricting reform amendment (Count I) and compactness mandate (Count II). Compl. ¶¶ 180–250. Plaintiffs are the Republican National Committee (RNC); Republican Party of Virginia (RPV); the five Republican members of the Commonwealth’s congressional delegation; and voters who reside in each congressional district, prefer Republican candidates, and serve as district chairs or in other official RPV roles. *Id.* ¶¶ 7–32. Plaintiffs seek declaratory and injunctive relief against the Virginia State Board of Elections, the Virginia Department of Elections, the Commissioner of Elections and members of the State Board in their

official capacities (collectively, “Defendants”). *Id.* ¶¶ 33–38; *see id.* p. 45 (¶¶ a–e). Plaintiffs now seek a preliminary injunction forbidding Defendants from implementing the 2026 Plan during the pendency of this suit, including for the 2026 primary and general elections. Plaintiffs do not ask the Court to enjoin voting in any election.

ARGUMENT

The Court should “preserve the status quo between the parties while litigation is ongoing.” *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019). A preliminary injunction is warranted where (1) “the movant will more likely than not suffer irreparable harm,” (2) “the underlying claim will more likely than not succeed on the merits,” (3) “the balance of hardships . . . favors” a preliminary injunction, and (4) a preliminary injunction “is not contrary to the public interest.” Va. Sup. Ct. R. 3:26(c) and (d). Each factor is satisfied. The 2026 Plan is unconstitutional because the General Assembly has no authority to promulgate it or repeal the 2021 Plan and because its districts are not compact. These constitutional manipulations of the right to vote inflict *per se* irreparable harms that are stark and particularized here. These harms outweigh any interests Defendants might claim, and the public interest favors constitutional rights. Preliminary relief is warranted.

I. Plaintiffs Are Likely to Succeed on the Merits

A. The General Assembly Is Forbidden from Enacting the 2026 Plan: Count I

Plaintiffs are likely to succeed on Count I, which challenges the General Assembly’s authority to repeal the 2021 Plan and redraw the districts. Compl. ¶¶ 180–92. “Although all legislative enactments are entitled to a presumption of constitutionality,” Virginia’s courts “have not hesitated to invalidate laws found, upon careful consideration, to violate the prohibitions” of the Constitution. *Benderson Dev. Co. v. Sciortino*, 236 Va. 136, 148, (1988). “An Act passed by the General Assembly inconsistent with or repugnant to the Constitution is invalid, and it is [the court’s] duty to declare such an act unconstitutional.” *Terry v. Mazur*, 234 Va. 442, 449–50 (1987).

The constitutional violation here is as palpable as they come. The Constitution provides that congressional members “shall be elected from electoral districts established pursuant to Section 6-A of this Constitution.” Va. Const. art. II, § 6. Section 6-A, in turn, provides that each decade a Commission “shall be convened for the purpose of establishing districts for the United States House of Representatives” and that, if the Commission fails to propose a legislative redistricting acceptable to the General Assembly, “the districts shall be established by the Supreme Court of Virginia.” *Id.* art. II, § 6-A(a) and (f); *see also id.* art. II, § 6-A(g). The 2021 Plan was established by the Supreme Court under Section 6-A and thus “shall” govern. *Id.* art. II, § 6. The 2026 Plan was not established by this procedure and, thus, is invalid. Accordingly, the General Assembly has no authority to impose that plan or to repeal the 2021 Plan. *See* HB29 pt. 16(1) §§ 1 and 4. Nor may the General Assembly order Defendants to “immediately implement the voting districts [it] established” or to declare that the 2026 Plan “shall apply to the November 3, 2026, general elections for . . . members of the United States House of Representatives.” HB29 pt.16(1) § 5; HB29 pt.16(2) § 1; *see infra* note 3. The General Assembly has “patently go[ne] beyond the margin delimited by the Constitution.” *Moore v. Sutton*, 185 Va. 481, 484 (1946).

There would be no possible cure for this violation in the ongoing referendum, even if the referendum were not plagued by “weighty assertions of invalidity.” *Koski*, 2026 WL 608588, at *4. This is because HB29 was enacted on February 20, which is two months prior to the April 21 end date of voting. A proposed amendment will, if ratified, “become part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters,” Va. Const. art. XII, § 1, and the General Assembly provided that, “[i]f a majority of those voting vote in favor of the amendments, they shall become effective upon certification by the State Board of

Elections,” HB1384(14), § 2. Thus, the repeal of the 2021 Plan and adoption of the 2026 Plan are “invalid.” *Terry*, 234 Va. at 449–50.

Another reason the amendment cannot authorize what the General Assembly did in the 2026 Plan is that it would merely provide authority “to *modify* one or more congressional districts . . . , in the event that any State . . . conducts a redistricting of such state’s congressional districts” in certain circumstances. HB1384(14) § 1 (emphasis added). HB29 does not “modify” one or more existing districts; it purports to *repeal* the 2021 Plan and impose *radically different* districts. *See* Barber Rep. 75–76. To “modify” is to “[t]o make somewhat different; to make small changes to.” Black’s Law Dictionary 1203 (11th ed. 2019). Accordingly, “permission to ‘modify’ does not authorize ‘basic and fundamental changes.’” *Biden v. Nebraska*, 600 U.S. 477, 494 (2023) (citation omitted); *MCI Telecommunications Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994) (“The word ‘modify’ . . . has a connotation of increment or limitation.”). That point is confirmed in the amendment’s distinct use of the phrase “conducts a redistricting,” referring to the condition for its grant of authority, and the term “modify,” referring to the scope of that authority. Where a legal text “has used specific language in one instance but . . . uses different language when addressing a similar subject elsewhere . . . , the Court must presume that the difference in the choice of language was intentional.” *Morgan v. Commonwealth*, 301 Va. 476, 482 (2022) (citation and alteration marks omitted). Because the General Assembly has not sought authority to “conduct a redistricting,” but only to “modify” districts, the 2026 Plan can never become authorized.

B. District in the 2026 Plan Are Not Compact: Count II

Plaintiffs are also likely to succeed on Count II, which challenges the 2026 Plan under the constitutional command that “[e]very electoral district shall be composed of contiguous and compact territory.” Va. Const. art. II, § 6; Compl. ¶¶ 193–205. Because the 2026 Plan’s districts are not compact by any fair measure, and because the General Assembly degraded geographical

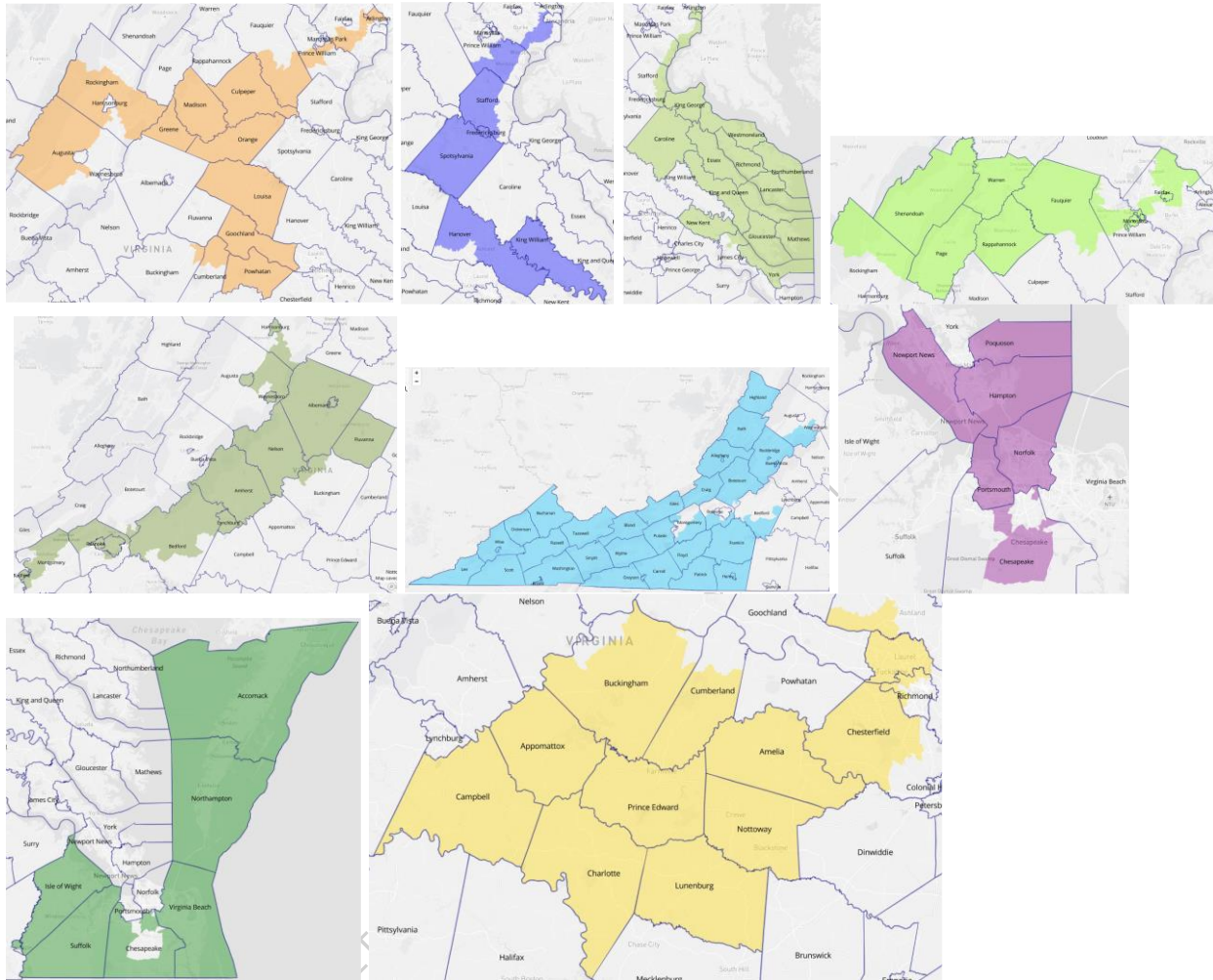
compactness and communities of interest in singular pursuit of illegitimate goals of partisan and regional advantage, the 2026 districts “more likely than not” violate this provision. Va. Sup. Ct. R. 3:26(d)(i). Indeed, it is certain that they do.

The compactness requirement sets a “duty,” not an option. *Wilkins v. Davis*, 205 Va. 803, 813 (1965); *see also In re Legislative Districting of State*, 370 Md. 312, 356 (2002) (a constitutional compactness requirement is “mandatory and not ‘suggestive’”). Accordingly, the question “whether a voting district is ‘compact’ is justiciable.” *Vesilind*, 295 Va. at 445. But it “does not admit to a bright line approach.” *Id.* at 444, 449. Precedent acknowledges “different methods of measuring compactness” both in the social sciences and from the standpoint of “geographic size, ease of travel and representation, and communities of interest.” *Id.* at 445. Precedent also recognizes the legislative need to implement “traditional discretionary redistricting elements.” *Id.* at 448 (alteration marks omitted). Accordingly, the General Assembly will receive “deference . . . in its value judgment as to the relative degree of compactness required,” but only if “the General Assembly considered the constitutional requirement of compactness in reconciling the different demands upon it.” *Id.* This standard does not tolerate failings that are “obvious, indisputable and excessive.” *Brown v. Saunders*, 159 Va. 28, 45 (1932). Here, it is indisputable that the 2026 districts are excessively non-compact across the board.

1. The 2026 Districts Are Visibly Non-Compact

Begin with district shapes. The compactness requirement confirms that “reapportionment is one area in which appearances do matter.” *Shaw v. Reno*, 509 U.S. 630, 647 (1993). A district is not compact if it contains “tentacles, appendages, bizarre shapes, or any other obvious irregularities.” *Allen v. Milligan*, 599 U.S. 1, 20 (2023) (citation omitted); *see also In re Senate Joint Resol. of Legislative Apportionment 1176*, 83 So. 3d 597, 656 (Fla. 2012) (interpreting

compactness requirement to forbid “bizarre and unusual shapes” under a “visual inspection”). The 2026 districts exhibit these failings.



At a mere “glance,” the “extremely irregular size [and] shape” of these districts “permit[s] the conclusion that” they are “not constitutionally compact.” *Matter of Legislative Districting of State*, 299 Md. 658, 680 (1982); see *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 98 (1981) (rejecting district because “[a] visual examination . . . reveals a tortured, extremely elongated form”). Two districts resemble “a shrimp with a long tail” (CD6) and “a lobster whose claws have caught that shrimp” (CD7), another “grows an ‘arm’” (CD5), another “splits into two separate branches that wrap around” CD6’s tail (CD9), another with a brontosaurus shape “is, in many places, less than

a mile wide” before “reach[ing] deep into geographically distant parts of the Commonwealth” (CD8), and another “traces a narrow and non-compact corridor through Fairfax County” before widening “farther west into the Shenandoah Valley” (CD11). Barber Rep. 10–31; *see also* Keena Rep. ¶¶ 9–26 (describing 2026 Plan’s non-compactness). The districts fail “the ‘eyeball’ test.” *Jersey City United Against the New Ward Map v. Jersey City Ward Comm’n*, 336 A.3d 219, 231 n.6 (N.J. 2025) (citation omitted); *In re Legislative Districting of Gen. Assembly*, 193 N.W.2d 784, 790–791 (Iowa 1972) (faulting “strange shapes”).

2. The 2026 Districts Are Non-Compact under Standardized Scores

A battery of mathematical compactness measurements confirm this is a case where seeing is believing. To supplement “a visual examination of a district’s geometric shape, quantitative geometric measures of compactness have been used to assist courts.” *Senate Joint Resol.*, 83 So. 3d at 635. They are helpful here.

Although many metrics have been formulated, *see Vesilind*, 295 Va. at 444–45, they represent variations on common themes. Barber Rep. 50. The three most common measures are the Reock, Polsby-Popper, and Convex Hull, and taken together they provide a fulsome account of district shapes from different perspectives. *Id.* at 47.¹ They are useful, not in setting a binary line where a shape becomes non-compact, but in facilitating comparisons. *Bethune-Hill v. Va. State Bd. of Elections*, 141 F. Supp. 3d 505, 535–36 (E.D. Va. 2015) (“Nor does a district’s ‘absolute’ compactness score matter so much as its ‘relative’ score.”), *aff’d in part, vacated in part*

¹ The three scores measure different geometric notions of “compactness.” The Reock score calculates the area of a district against the area of the smallest possible circle circumscribing the district—it measures compactness in the sense of a shape’s length, scoring elongated shapes lower than compressed shapes. *Id.* at 46. Polsby-Popper compares the area of the district against the area of a circle with a circumference equal to the district’s perimeter, which measures perimeter regularity and penalizes shapes with jagged outlines and appendages. *Id.* Convex-Hull, an alternative perimeter measure, calculates a district’s area to the area of an outline stretched around the district—a measure that penalizes indentations or wrap-around configurations. *Id.* at 46–47.

on other grounds, 580 U.S. 178 (2017). Districts are likely non-compact if they rank lower than appropriate comparators across scores. Barber Rep. 47. That is the case here.

The numbers tell a clear and consistent story: using all three of those common compactness metrics, the 2026 Plan is substantially less compact than the 2021 Plan (which Dr. Barber refers to as the “2022 Plan” in his report, based on the year the plan was first used). *Id.* at 47. The 2026 Plan’s average Reock, Polsby-Popper, and Convex Hull scores plummeted from 0.383 to 0.265, from 0.262 to 0.146, and from 0.748 to 0.600, respectively, from the 2021 Plan. Barber Rep. 49–50. These consistent double-digit declines confirm what is already apparent to the naked eye. Moreover, it is not just the *average* compactness scores that degraded. The 2026 Plan dramatically reduces the compactness of *every single district* in the 2026 Plan relative to the 2021 Plan. *See id.*

The 2026 Plan does not fare better when compared to over 70 years of prior Virginia plans passed by the General Assembly (before the redistricting commission existed). *Id.* at 53–54. The 2026 Plan’s average Reock, Polsby-Popper, and Convex Hull scores rank below the averages of every other Virginia congressional plan as far back as may feasibly be measured (the 1952 plan). *Id.* Moreover, the 2026 Plan’s individual districts consistently rank below their comparators in prior Virginia plans. *Id.* at 54–55. Put bluntly, even when it possessed redistricting power, the General Assembly did not in modern history pass a plan as irregular as the 2026 Plan.

These findings are not limited to the three main metrics discussed. The basement rankings under the Reock, Polsby-Popper, and Convex Hull scores are confirmed by less commonly used measures, which *also show that the 2026 Plan is the least compact in Virginia’s living memory*. Barber Rep. 76–79. Although “[t]he proliferation” of compactness scores can create confusion, *Vesilind*, 295 Va. at 445, here, the use of an entire suite of compactness measurements to corroborate the findings from Reock, Polsby-Popper, and Convex Hull provide clarity by pointing

in the same direction. However compactness is measured, the 2026 Plan ranks worst among Virginia plans going back to 1952. Barber Rep. 54–55; 76–79. Moreover, this is not a case where compactness was sacrificed in one or a few districts for the good of neighboring districts; all districts rank poorly. *Id.* at 4, 53–54.

Finally, the 2026 Plan’s compactness is extremely poor when compared to other States. Virginia’s 2026 Plan also ranks as *the least or second-least compact congressional district plan* in the United States today. *Id.* at 56. The 2026 Plan’s average Reock score is dead last among states with at least three congressional districts. *Id.* at 57. Under the Polsby-Popper score, the 2026 Plan ranks second-to-last, beating only Louisiana’s plan. *Id.* That is no cause to boast; Louisiana’s sixth district was enjoined as a racial gerrymander because it “is not ‘compact.’” *Callais v. Landry*, 732 F. Supp. 3d 574, 613 (W.D. La. 2024) (three-judge court).² Under the Convex Hull score, Virginia’s plan beats only that of Illinois, which has been ridiculed as non-compact and an extreme gerrymander. *See* Princeton Gerrymandering Project, Illinois 2021 Congressional—Enacted (issuing “F” grade for “[g]eographic features” because of “[n]on-compact districts”); Barber Rep. 56. The 2026 Plan is less compact than the mid-decade plans implemented in California and Texas, less compact than plans in states with geographic features like Virginia’s, and less compact than plans in states with between 9 and 13 districts. Barber Rep. 58. From no vantage-point are the 2026 districts compact.

3. The Districts Flout Traditional Districting Principles

Although Virginia precedent entitles the General Assembly to make a “spatial and political assessment of compactness, which” can “include[] consideration of geographic size, ease of travel and representation, and communities of interest,” as well as “the number of localities split between

² The case remains pending in the Supreme Court, where Louisiana now contends that its own district is unconstitutional. *Louisiana v. Callais*, 24-109 (re-argument held Oct. 15, 2025).

districts,” *Vesilind*, 295 Va. at 445, no such concept is available as a defense here. The lines flout all traditional districting principles, not just compactness.

Virginia precedent affords legislative “deference” and “discretion” because the General Assembly is “the institution best informed” to decide what “best serves local needs.” *Id.* This deference applies “[w]here there is evidence that the General Assembly considered the constitutional requirement of compactness” and balanced it against “legitimate legislative considerations.” *Id.* at 448; *see also Wilkins v. West*, 264 Va. 447, 462 (2002) (compactness “does not override all other elements pertinent to designing electoral districts”). Districts of irregular shapes have been upheld because they satisfied legitimate goals such as retaining district cores and grouping communities of interest. *Wilkins*, 264 Va. at 466; *Jamerson v. Womack*, 244 Va. 506, 516 (1992). The Virginia Supreme Court also rejected a challenge where the plaintiffs contended baldly that *no* criteria could justify the reduction of perfect compactness scores past an arbitrarily selected bright-line mathematical floor. *Vesilind*, 295 Va. at 447–52. Dismissing that view, the Court held that a *prima facie* showing of non-compactness may be overcome with some evidence of “reasonableness.” *Id.* at 447, 449–50.

No showing of reasonableness is possible here. The 2026 Plan attacks, rather than serves, local needs. Keena Rep. ¶¶ 8–11, 24–26. The General Assembly had no need to redistrict because the Virginia Supreme Court adopted a constitutionally compliant plan with coherent districts uniting common interests. In its gratuitous redraw, the General Assembly dispensed with “traditional discretionary redistricting elements.” *Vesilind*, 295 Va. at 448 (quotation and alteration marks omitted). The 2026 Plan fragments counties to a far greater degree than the 2021 Plan. Barber Rep. 58–59. An objective of limiting “the number of localities split between districts” did not cause the irregular shapes. *Cf. Vesilind*, 295 Va. at 445. The 2026 districts also do not follow

geographic boundaries like roads, rivers, peninsulas, or mountains. *In re Senate Joint Res.*, 80 So.3d at 663; Barber Rep. 66–73.

Nor does the 2026 Plan track “communities of interest.” *Vesilind*, 295 Va. at 445. The Virginia Supreme Court’s special masters had no trouble discerning that Northern Virginia’s communities cannot be mistaken for the Shenandoah, Appalachia, Tidewater, or Piedmont regions. *See also* Keena Rep. ¶¶ 14–17, 19, 22–23 (describing those regions’ interests). The General Assembly must have known this, too, and it attacked some communities to favor others. The 2026 Plan splits both Fairfax and Prince William Counties into five districts and splits the Shenandoah Valley, a traditionally unified area, into five districts, Barber Rep. 5, 61, 71, even joining Fairfax and Prince Williams Counties *with* the Shenandoah Valley in three districts. Keena Rep. ¶¶ 11, 16, 17. The plan also joins Alexandria and Fairfax County with the Northern Neck, Middle Peninsula, and portions of the Lower Peninsula. *Id.* ¶ 18. No one genuinely thinks that residents of Gloucester, York, New Kent, and Lancaster Counties share common interests with residents of Arlington and Alexandria (CD8); that residents of King William, Hanover, and Spotsylvania Counties share common interests with residents of Fairfax County (CD1); or that residents of Rockingham, Augusta, Greene, and Madison Counties share interests with residents of Arlington and Fairfax Counties (CD7). The General Assembly did not “balance” compactness and communities of interest. *Vesilind*, 295 Va. at 440. It flouted all legitimate factors to achieve its sole stated goal of partisan advantage. *See* Keena Rep. ¶¶ 9–23.

The General Assembly increased district sizes, encumbering travel across districts and representation. Barber Rep. 51. “[G]eographical compactness serves independent values; it facilitates political organization, electoral campaigning, and constituent representation.” *Karcher v. Daggett*, 462 U.S. 725, 756 (1983) (Stevens, J., concurring); *Vesilind*, 295 Va. at 441 (noting

that the General Assembly may weigh “the ease of going back and forth between the districts”). But the 2026 districts cannot be feasibly used. Residents must drive hours—often in heavy traffic—to coordinate events with fellow district residents. Ex. J, Declaration of Chris Marston (“Marston Decl.”) ¶¶ 22–23, 30; *see also, e.g.*, Keena Rep. ¶¶ 11, 15–18, 23.

Representatives will have no incentive to visit far-flung rural communities that cannot hold them accountable. *See* Keena Rep. ¶¶ 8, 11, 17–18, 20. Nor will members be able to “bring with them” to Congress “a local knowledge of their respective districts,” *The Federalist* No. 56, at 261 (Madison) (Hallowell ed., 1842), because of the “disparate needs and interests of these populations.” *LULAC v. Perry*, 548 U.S. 399, 402 (2006) (finding such a district non-compact). In directing elections from single-member districts, 2 U.S.C. § 2c, Congress envisioned a “personal and intimate acquaintance between the representative and constituent which is of the very essence of true representation.” Cong. Globe, 27th Cong., 2d Sess. App. 749 (1842). The General Assembly has thwarted that possibility by fashioning what are not truly districts but amalgamations of census blocs bearing no identifiable relationship to any geographic or political unit.

4. Raw Partisan Advantage Does Not Justify Non-Compact Districts

There is no “evidence that the General Assembly considered the constitutional requirement of compactness in reconciling the different demands upon it.” *Vesilind*, 295 Va. at 448. To the contrary, the General Assembly’s only goal, repeatedly stated, was a stark 10–1 partisan delegation. Ex. K, 2/5/26 Press Release of President pro tempore of the Senate (“Our maps are ready; Virginia is ready; we said 10-1, and we meant it.”). No “floor speeches . . . mentioned compactness,” *Vesilind*, 295 Va. at 450, the General Assembly included no compactness measurements in the spreadsheet of data supporting the bill, and it expressly rejected application of a statute that requires, among other traditional districting principles, compact districts. Ex. L, Data Table for the 2026 Virginia Congressional Map, as attached to HB29.

Partisan lust is not a factor “that a legislative body must balance in designing a district” under Virginia law. *Vesilind*, 295 Va. at 448. Because the compactness requirement is meant “to preclude at least the more obvious forms of gerrymandering,” A.E. Dick Howard, Commentaries on the Constitution, 415 (1974), there can be no partisan gerrymandering defense to a compactness challenge. Indeed, “compactness is ‘almost universally recognized’ as an appropriate anti-gerrymandering standard.” *Schrage*, 430 N.E.2d at 486 (citation omitted). It would flip the Virginia Constitution on its head to excuse extremely non-compact districts because of an extremely partisan goal. *Davenport v. Apportionment Comm’n*, 319 A.2d 718, 722 (N.J. 1974) (“the carving out of bizarrely-shaped districts for partisan advantage will not be tolerated”); *Preisler v. Doherty*, 284 S.W.2d 427, 471 (Mo. 1955) (explaining that a compactness requirement “guard[s] . . . against a legislative evil, commonly known as the ‘gerrymander’”); *Matter of Legislative Districting of State*, 475 A.2d 428, 436 (Md. 1982) (same); *Schneider v. Rockefeller*, 293 N.E.2d 67, 72 (N.Y. 1972) (same); see also *Larios v. Cox*, 300 F. Supp. 2d 1320, 1339–56 (N.D. Ga.) (holding that regional and partisan favoritism cannot justify inequality of district population), *aff’d*, 542 U.S. 947 (2004).

This case illustrates how the compactness requirement should curb (not facilitate) gerrymandering. The 10–1 partisan goal here would mark the most extreme split in the Commonwealth in the modern era. Barber Rep. 39. Other delegation splits have favored one of the parties, but on a more modest basis (e.g., 8–3 or 8–2). *Id.* One must look back to the Byrd monopoly of the 1940s to find a consistent, entirely lopsided split.³ The 2026 plan, in fact, scores among the worst in *national* history under recognized partisan fairness scores. Barber Rep. 42–45.

³ For two anomalous years starting in 1980, when Reagan was elected president, the delegation split 10–1 for the Republican Party, but the decennial redistricting (which had not occurred) was not the cause. Barber Rep. 41. In 1982, the split was 6–4; in 1986 and 1988, it was 5–5. *Id.*

Whereas a less aggressive legislature might have achieved a partisan goal with compact districts, only *non*-compact districts could satisfy this one’s constraining 10–1 objective. *Id.* at 45. It is precisely to such extreme circumstances that the compactness requirement was meant to apply.

II. All Equitable Factors Favor a Preliminary Injunction

All governing equitable factors support “the status quo.” *May*, 297 Va. at 18. To begin, Plaintiffs will “suffer irreparable harm without [a] preliminary injunction.” Va. Sup. Ct. R. 3:26(c); *May*, 297 Va. at 18. The individual Plaintiffs are active voters in each district who suffer injury from “unconstitutional manipulations of the electorate.” *Howell v. McAuliffe*, 292 Va. 320, 333, (2016). The individual Plaintiffs have a constitutional right to vote in districts enacted pursuant to Article II, §§ 6 and 6-A and are thus “directly affected in district-wide elections by the legislature’s alleged failure to comply with the Constitution.” *Id.* Moreover, because the “electoral districts violate the compactness . . . requirement[] of Article II, § 6,” Plaintiffs “are directly affected” as “residents of” the offending districts. *Wilkins*, 264 Va. at 460; *Howell*, 292 Va. at 332–33.

These injuries establish not only standing but also irreparable harm. *Lewis v. Lilly*, 114 Va. Cir. 136, 147 (Waynesboro 2024) (“even temporary deprivations of constitutional rights results in irreparable harm”); *Lynchburg Range & Training, LLC v. Northam*, 105 Va. Cir. 159, 164 (Lynchburg 2020) (same); *Lucas v. Stimson*, 115 Va. Cir. 519, 533–34 (Fairfax 2025) (same); *Elhert v. Settle*, 105 Va. Cir. 544, 553 (Lynchburg 2020) (same). Plaintiffs are injured in their “constitutionally protected right to vote,” which is “preservative of other basic civil and political rights.” *Reynolds v. Sims*, 377 U.S. 533, 554, 562 (1964). Money damages are not available and could never in any event compensate for violations of those rights. *See, e.g., McNeal v. Richmond Mem’l Hosp.*, 36 Va. Cir. 531, 532 (1995) (Richmond 1995) (harm is irreparable if “money may not replace the . . . loss”). Nor is any adequate legal remedy available. *See Howell*, 292 Va. at 351–53 (issuing extraordinary writ to protect voting rights).

Though sufficient, those harms mark only the starting point. The harms in this extreme case are even more “particularized” than in the usual constitutional case. *Wilkins*, 264 Va. at 460. Here, the requirement that plans pass the Commission or the Virginia Supreme Court is meant to ensure partisan fairness, but the General Assembly fashioned the 2026 Plan to give Plaintiffs (except residents of CD9) no opportunity to elect their candidates of choice (Republicans) to Congress. Barber Rep. 37–39. All Plaintiffs reside “in a cracked or packed district.” *Gill v. Whitford*, 585 U.S. 48, 69 (2018) (recognizing standing from that injury). Meanwhile, the incumbent congressional Plaintiffs—in addition to harms they suffer as voters—have been ripped from their constituencies and purposefully targeted by the General Assembly to lose the next election. Marston Decl. ¶¶ 31–34. Plaintiff RPV advocates for Republican candidates and organizes campaigning efforts, which the 2026 Plan is purposefully designed to thwart.

The harms resulting from the violation of the compactness requirement are equally particularized. RPV is subdivided internally by congressional district and runs its operations accordingly, with a chairman and officers for each district. *Id.* ¶¶ 4, 8. The mid-decade redistricting has upended RPV’s internal affairs, shifting chairmen to new districts where they were not elected, and burdened those affairs, requiring new coordination with residents in far-flung places across the Commonwealth. *Id.* ¶¶ 19, 21, 24, 28. That has also burdened the individual RPV Plaintiffs directly, as their districts have shifted and become extremely difficult to manage—requiring hours of driving to cross. *Id.* ¶¶ 17, 22. Interests of different communities grouped haphazardly into the same districts conflict, which encumbers organizing and advocating. These same harms apply to

the congressional Plaintiffs, who are compelled to campaign in erratically defined areas that are difficult to travel across or reach by way of coherent campaign messages. *Id.* ¶¶ 24, 33–34.⁴

The balance of hardships favors an injunction. Va. Sup. Ct. R. 3:26(d)(i). It would be difficult to overstate the magnitude of harms the 2026 Plan imposes. By comparison, Defendants will suffer no harm in implementing the plan that governed for the 2022 and 2024 elections. The Commonwealth’s political branches, meanwhile, have “no cognizable interest” in violating the Virginia Constitution. *Lucas*, 115 Va. Cir. at 538.

Accordingly, an injunction is “not contrary to the public interest.” Va. Sup. Ct. R. 3:26(d). “The public interest is always served by clarifying and enforcing the constitutional order.” *Lucas*, 115 Va. Cir. at 53–39. The public interest here is best served by an injunction protecting Plaintiffs and other members of the public from a power grab openly announced for invidious purposes. Rarely will legislators be so transparent about their bad faith. Because the Constitution protects the people from overlords run amok, this case warrants an injunction if any case ever did.

CONCLUSION

The Court should provisionally enjoin the 2026 Plan.

⁴ While HB29 contains language elliptically stating that some aspects of its redistricting provisions “shall become effective” if the public approves the proposed constitutional amendment on April 21, this only adds confusion to injury. HB29 pt.16(9). HB29 also directs Defendants to “immediately implement the voting districts” and declares that its redistricting provisions “shall apply to the November 3, 2026, general elections.” HD29(16)(1) § 5 and (2) § 1. At best, there may be two applicable congressional plans, and the uncertainty is itself a form of irreparable harm. Marston Decl. ¶¶ 10–11, 34. At minimum, the Court and Plaintiffs need assurance that Defendants can and will implement the 2021 Plan if the referendum fails or this case succeeds.

Respectfully Submitted,

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