Virginia:
In the Circuit Court of the City of Richmond, John Marshall Courts Building

REPUBLICAN NATIONAL COMMITTEE, ET AL.,

Plaintiffs,

v. **Case No.: CL26-1208**

VIRGINIA STATE BOARD OF ELECTIONS, ET AL.,

***Defendants*.**

MEMORANDUM OPINION AND ORDER

The matter before the Court is Plaintiffs' complaint seeking declaratory judgment pursuant to Va. Code Ann. § 8.01-184 (Lexis 2025). Plaintiffs allege the General Assembly of the Commonwealth of Virginia unlawfully enacted legislation enabling a constitutional amendment providing for new congressional districts in the 2026 election of members of the United States House of Representatives. Specifically, Plaintiffs claim in Count I of their complaint that the legislature exceeded its authority in passing conditional legislation contingent upon the voters' ratification of the amendment. In Count II, they claim the resulting districts fail to comply with the Commonwealth's constitutional compactness requirement. At this early stage of the proceedings, Plaintiffs seek a preliminary injunction pursuant to §§ 8.01-186 and 620 to enjoin "any implementation of the new [district] map." (Complaint at 44-45).

The parties, including the Intervenor, the Democratic Congressional Campaign Committee, appeared on April 20, 2026, and presented evidence in support of, and in opposition to, the request for injunctive relief. Having considered the pleadings, the

evidence, and the arguments of counsel, the Motion for Preliminary Injunction is denied for the reasons stated below.

BACKGROUND

Philadelphia, September 17, 1787-

Citizen: "Well, Doctor, what have we got, a republic or a monarchy?"

Benjamin Franklin: " A republic, if you can keep it."

When Benjamin Franklin spoke these words as he stepped out of Independence Hall at the close of our Constitutional Convention, he may have been focused on threats from the still-hostile empire of Great Britain. More likely, he was concerned with insidious forces that might corrupt our fledgling nation from within and bring the great American "experiment"[1] to a premature end.

The parties in this case are at least in agreement on one point: Mr. Franklin's warning is nigh upon us. The public record is replete with predictions of catastrophic consequences for various groups of citizens from any number of possible sources. The record before the Court is barely less constrained. Plaintiffs claim that "[a] legislature indifferent to the Constitution" will violate the "voting rights of millions of Virginians" in pursuit of "partisan fervor." (Plaintiffs' Memorandum in Support at 1-2). To the contrary, Defendants assert a nationwide "power grab . . . threaten[s] to disenfranchise Virginia voters in the next Congress." (Intervenor's Memorandum in Opposition at 1-2).

To be clear, a mid-decade redistricting in any state on this scale is without precedent. However, it is just the latest in a series of escalating salvos of political

[1] Alexis De Tocqueville, *On Democracy in America* (1835).

gamesmanship in these United States that is eroding long-standing traditions and leaving citizens feeling disenfranchised.

It is clearly not the role of this Court to determine the wisdom of the General Assembly's actions nor the resulting effect on the citizenry. A court's role is a limited role. It is not to engage in policy making. The question before this Court is strictly limited to whether the General Assembly acted within the confines of the laws and the Constitution of the Commonwealth of Virginia.

FACTS

It is not contested that in the Summer of 2025, the legislature of the state of Texas engaged in a mid-decade redistricting. The result was a modification of the election maps for the state's delegation to the United States House of Representatives. (Plaintiffs' Memorandum in Support at 3, Defendants' Memorandum in Opposition at 3). It is also alleged and not contested that the action in Texas was taken to give the Republican majority in that state an increased likelihood of success in the 2026 congressional elections. Several states with Democratic majorities in state government responded with similar proposals that would benefit the Democratic Party. This includes the Commonwealth of Virginia.

In the Fall of 2025, members of the Virginia General Assembly initiated a constitutional referendum seeking the authority to temporarily suspend the legislative districts drawn by the bi-partisan Virginia Redistricting Commission ("the 2021 maps") and replace them with modified districts ("the 2026 maps"). House Bill 1384, as enacted on February 6, 2026, placed the language of the amendment before the voters,

and House Bill 29, as enacted on February 20, 2026, and later signed into law by Governor Abigail Spanberger, defined the eleven new proposed congressional districts that would go into effect if the amendment passed. The election took place on April 21, 2026, and it appears that a majority of the voters have ratified the proposed amendment.[2]

ANALYSIS

"Granting or denying a temporary injunction is a discretionary act arising from a court's equitable powers." *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019). It is an "extraordinary remedy" dependent on the "nature and circumstances" of an individual case. *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60 (2008). As a threshold requirement, a court may issue a preliminary injunction only if it first determines that the movant will more likely than not suffer irreparable harm without the preliminary injunction. *Cartograf USA, Inc. v. Comerica Bank*, 85 Va. App. 1, 19 (2025). If that irreparable-harm threshold is met, the court must then determine whether three additional factors support issuance of the injunction: (1) the movant has asserted a legally viable claim based on credible facts that will more likely than not succeed on the merits; (2) the balance of hardships favors granting the preliminary injunction; and (3) the public interest, if any, supports issuance of a preliminary injunction. *Id.* Separately, Virginia law provides that no temporary injunction shall be awarded unless the court is satisfied of the plaintiff's equity. Va. Code Ann. § 8.01-628.

[2] The election results are expected to be certified on May 1, 2026.

1. *Irreparable Harm*

The Plaintiffs in this case include the Republican National Committee, the Republican Party of Virginia, several members of the United States House of Representatives who are candidates for reelection under the 2021 maps, and several chairpersons of Republican districts associated with the 2021 maps. There is no doubt that the Plaintiffs have shown a likelihood of irreparable harm. Doctor Michael Barber, an expert in Political Science and redistricting, testified consistent with his affidavit that the 2026 maps demonstrate "a clear [partisan] shift toward a more aggressive Democratic advantage." (Plaintiff's Exh. 3 at 37). He likewise stated that ten of the eleven districts would have a Democratic advantage. (*Id.*). This is a shift from the 2021 maps that gave a Democratic advantage in six of the eleven districts. (Plaintiff's complaint at ¶ 75 (quoting from the report of the Special Masters (Plaintiff's Exh. 2 at 20))). Chris Marston, the General Counsel for the Republican Party of Virginia, testified that he is familiar with many of the congressional candidates for his party as well as the various district chairpersons and the overall makeup and geography of each district. He testified consistent with his affidavit that the districts of the 2026 maps would negatively impact the viability of numerous candidates for his party, fundraising efforts, and pose multiple logistical challenges associated with elections and representation. (Plaintiff's Exh. 9 at ¶¶ 14, 16, 18, 25, 31, 32). Consequently, the Court finds that Plaintiffs have made a threshold showing of irreparable harm.

2. *Success on the Merits*

Plaintiffs raise several challenges to the actions of the General Assembly in Counts I and II that are effectively broken down into four subparts. First, Plaintiffs claim

the creation of the 2026 maps was unlawful because the legislature lacked the authority to engage in redistricting prior to the enactment of the amendment. (Plaintiffs' Memorandum in Opposition at 6-8). Second, Plaintiffs allege the creation of the 2026 maps exceeds the legislature's limited authority under the amendment to "modify" districts. (*Id.* at 8). Third, they argue that the amendment, as passed, continues to require compactness. (*Id.* at 8-18). Finally, Plaintiffs claim that the resulting districts fail to comply with that compactness requirement. (*Id.*).

a. HB 29 – Conditional Legislation

As noted above, House Bill 29, an appropriations bill of the 2026 Session, includes several provisions to effectuate Defendants' redistricting plan. First, it repeals the 2021 maps and prohibits their further use. HB29 Pt. 16(1)§1. Second, it establishes eleven new districts for the Virginia delegation to the House of Representatives. *Id.* at §4. Third, it directs Defendant, the Virginia State Board of Elections, to immediately implement the new maps and revises the date for primary elections. *Id.* at §5 and Pt. 16(2)§2.

HB 29 also temporarily suspends the enforcement of the Commonwealth's conventional statutory provisions for the "Standards and criteria for congressional … districts." *Id.* at Pt. 16(4) (suspending enforcement of Va. Code Ann. § 24.2-304.04 until October 31, 2030). These suspended standards include, among other things, traditional factors to be considered in setting district boundaries, such as preserving "communities of interest," pursuing compact and contiguous territory, and not "unduly . . . disfavor[ing] any political party." § 24.2-304.04

Finally, HB 29 conditions all of the preceding legislative modifications of existing law on the ratification of the constitutional amendment put to the voters on April 21, 2026. *See* HB 29 Pt. 16(9). Intervenor refers to this provision as "contingent legislation." (Intervenor's Memorandum in Opposition at 7).

Plaintiffs claim the legislature's passage of HB 29 violated the then-existing constitutional provision placing redistricting solely in the hands of the bipartisan Virginia Redistricting Commission. (Plaintiff's Memorandum in Support at 6-7 (referencing Va. Const. art. II. § 6-A). In essence, they assert that ratification of the Amendment in April cannot retroactively "breathe life" into legislation that was unlawful from its inception two months earlier. (Plaintiffs' Reply Brief at 6).

Several core doctrines undermine the Plaintiffs' position. First, the power of the General Assembly to enact legislation is **plenary**, and one need look no further than the Constitution itself:

> The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon a subject shall not work a restriction of its authority upon the same or any other subject. The omission in this Constitution of specific grants of authority heretofore conferred shall not be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

Va. Const. Art. IV, § 14. The Supreme Court of Virginia has acknowledged this and notes that in reviewing legislative actions, one should not look for legislative "authority"; rather, one should look for legislative prohibitions. *See Old Dominion v. State Corp. Comm'n*, 294 Va. 168, 177 (2017). "[The Constitution] is a restraining instrument, and . . . the General Assembly of the State possesses all legislative power not prohibited by the Constitution." *Gallagher v. Commonwealth*, 284 Va. 444, 452 (2012).

Second, this plenary authority leads to a strong presumption of validity for any legislative action. *See Montgomery Cty. v. Virginia Dept. of Rail & Public Trans*., 282 Va. 422, 435 (2011). "Indeed, there is 'no stronger presumption known to the law,' *id.*, and therefore 'a heavy burden of proof is thrust upon the party' challenging a statute's constitutionality." *Harrison v. Day*, 200 Va. 764, 770, (1959).

This background on the plenary power of the legislature and the presumption of validity informs the Court's analysis.

This Court can find no credible restriction on the legislature's authority to craft contingent legislation in the Constitution. To the contrary, as the Intervenor notes, contingent legislation is "a practice endorsed by Virginia courts for over 170 years." (Intervenor's Memorandum in Opposition at 6 (citing *Bull v. Read*, 54 Va. (13 Gratt.) 78, 79 (1855))). In *Bull*, the Supreme Court of Virginia states unequivocally:

> It will be conceded that the legislature may provide that an act shall not take effect until some future day named or until the happening of some particular event or in some contingency thereafter to arise or upon the performance of some specified condition. The exigencies of the government may frequently require laws of this character and to deny to the legislature the right so to frame them would be unduly to qualify and impair the powers plainly and necessarily conferred.

Id. at 89. Numerous rulings on contingent legislation have affirmed this principle. *See Brunswick County v. Peebles*, 138 Va. 348, 361-63 (1924) (upholding statute passed in anticipation of constitutional amendment's adoption on a later date); *Fairfax County v. Herndon*, 194 Va. 810, 814 (1953) ("Though the act was actually passed by the General Assembly in 1932, … it has the legal effect of having been passed … when adopted by referendum [in 1952]").

Virginia is not alone in her approving consideration of contingent legislation principles. The concept was perhaps most notably recognized by the Supreme Court of the United States in *Druggan v. Anderson*, 269 U.S. 36 (1925). In that case, Petitioner Druggan had been convicted of bootlegging following the passage of the Eighteenth Amendment to the Constitution of the United States, prohibiting the distribution of intoxicating spirits. *Id.* at 38. When the amendment was passed, it had a one-year delay in implementation. *Id.* During that intervening year, Congress passed the Prohibition Act that Druggan was later convicted of. *Id.* Druggan argued that the act of Congress was unconstitutional because the Amendment had not gone into effect at the time of the statute's enactment.

In rejecting Druggan's argument, Justice Oliver Wendell Holmes validated the conditional authority of Congress, stating:

> A shorter answer to the whole matter is that the grant of power to Congress is a present grant and that no reason has been suggested why the Constitution may not give Congress a present power to enact laws intended to carry out constitutional provisions for the future when the time comes for them to take effect.

Id. While Justice Holmes writes in the context of federal legislation, and the facts of *Druggan* are not squarely on all fours with the present matter, the Court finds it persuasive that conditional legislation of this kind is neither novel nor unprecedented.

Indeed, our sister-state to the South approved a statute conditioned upon the passage of a constitutional amendment in *Fullam v. Block*, 271 N.C. 145 (1967). In so doing, it adopted the rationale of *Druggan* and several states:

> A Legislature has power to enact a statute not authorized by the present Constitution where the statute is passed in anticipation of a constitutional amendment authorizing it or provides that it shall take effect upon the adoption of such a constitutional amendment.

Id. at 149 (quoting 171 A.L.R. 1075).

This Court finds the aforementioned precedent convincing and concludes Plaintiff is unlikely to prevail on its theory that the General Assembly lacked the authority to conditionally enact HB 29 in advance of the ballot referendum put to the people on April 21, 2026.

b. HB 29 – "Modify"

Plaintiffs next claim the legislature violated the tenets of its own amendment because rather than "modify" the districts in conformance with HB 1384, it "impose[d] *radically different* districts." (Plaintiffs' Memorandum in Support at 8 (emphasis in original)).

When searching for the intended meaning of the Virginia Constitution, just as one does in statutory construction generally, one looks to the plain meaning of the word at issue. *See Scott v. Commonwealth,* 29 Va. Cir. 324 (1992). "That intention is initially found in the words of the statute itself, and if those words are clear and unambiguous, we do not rely on rules of statutory construction or parol evidence, unless a literal application would produce a meaningless or absurd result." *Crown Cent. Petroleum Corp. v. Hill*, 254 Va. 88, 91 (1997). Words are "ambiguous" if they may be "understood in more than one way." *Brown v. Lukhard*, 229 VA. 316, 321 (1985).

Plaintiffs rely on Black's Law Dictionary for a narrow definition of the term. "[M]odify" is "[t]o make somewhat different; to make small changes to." (Plaintiffs' Memorandum in Support at 8 (citing Black's Law Dictionary 1203 (11th ed. 2019)). Defendants counter that "modify" is alternatively defined as "to make basic or fundamental changes in[,] often to give a new orientation to or to serve a new end."

(Defendants' Memorandum in Opposition at 11). As an example, Webster notes "the wing of a bird is an arm *modified* for flying." Merriam-Webster, https://www.merriam-webster.com/dictionary/modify (last visited April 24, 2026) (emphasis in original).

As "modify" is subject to multiple interpretations, this Court must consider the legislature's intentions. *See Commonwealth v. Fairfax County Sch. Bd.*, 49 Va. App. 797, 804 (2007). That intent can be found in the legislative record. The legislature crafted this constitutional amendment in response to gerrymandering efforts in other states. *See* HB 1384 (2026 Regular Session) (providing for modification "in the event that any State of the United States of America conducts a redistricting."). A number of legislative statements evince a desire for sweeping changes in the redistricting process. Plaintiffs' complaint avers "[a]t the press conference unveiling the plan, Senate President pro Tempore Louise Lucas confirmed rumors that the General Assembly would pursue a 10-1 partisan split." (Complaint at ¶ 80). Delegate Anne Ferrell Tata noted: "the push to amend Virginia's Constitution to allow mid-decade redistricting is driven by a single motivation: to cement partisan control of Virginia for generations." (Plaintiffs' Exh. 19 at 1:19). Given this legislative background, the Court concludes that modify should be given an expansive meaning. This conclusion leads to a finding that Plaintiffs are unlikely to succeed on the merits of this argument.

c. Constitutional Compactness Requirement

Plaintiffs next claim that the amendment fails to eliminate the constitutional mandate of compactness. *See* Va. Const. art. II, § 6 ("Every electoral district shall be composed of contiguous and compact territory."). Defendants and Intervenor counter

that the amendment suspends the compactness requirement, and, in any event, the 2026 maps are compact.

i. Background

The Commonwealth's Constitution, consistent with a minority of her sister-states[3], requires that electoral districts be both contiguous and compact. *See* Va. Const. art. II, § 6. "Compactness is a feature of the district . . . that describe[s] [its] shape [and] how the [district] look[s]." (Transcript of Hearing on Motion for Preliminary Injunction (April 20, 2026) (Testimony of Intervenor's expert Dr. Maxwell Palmer) ("Transcript") at 199). Compactness can be measured both **qualitatively** (the "eyeball[4]" test) and **quantitatively**. There is no single standard of quantitative analysis to measure compactness. *See Vesilind v. Va. State Bd. of Elections*, 295 Va. 427, 445 (2018). Indeed, there are more than "[fifty] different methods of measuring compactness." *Id.* at 444-45. When combined with the qualitative assessment, the concept of what is "compact" becomes "somewhat abstract." *Id.* Virginia's compactness requirement is also codified by stature. *See* Va. Code Ann. § 24.2-304.04(7)[5]

Beyond compactness, the legislature has traditionally considered other factors that have been recognized by courts in the creation of legislative districts. Some of these traditional factors include: 1) the need to avoid splitting counties, cities and towns in different districts where practicable; 2) preserving communities of interest

[3] Thirty-two states require that legislative districts be compact, but only seventeen require compactness in congressional districts. *See* Justin Levitt, Loyola Law School, All About Redistricting, (last visited April 25, 2026), https://redistricting.lls.edu/redistricting-101/where-are-the-lines-drawn/.
[4] Experts for Plaintiff and Intervenor each described the "eyeball" test. (Transcript at 43-44 (testimony of Dr. Michael Barber, plaintiff's expert on compactness); and 206-207 (testimony of Dr. Palmer, Intervenor's expert on compactness).
[5] As noted elsewhere, this statutory provision is suspended by HB 29 and ratification of the amendment.

within districts; 3) keeping precinct-level boundaries intact within districts; and 4) consideration of the status-quo by acknowledging existing districts and incumbency. *See Jamerson v. Womack*, 244 Va. 506, 512 (1992). Some of these factors have been statutorily codified as necessary considerations. *See* Va. Code Ann. § 24.2-304.04.[6]

These traditional, customary, and statutory requirements should not be conflated with the requirements contained in the Constitution, such as compactness. *See id.* at 514 ("when we were dealing with the reapportionment policies of minimizing the splitting of counties and cities and of recognizing existing communities of interest in *Brown v. Saunders*, we did not mention them as a part of this constitutional requirement" (internal citations omitted)).

ii. Compactness as an Ongoing Requirement

With this background, the Court turns to the effect of the amendment on the compactness requirement. As noted above, Plaintiffs argue the requirement is still viable. (Plaintiffs' reply brief at 8-11). Defendants and Intervenor say the requirement has been suspended. (Defendants' brief at 12-13; Intervenor's brief at 10-11).

Art. II, § 6 contains the compactness requirement. When the Commonwealth adopted its bi-partisan redistricting commission in 2020, the Constitution was amended to add section 6-A. *See* Va. Const., Art. II, § 6-A. Read together, sections 6 and 6-A required that districts be created by the commission and be compact.

The current amendment modifies section 6 to allow the creation of congressional districts from both section 6 (the legislature) under limited circumstances and 6-A (the commission) by default. *See* HB 1384 ("districts established pursuant to *this section*

[6] These statutory provisions have likewise been suspended by HB 29 and the ratification of the amendment.

and Section 6-A."). It also adds the language: "*except that the General Assembly shall be authorized to modify one or more congressional districts … in the event that any [other] State … conducts a [mid-decade] redistricting." Id.* In short, the Amendment allows the commission to continue its work at the beginning of each decade, but gives the legislature the prerogative to intervene with superseding districts if another state engages in mid-decade redistricting.

Because the parties dispute the effect of the amendment's language, the Court returns to basic rules of interpretation. One such rule is the "last antecedent rule." The rule may be summarized as follows:

> Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence. Thus, a proviso usually is construed to apply to the provision or clause immediately preceding it.

Alger v. Commonwealth, 267 Va. 255, 260 (2004). In *Alger*, the Court looked at Va. Code Ann. § 18.2-308.2, stating:

> It shall be unlawful for (i) any person who has been convicted of a felony . . . to knowingly and intentionally possess or transport any *(a)* firearm *or (b) stun weapon or taser … except in such person's residence or the curtilage thereof* or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in *subsection A* of § 18.2-308.

The Court held that the last antecedent before the "except clause" was the phrase "stun weapon or taser as defined in § 18.2-308.1." *Id.* This meant that the "except clause" modified only "stun weapon or taser" and not "firearm." The Court noted that this conclusion was also supported by the division of firearm and stun weapons into categories (a) and (b). *Id.*

Plaintiffs argue that application of the last antecedent rule commands an interpretation that "except" applies only to the preceding phrase, which they define as "In the year 2021 and every ten years thereafter." (Plaintiffs' reply brief at 9). The Court disagrees. The Plaintiffs' quotation is a truncated portion of the "preceding phrase" that fails to capture the legislature's inclusion of critical language. The full "preceding phrase" reads:

> The Commonwealth shall be reapportioned into electoral districts in accordance with **this section and Section 6-A** in the year 2021 and every ten years thereafter*, except …*

HB 1384 (emphasis added). By including "this section" (containing the compactness requirement), it is clear the legislature intended to apply the term "except" to the entirety of Section 6 and Section 6-A.

To read it otherwise would lead to an absurd result. If "except" only applied to the temporal qualifier of "2021 and every ten years thereafter," it would empower the legislature to modify districts while simultaneously leaving both section 6 and section 6-A intact. This leads to the result Plaintiffs advance: the survival of the compactness provision (under section 6). **But**, it would also lead to the survival of the commission's authority (under section 6-A). To do so, would create an absurd result by establishing dueling district-drawing authority. The legislature could not have intended to create an exception that would empower both the General Assembly and the commission to have simultaneous and conflicting authority. Because the Court may not interpret a statute in a manner that leads to an absurd result, *see Crown*, 254 Va. at 91, the Court finds

Plaintiff is unlikely to succeed on the merits of its interpretation that the constitutional compactness requirement is currently in force.[7]

iii. Compactness

Plaintiffs also allege that 2026 maps fail to meet any standard of compactness. (Plaintiffs' Memorandum in Support at 8-15). The Court's preliminary holding that the compactness requirement has been effectively suspended normally would foreclose further analysis of Plaintiffs' compactness claim. *See Butcher v. Commonwealth*, 298 Va. 392, 396 (2020) ("As we have often said, 'the doctrine of judicial restraint dictates that we decide cases "on the best and narrowest grounds available."'" *citing Commonwealth v. White*, 293 Va. 411, 419 (2017)). However, the Court is mindful of the parties' joint concerns that any unneeded delay in the prompt consideration of these matters may substantially harm Plaintiffs, Defendants, or both, by inserting chaos into an impending election. (Defendant's Exh. 1 at 4; Transcript at 185, 254-55, 282). The Court, while mindful of principles of restraint, will nonetheless address Plaintiffs' additional claim relating to compactness in order to provide a factual record for a potential reviewing court that may be unduly constrained by time limitations.

As noted in the background section above, compactness can be measured in numerous ways. Beyond the qualitative eyeball test, the experts in this matter are generally in agreement that three statistical measurements of compactness are frequently utilized measures of quantitative compactness. (Transcript at 44 (Dr.

[7] The Court likewise finds helpful the series qualifier cannon, which is the axiom that "when there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." *Jaycox v. Terex Corp.*, 541 F. Supp. 3d 954, 962 (E.D. Mo. 2021) (alteration omitted) (quoting Antonin Scalia & Bryan A. Garner, *Reading the Law: The Interpretation of Legal Texts* 147 (1st ed. 2012)).

Barber) and 199 (Dr. Palmer); Plaintiffs' Exh. 3 at 47 and Defendants' Exh. 2 at 2-4). These are the Reock, the Polsby-Popper, and the Convex-Hull scores of compactness.[8] *Id.* The Reock and Polsby-Popper scores have also been considered by the Supreme Court of Virginia in a previous challenge to district compactness. *See Vesilind*, 295 Va. at 447-49.

Plaintiffs allege that qualitatively, the districts fail the "eyeball" test. (Transcript at 43-44). They claim the districts exhibit "bizarre and unusual shapes." (Plaintiffs' Memorandum in Support at 10). One district appears to be shrimp with a long tail. (*Id.*). Another is a lobster. (*Id.*). District Eight is shaped like "that bizarre beast [the] brontosaurus . . . [with] h[a]unches sitting on the lower peninsula." (Transcript at 9).

Plaintiffs also claim the districts fall short on at least three associated quantitative measures of compactness. (Plaintiffs' Memorandum in Support at 11-13). They are less compact than the 2021 maps. (Plaintiffs' Exh. 3 at 4). They are less compact than other states' congressional maps. (*Id.*). They are the least compact districts in Virginia since the 1950's. (*Id.*).

In assessing this claim, the Court finds the guidance of the Supreme Court of Virginia's opinion in *Vesilind* highly instructive. In that case, a group of citizens challenged a series of state legislative districts for the House of Delegates and the Senate of Virginia as violating the Commonwealth's compactness requirement. *See*

[8] A detailed description of these measures is beyond the scope of the analysis necessary for injunctive relief. However 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. 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. 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." (Plaintiffs' Brief in Support at 11 (internal citations removed)).

Vesilind, 295 Va. at 432. The Circuit Court for the City of Richmond conducted a three-day bench trial and heard from expert witnesses for each party. *Id.* at 434. Each expert presented evidence relating to compactness. *Id.* at 435-37, 440. At the conclusion of the case, Judge Riley Marchant, speaking for this Court, held that the compactness standard "requires that if the evidence offered by both sides of the case would lead reasonable and objective persons to reach different conclusions, then the legislative determination is 'fairly debatable' and must be upheld." *Id.* at 443. Judge Marchant went on to hold that the legislature's action in drawing the districts was fairly debatable and upheld the constitutional validity of the challenged districts. *Id.*

The Supreme Court of Virginia upheld this Court. *Id.* at 452-53. In so doing, it noted several factors guiding its conclusion. These included the legislative "presumption of validity" (*Id.* at 444); the need to resolve every reasonable doubt in favor of a finding of constitutionality (*Id.*); the fact that the presence of multiple formulas to determine compactness fails to provide clarity to a challenge to the legislative determination (*Id.* at 445); and that redistricting, by its nature, is political. (*Id.*). Consequently, the Court noted the General Assembly's primacy in considerations of compactness. (*Id.*). The Court then went on to state the "key question" as "whether the legislature's determination [of] compact[ness] . . . is fairly debatable." (*Id.* at 447). It upheld the districts as being compact within the constitutional context.

In this case, the parties' expert testimony is remarkably consistent regarding measurements and compactness scores. Doctor Barber does not dispute the methods or the scores calculated by Doctor Palmer, and Doctor Palmer does not dispute Doctor Barber's methods or calculations. Rather, the opposing conclusions the experts reach

are predicated on the data they chose to compare in evaluating quantitative compactness. Doctor Barber's report and his conclusions are based primarily on a comparison of the 2021 congressional maps to the 2026 congressional maps and their respective scores. (Plaintiffs' Exh. 3 at 6-7 ("the 2026 plan consistently scores lower than the 2022[9] plan.")). To the contrary, Doctor Palmer's conclusions were based on a comparison of the 2026 congressional maps with the state legislative districts that were previously considered and upheld in *Vesilind.* (Defendants' Exh. 2 at 4-7).

Dr. Barber suggests it is detrimental "that the 2026 plan is less compact than the map it replaced." (Plaintiffs' Exh. 3 at 5). However, he acknowledged that redistricting sometimes results in more compact maps and at other times less compact maps. (Transcript at 74).

On the other hand, Dr. Palmer looked at the districts upheld in *Vesilind* and compared them to the 2026 maps. His analysis showed "[t]he 2026 districts are generally more compact than the districts challenged in *Vesilind.*" (Defendants' Exh. 2 at 5). In a more granular analysis, Dr. Palmer applied eight different statistical measures of compactness and concluded in seven of those eight analyses that "the least compact 2026 congressional district under each metric scores higher than at least one of the districts challenged in *Vesilind.* (*Id.* at 5-6). Consequently, Dr. Palmer, having considered the standards laid down by the Supreme Court of Virginia in *Vesilind*, concluded that the 2026 maps largely met or exceeded the standards previously approved.

Dr. Palmer reinforced this report through his testimony, stating:

[9] The Court notes it has chosen to refer to the previous districts as 2021 maps, and Dr. Barber has referenced them as from the year 2022. Neither is incorrect.

> [E]ach 2026 district is more compact on every measure than districts that have been upheld by the Supreme Court of Virginia as sufficiently compact.

(Transcript at 233). Plaintiffs challenged Dr. Palmer on several bases. First, they assert that Dr. Palmer's comparison of congressional districts to state legislative districts is flawed "because congressional districts are significantly larger." (Plaintiffs' reply brief at 14). Of course, the eleven congressional districts will be larger than the state's 140 legislative districts, but Plaintiffs provide not a scintilla of evidence to suggest that size of a district has any bearing on the mathematical formulas measuring compactness. The Court does not find this persuasive.

Plaintiffs likewise questioned Dr. Palmer's methodology for failing to consider ease of travel, communities of interest, incumbency, or political boundaries. (Transcript at 219-21). To be clear, these are valued traditional factors that have long been considered in redistricting. They are also considerations the legislature has chosen to abandon. *See* HB 29 Pt. 16(4) (suspending enforcement of Va. Code Ann. § 24.2-304.04). Plaintiffs' position simply misses the point. Doctor Palmer's analysis is focused entirely on the constitutional compactness requirement precisely because the other factors (wisely or not) have been discarded by the vote of the people's duly elected representatives and the people themselves. The Court fails to find Plaintiffs' position credible.

This Court does not find the testimony of Plaintiffs' expert, Dr. Barber, to be inherently incredible. Although Intervenor impeached Dr. Barber with a series of cases (both published and unpublished) in which other courts have questioned his credibility, this Court finds his conclusions are not unreliable or unsound. The 2026 maps are

undoubtedly less compact than the ones they replace. They are certainly partisan gerrymanders. They displace both representatives and voters into new, oddly shaped districts. Instead, the Court simply concludes, when compared to the testimony of Dr. Palmer, who was not impeached in any meaningful way, that Dr. Palmer's testimony and methodology is more credible.

In short, reasonable and objective persons reached different conclusions on the effects of the 2026 maps. The issue of compactness is fairly debatable. The Plaintiff is unlikely to succeed on the merits of compactness.

3. Balance of Harm

The Court finds the balance of harm impacts the parties equally. Granting an injunction at this stage will essentially compromise the ability for Defendants to carry out their duty to prepare for a federal election. It would also impact the likelihood of Intervenor to succeed in that election. Denying the injunction will have the contrary impact of negatively affecting the Plaintiffs in this case. As such, the Court views the balance of harm as a neutral factor.

4. Public Interests

The public interests are not advanced by granting an injunction in this case. The public is entitled to clarity in an electoral framework that must be administered in a timely and professional manner. Millions of Virginians voted in an election. On the issues raised before this Court, in these early stages of the proceedings, the evidence suggests the election and the proceedings leading to it were conducted in conformance with the applicable constitutional and legal principles and controlling authorities. As

such it is in the public interests to allow the amendment to take effect. Granting the extraordinary relief requested would imperil the public interests.

CONCLUSION

There can be no doubt that the actions of the General Assembly, and now a majority of the voting electorate, are without precedent in the Commonwealth of Virginia. The proponents claim they are restoring fairness in a national political fight. Those opposed say partisan fervor will disenfranchise millions of Virginians.

Certainly, the suspension of the authority of the Virginia Redistricting Commission will have profound consequences. What those consequences are remains to be seen.

Sir Thomas More of London was exceptionally dedicated to the rule of law and stood by this belief to his ultimate peril. He was put to death for standing against the Crown of England and refusing to endorse King Henry VIII's intention to divorce. In Robert Bolt's play on the life of More, "A Man for All Seasons," Sir More has the opportunity to save himself by arresting one of his tormenters under a dubious sham warrant, but he resists that temptation. A member of his family askes why he will not flout the law to save himself. More responds:

> "What would you do? Cut a great road through the law to get after the Devil? ... And when the last law was down, and the Devil turned round on you – where would you hide, … the laws all being flat? This country is planted thick with laws from coast to coast, Man's laws, not God's, and if you cut them down – and you're just the man to do it – do you really think you could stand upright in the winds that would blow then? Yes, I give the Devil benefit of law, for my own safety's sake!"

Robert Bolt, *A Man for All Seasons*, (July 1, 1960).

Many a tradition and law has been laid down in the advancement of a national quest for political power, and the winds that will blow cannot yet be known. Nonetheless, this Court knows its role is clear. It is not to assess the wisdom of public policy nor to engage in policy making from the bench. Instead, it is to decide if those with whom we have entrusted power have exercised that power in conformance with their constitutional mandate. On this question, the Court's answer is in the affirmative.

For these reasons, the Plaintiffs' Motion for Preliminary Injunction is **DENIED.** It is so **ORDERED.**

Entered this 26th day of April, 2026,

Tracy Thorne-Begland