IN THE SUPREME COURT OF VIRGINIA

Record No. 260399

REPUBLICAN NATIONAL COMMITTEE, et al.,
Petitioners/Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS, et al.,
Respondents/Defendants

MOTION FOR INJUNCTION
PENDING PETITION FOR REVIEW AND FOR EXPEDITION

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Petitioners Republican National Committee, the 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, through counsel, have filed a petition for review under Virginia Code §8.01-626 and Rule 5:17A seeking relief from an order of the circuit court below declining to temporarily enjoin congressional redistricting legislation that violates the Virginia Constitution. Because congressional elections will occur this year, and the filing period is about to begin, time is of the essence. In this motion pursuant to Rule 5:4, Petitioners seek immediate injunction relief pending the Court's resolution of their petition for review. As shown below, Petitioners are likely to prevail in their petition for review, and—as the circuit court found—they will suffer irreparable harm without an injunction. Because the balance of equities and public interest favor an injunction, the Court should promptly issue one to preserve the status quo so that it can consider and resolve the petition for review.

Petitioners have informed counsel for all parties of their intent to file this motion. *See* Rule 5A:2(a)(1). Defendants the Virginia State Board of Elections, the Virginia Department of Elections, and the Commissioner of Elections and members of the Board of Elections, and Defendant-Intervenor Democratic Congressional

Campaign Committee (DCCC) oppose the relief requested in this motion and intend to file responses. Given the time sensitive nature of this case, Petitioners request that the Court waive the 10-day response period in Rule 5A:2(a)(2).

INTRODUCTION

This Court is considering "weighty assertions of invalidity against" a redistricting amendment (the Amendment) the General Assembly recently presented for a public vote. *Koski v. RNC*, 926 S.E.2d 289, 293 (Va. 2026). This case raises equally (or more) weighty assertions of invalidity against the redistricting plan the General Assembly promulgated under the mantle of authority supposedly conferred by that Amendment.

Unlike California's legislature—which solicited a public vote on a specific redistricting plan in departing from that State's independent redistricting process—the General Assembly put only an *authorization* to redistrict before the public. To sweeten the sales pitch in what would be—and was—a closely divided and geographically polarized vote, the General Assembly presented a modest Amendment. It asked the public for permission to "*modify* one or more congressional districts . . . , in the event that any State . . . conducts a redistricting of such state's congressional districts . . . ." R.0395 (emphasis added). The General Assembly put forth no text that abrogated the Commonwealth's venerable requirement that "[e]very electoral district shall be composed of contiguous and compact territory."

Va. Const. art. II, § 6. As a consequence of the text it chose, the public had no basis to expect that the General Assembly was seeking a blank check to redistrict the Commonwealth in an unlimited and bizarre manner, an approach the Commonwealth now asserts was authorized by the Amendment.[1]

This was a bait-and-switch. Separate from the amendment process, the General Assembly fashioned the "2026 Plan" and slipped it into a massive appropriations bill. It is undisputedly the least compact congressional plan in the United States today and the least compact congressional plan in the Commonwealth's history as far back as may be measured. 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 the voices of downstate Virginians are canceled 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 that is what it claims to have done. No General Assembly since the era of the Byrd Machine has been so brazen. The public did not approve any of this; it was misled into believing the General

[1] The Commonwealth and Intervenor may argue that, because the gerrymandered map had already been adopted, it was known to the public at the time of the referendum. But vanishingly few voters read the budget bill, where the map was enacted. The map was not in the language of the amendment, nor in the ballot question, nor in the official explanation of the amendment posted at the polls.

Assembly sought modest, incremental authority to engage in redistricting that, though partisan, complied with minimal constitutional norms.

The circuit court, however, declined to preserve the status quo and provisionally enjoin the 2026 Plan. Its opinion reads like an elegy for the Commonwealth's constitutional order. It found that the 2026 districts "are certainly partisan gerrymanders" that are "oddly shaped districts" that "displace both representatives and voters." R.0191. The circuit court's opinion also reflected an understanding that such "unconstitutional manipulations of the electorate," *Howell v. McAuliffe*, 292 Va. 320, 333, (2016), mark a threat to republican government, "eroding long-standing traditions and leaving citizens feeling disenfranchised," R.0172; *see also* R.0171–172, R.0192–193. Yet the court concluded that judicial intervention was foreclosed because the public had ratified the amendment.

Constitutional analysis requires more. "In a constitutional republic, '[i]t is emphatically the province and duty of the judicial department to say what the law is.'" *Koski*, 926 S.E.2d at 290 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). The Amendment—even if the Court finds it valid—is text that can and must be read and enforced. It does not authorize the wholesale redistricting that the General Assembly enacted. And the constitutional requirement that districts shall be "compact," Va. Const. art. II, § 6, remains a mandatory directive. Both constraints operate upon the General Assembly, both have been violated, and both can and

should be enforced by this Court. The violations here are not difficult to see; they are visible to the naked eye on the most cursory inspection. The Court should therefore act promptly and enjoin the 2026 Plan while the petition for review is pending. Alternatively, it should set the petition for review for expedited consideration and resolution.

BACKGROUND

1. Partisan gerrymandering is "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*). Because the federal constitution does not regulate this practice, *Rucho v. Common Cause*, 588 U.S. 684 (2019), the choice of remedies is left to "the States as laboratories for devising solutions to difficult legal problems." *AIRC*, 576 U.S. at 817 (citation omitted). State judiciaries are responsible for enforcing those constitutionally prescribed solutions. *Moore v. Harper*, 600 U.S. 1, 19 (2023).

The Commonwealth's Constitution restricts gerrymandering 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, the 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).

2. The Commonwealth adhered to these directives in the most recent decennial redistricting. Although the commission process was unsuccessful, this Court unanimously approved legislative and congressional plans proposed by a bipartisan team of two special masters. R.0195. 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). R.0208–212.

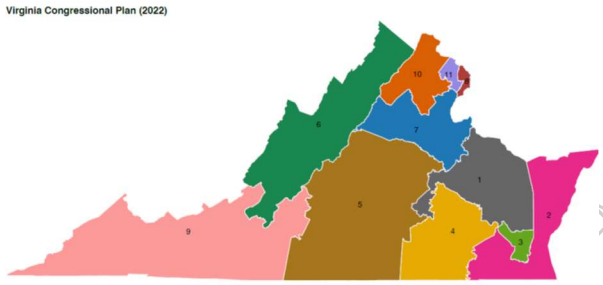
The special masters (whose plan this Court approved) balanced concerns for community and other traditional principles with the compactness mandate, sometimes accepting configurations that "score relatively poorly" under mathematical measures to achieve other goals, R.0213, and sometimes rejecting other goals that would degrade district compactness, R.0208. 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. R.0215–216. 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 Key Focus Area: Redistricting*, UPVOTE VIRGINIA, https://upvoteva.org/redistricting (last visited May 1, 2026).

3. In 2026, the Democratic Party took 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. The General Assembly claimed an urgent need to join in with mid-decade redraws elsewhere (such as in New York, Texas, and California). R.0296–298.

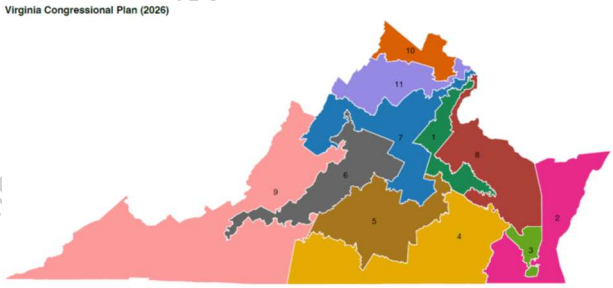
The General Assembly does not pretend that the 2026 Plan serves local needs. The plan's defining feature is non-compactness. With thin strips of territory, the plan splits "communities with shared economic and political interests, or cultural,

geographic, or historical ties" throughout the Commonwealth. R.0367. 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. R.0367, R.0375. 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:

2021 Plan



2026 Plan



The singular 10–1 goal is brazen by any standard. Not since the Byrd era was the delegation so lopsided. R.0298; R.0698. The casualty was compactness and its democratic benefits, leaving a map that "distort[s] the political power of voters in Northern Virginia" and eliminates legislators' "incentive to represent geographically remote communities of interest that are divided by district boundaries." R.0375; *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." R.0389.

The General Assembly believes its exercise of redistricting power has been authorized retroactively by the Amendment, which a narrow majority of voters approved on April 21, 2026. *See* R.0173–74. The Amendment is beset by "weighty assertions of invalidity." *Koski*, 926 S.E.2d at 293. It is, in all events, narrowly drafted, authorizing the General Assembly to "modify" congressional districts if "any State . . . conducts a redistricting of such state's congressional districts" in certain circumstances." R.0395. The 2026 Plan was neither put to the voters nor provided among the materials voters received when they cast ballots in the referendum.

4. Petitioners 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). R.0042–0045. Petitioners 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. R.0007–09. Petitioners 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"). R.0007–10, R.0045.

Petitioners moved the circuit court for a preliminary injunction forbidding Defendants from implementing the 2026 Plan during the pendency of this suit, including for the 2026 primary and general elections. Petitioners did not ask the circuit court to enjoin voting in any election.

5. The circuit court denied the motion. It first elected to afford the term "modify" in the Amendment an "expansive meaning" based, not on any textual analysis, but its freewheeling concept of "intent." R.0181. It therefore treated the Amendment as the type of blank check Defendants claimed it to be in litigation, unbeknownst to the public during voting. The circuit court then held that the General Assembly successfully exempted itself from the compactness requirement in the *first* paragraph of Article II, Section 6 because the *second* paragraph of that provision contains the word "except" in permitting mid-decade legislative redistricting in defined circumstances. R.0183–186. Thus, the General Assembly was deemed to have exempted itself from any modicum of need for district regularity—even *contiguity*—in a manner no voter was apprised of.

Mindful of its duty to aid "a potential reviewing court" and mitigate "time limitations" in the appellate process, R.0186, the circuit court addressed Petitioners' contention that the districts fail the compactness requirement. The circuit court either

agreed with, or found no fault in, Petitioners' contentions or evidence, finding it almost entirely unrebutted that the 2026 districts "are less compact than the 2021" districts, "less compact than other states' congressional plans," and "are the least compact districts in Virginia since the 1950's." R.0187. The expert opinion, it found, was "remarkably consistent regarding measurements and compactness scores." R.0188. The court, however, found Petitioners unlikely to succeed because the scores of the 2026 districts "largely met or exceeded" the scores of districts upheld in this Court's precedents, i.e., *Vesilind*, *Jamerson v. Womack*, 244 Va. 506 (1992), and *Wilkins v. West*, 264 Va. 447 (2002). Notwithstanding the vast differences in evidentiary records, and functional differences between smaller *legislative* districts upheld in precedents and larger *congressional* districts challenged here, the circuit court deemed "mathematical formulas" dispositive. R.0190. In effect, it read this Court's precedents to immunize any district that scores at or above the lowest levels ever reviewed by this Court, regardless of context.

Petitioners now seek relief in this Court and request an injunction preserving the status quo for the pendency of this appeal.

ARGUMENT

The Court should grant the motion for injunction pending petition for review to "preserve the status quo between the parties while litigation is ongoing." *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019). A motion for an injunction pending

appeal is subject to the same standard that governs a preliminary-injunction motion. *See, e.g.*, *Tandon v. Newsom*, 593 U.S. 61, 64 (2021). That standard requires a threshold showing that "the movant will more likely than not suffer irreparable harm without the preliminary injunction." VA. SUP. CT. R. 3:26(c). The movant must also establish that "the underlying claim will more likely than not succeed on the merits," "the balance of hardships . . . favors" a temporary injunction, and a temporary injunction "is not contrary to the public interest." *Id.* 3:26(d). Each factor is satisfied. The circuit court recognized that, without an injunction, Petitioners have "no doubt" shown irreparable harm. R.0175. Petitioners are also more likely than not to show that the 2026 Plan is unconstitutional because the General Assembly has no authority to promulgate it and because its districts are not compact. Petitioners are therefore likely to prevail in their petition for review. These constitutional manipulations create *per se* harms that outweigh any contrary interests, and the public interest favors constitutional rights. An injunction pending appeal is warranted.

I. Petitioners Will Suffer Irreparable Harm Absent an Injunction

The circuit court correctly found "no doubt that the Plaintiffs have shown a likelihood of irreparable harm." R.0175. The individual Petitioners are active voters in each of the 2026 districts who suffer injury from "unconstitutional manipulations of the electorate." *Howell*, 292 Va. at 333. They are "directly affected in district-wide elections by the legislature's alleged failure to comply with the Constitution"

in their districts. *Id.*; *Wilkins*, 264 Va. at 460; *see also 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 Cir. Ct. 2024) ("even temporary deprivations of constitutional rights results in irreparable harm"); *Lynchburg Range & Training, LLC v. Northam*, 105 Va. Cir. 159, 164 (Lynchburg Cir. Ct. 2020) (same); *Lucas v. Stimson*, 115 Va. Cir. 519, 538 (Fairfax Cir. Ct. 2025) (same); *Elhert v. Settle*, 105 Va. Cir. 326, 338 (Lynchburg Cir. Ct. 2020) (same).

The court also credited showings of Petitioners' expert, Dr. Barber, and the General Counsel of the Republican Party of Virginia. R.0175. Harms in this extreme case are even more "particularized" than in the usual constitutional case. *Wilkins*, 264 Va. at 460. All Petitioners reside "in a cracked or packed district," *Gill v. Whitford*, 585 U.S. 48, 69 (2018), which eliminates their ability to elect their candidates of choice, R.0175. The circuit court additionally found that the 2026 districts "negatively impact the viability of numerous candidates," including the congressional Petitioners; that it impacts the internal organization of Petitioner Republican Party of Virginia, which is organized by congressional district; and that the districts "pose multiple logistical challenges associated with elections and representation." R.0175. Accordingly, Petitioners "have made a threshold of irreparable harm" many times over. R.0175.

These harms are immediate and require immediate relief pending the petition for review. This is a congressional election year, and the candidate filing period is commencing. Unless this Court issues a prompt injunction, the Commonwealth will certainly argue that relief available through the petition for review process comes too late and therefore must be denied. Courts ordinarily decline to issue equitable relief in the time period close to an election to avoid harms from alteration of election rules as the process is progressing. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (en banc). Accordingly, the petition for review process may not in itself provide a sufficient avenue for relief.

II. Petitioners Are Likely to Succeed on the Merits

Petitioners are likely to prevail in their petition for review. The circuit court's reasons for finding Petitioners unlikely to succeed on the merits exhibit legal and clear factual error. As an initial matter, the circuit court found that the Amendment authorizes the 2026 Plan and therefore found Petitioners unlikely to succeed on the merits. R.0176–180. That holding is only as good as the Amendment itself. If the Court finds the Amendment invalid (as it should), then Petitioners are plainly entitled to an injunction—indeed, a permanent one. Regardless, Petitioners demonstrated a likelihood of success on two independent grounds.

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

Petitioners are likely to succeed in their petition for review because the Amendment does not authorize the wholesale redistricting overhaul achieved in the 2026 Plan. The Amendment authorizes the General Assembly "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. R.0395 (emphasis added). HB29 does not "modify" one or more existing districts. As the circuit court explained, "it repeals the 2021 maps and prohibits their further use." R.0176. HB29 *replaced* the 2021 plan with a completely new plan, which Petitioners' unrebutted evidence showed fundamentally transformed Virginia's congressional districts, retaining low percentages of district cores nearly across the board. *See* R.0334; *see also* R.0684, R.0710–711. In five of the eleven new districts, a majority of the population is not carried over from a single previous district, but results from cobbling together of voters from multiple districts. Those are districts 5, 6, 7, 8 and 11. In two additional districts (1 and 10), more than 40 percent of the new district results from such cobbling together. R.0333–34 (discussing "core retention"). Defendants did not contest this point, and the circuit court did not find otherwise.

Instead, the circuit court afforded the term "modify" an "expansive meaning" embracing a wholesale redistricting without limit. R.0181. This was legal error. As

this Court has recognized, the term "'modify' means '[t]o make somewhat different; to make small changes to (something) by way of improvement, suitability, or effectiveness," or "[t]o make more moderate or less sweeping; to reduce in degree or extent; to limit, qualify, or moderate[.]" *Westrick v. Dorcon Grp., LLC*, 303 Va. 204, 209 (2024) (quoting Black's Law Dictionary 1203 (11th ed. 2019)). Accordingly, authority to modify does not authorize law that is "entirely new." *Id.*

The U.S. Supreme Court has agreed that "permission to 'modify' does not authorize 'basic and fundamental changes.'" *Biden v. Nebraska*, 600 U.S. 477, 494 (2023) (citation omitted). Surveying dictionaries—including the Random House Dictionary of the English Language, Black's Law Dictionary, Webster's Third New International Dictionary, and the Oxford English Dictionary—that Court has found that the term "has a connotation of increment or limitation," "like a number of other English words employing the root 'mod-' (deriving from the Latin word for 'measure'), such as 'moderate,' 'modulate,' 'modest,' and 'modicum.'" *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994). Simply put, the General Assembly put forth *modest* text authorizing it to *modify* one or more districts in the event that *other* states conduct a *redistricting*. But it is undisputed that the 2026 Plan is an unlimited redistricting that is in no sense limited or incremental change.

Against the weight of precedent and a bevy of dictionaries, the circuit court selected a different definition of "modify"—3.b in the Merriam-Webster Online Dictionary—as including "basic or fundamental changes in[,] often to give a new orientation or to serve a new end." R.0180–181; *Modify*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/modify (last visited Apr. 29, 2026). But that dictionary, too, includes a definition—3.a—of "minor changes." *Id*. And even the circuit court's preferred definition (3.b) speaks on a restricted continuum—"as new *orientation*," not a brand new product. The dictionary's exemplar use is "the wing of a bird is an arm *modified* for flying"—not a foot thrown away and replaced by a flapping arm. Here, the General Assembly *repealed* the prior districts; it did not reorient existing districts to a new purpose.

Besides, the circuit court failed to read the term in context. *See Erie Ins. Exch. v. EPC MD 15*, *LLC*, 297 Va. 21, 28 (2019). "When words have several plausible definitions, context differentiates among them." *United States v. Hansen*, 599 U.S. 762, 775 (2023). The Amendment distinctly uses the phrase "conducts a redistricting" to refer to the *condition* for its grant of authority to the General Assembly but not to the *scope* of the authority that arises. 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). The General Assembly had the phrase "*conduct a redistricting*" available to it, and indeed used that precise phrase, but chose to limit its own authority "to *modify[ing]* one or more congressional districts." R.0395 (emphasis added). That plain text confirms that "modifies" is used in the limited sense described in precedents, not in the "expansive" sense the circuit court adopted. R.0181.

The circuit court departed from faithful textual interpretation based on its understanding of "the legislature's intentions." R.0181. But the very authority it cited for this license clarified that this "intention is initially found in the words of the" law "itself." *Commonwealth v. Fairfax Cnty. Sch. Bd. & P.L.*, 49 Va. App. 797, 802 (2007) (citation omitted); *Botkin v. Commonwealth*, 296 Va. 309, 314 (2018) ("This Court determines legislative intent from the words employed in the statute."). In *Brown v. Lukhard*—a case upon which the circuit court relied, *see* R.0180—this Court held that "when an enactment is unambiguous, extrinsic legislative history may not be used to create an ambiguity, and then remove it, where none otherwise exists." 229 Va. 316, 321 (1985) (citing *Cohan v. Thurston*, 223 Va. 523, 525 (1982)). Moreover, the circuit court erroneously looked to statements of members when "unveiling the [2026] plan," R.0181, not to the history of the *Amendment*.

B. Districts in the 2026 Plan Are Not Compact

Petitioners are likely to succeed in their petition for review for the additional reason that the 2026 Plan fails to comply with the command that "[e]very electoral district shall be composed of contiguous and compact territory." Va. Const. art. II, § 6. 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.

1. The Districts Must Be Compact

As a threshold matter, the circuit court committed legal error in concluding that the Amendment superseded the Constitution's compactness requirement. R.0183–186. Article II, Section 6—with or without the Amendment—is explicit: "Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district." R.0395; Va. Const. art. II, § 6. The Amendment did not touch that text which appears in the provision's first paragraph.

The circuit court looked to language in the *second* paragraph of Article II, Section 6, which the Amendment altered to read: "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 that the General Assembly shall be authorized to modify one or more congressional districts" under identified circumstances. R.0395. But a clause in the *second* paragraph of Article II, Section 6 did nothing to abrogate the force of its *first* paragraph. That first paragraph, as quoted, applies the mandate of "compact territory" to "*[e]very* district"—with or without the proposed amendment. R.0394 (emphasis added). The term "every" means "without exception." *Every*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 788 (1993); *see Via v. O'Donnell*, 27 Va. Cir. 433, 438 (1982) ("If any exception was intended, then why is the word 'every' used?").

The circuit court erred in taking words "myopically" without "context." *Erie*, 297 Va. at 28. The clause beginning "except" was added to the second paragraph of Section 6, which requires that districts be "reapportioned . . . in the year 2021 and every ten years thereafter." R.0395. The word "except" cannot be matched with—and swallow—just any constitutional mandate, especially one appearing in an entirely separate paragraph. Read in the context of the *second* paragraph where it appears, the language permits a mid-decade legislative redistricting as an exception to the mandatory redistricting by the commission next scheduled for 2031. This is a timing-based exception to the decennial redistricting model. *See Georgia v. Ashcroft*, 539 U.S. 461, 489 n.2 (2003) ("When the decennial census numbers are released, States must redistrict to account for any changes or shifts in population."). That point

finds support in the exception's triggering text, which applies under certain circumstances arising "at any *point following* the adoption of the *decennial* reapportionment law." R.0395 (emphases added). These "neighboring words" oriented to the concept of timing give "precise content" to the scope of what the term "except" covers. *See Fischer v. United States*, 603 U.S. 480, 481 (2024).

The circuit court believed that, because the second paragraph of Section 6 references "this section and Section 6–A," the term except marked a wholesale departure from anything contained in either provision. This view misses that the requirements of the first paragraph of Section 6 stand on their own terms, with or without that cross-reference. This meaning is confirmed by "the rule of the last antecedent," i.e., that "qualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote[.]" *Coffman v. Commonwealth*, 67 Va. App. 163, 168 (2017) (citation omitted). As the circuit court admitted, this Court has applied that canon to limit the reach of a clause beginning with the term "except" to the previous terms, not all the terms in the same statutory sentence. *See Alger v. Commonwealth*, 267 Va. 255, 260 (2004); R.0184.

But the circuit court did not explain why this case is different. Here, the sentence at issue contains three distinctive verbal units: [1] "The Commonwealth shall be reapportioned into electoral districts," [2] "in accordance with this section and Section 6-A," and [3] "in the year 2021 and every ten years thereafter." R.0395;

R.0185. The last antecedent is the third phrase. Accordingly, *that* phrase is the target of the exception.

The circuit court's contrary reasoning was muddled. Citing the series-qualifier canon in a footnote, it seemed to believe that the exception clause reached all the way back to the first group of words, which (as noted) requires the use of electoral districts. R.0186. That outcome confirms why the last-antecedent canon—not the series-qualifier canon—provides the correct model here. *See Pileggi v. Washington Newspaper Publ'g Co., LLC*, 146 F.4th 1219, 1235 (D.C. Cir. 2025) ("The point of statutory canons . . . is to aid in resolving ambiguous statutory terms or phrases, not to cause a court to miss the forest for a single tree"). The sentence at issue does not contain a series of "all nouns or verbs," implicating the series-qualifier canon, R.0186, but three distinct verbal units. Because the exception cannot plausibly override the very requirement that electoral districts be drawn,[2] it plainly does not reach the first of the three verbal units. But the circuit court did not explain why—under its series-qualifier theory—the exception would reach the second and third of the phrases, but not the first. Simply put, its interpretation was erratic.

[2] Or, for that matter, that they be drawn consistent with law, including "the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States," yet another requirement that would be quietly removed under the circuit court's reading. Va. Const. art. II, § 6.

The circuit court ultimately believed plain text could not control because of the absurd-results canon. R.0185–186. It theorized that, if the exception did not reach the second of the three verbal units, the amendment would not supersede the requirement of commission-based redistricting imposed in Section 6-A. R.0185. This was a mistake. The word "except" did not need to reach back to the reference to Section 6-A further up in the sentence to override the independent-commission requirement because the exception itself vested in "the General Assembly," not in the commission. Because "the specific controls the general," *Crawford v. Haddock*, 270 Va. 524, 530 (2005), the plain authorization was amply sufficient to authorize a legislative—not a commission—redistricting. But there is no specific authorization in the second paragraph of Section 6 to configure non-compact, non-contiguous, or unequally populated districts that could override Section 6's first paragraph.[3]

In short, the Amendment affects the "when" and "who" of redistricting, but not the "how." Compactness remains a requirement.

[3] The absurd-results canon cuts the other way. Section 6 contains not only the compactness requirement but also the requirements that districts be contiguous. Va. Const. art. II, § 6. Defendants' position would entitle the General Assembly, for example, to draw one portion of a district in Virginia Beach and the other in Roanoke with "an intervening land mass totally severing [the] two sections." *Wilkins*, 264 Va. at 464. Even the General Assembly did not think it had that authority, or else it could have created an 11–0 partisan split with non-contiguous districts.

2. The 2026 Districts Are Not Compact

The circuit court also erred in concluding that the districts within the 2026 Plan satisfy the constitutional compactness requirement.[4]

a. Petitioners Made a Strong Showing on an Undisputed Record

The compactness requirement sets a "duty," not an option. *Wilkins v. Davis*, 205 Va. 803, 813 (1965). 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; *see also id*. at 448–49. 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 compactness inquiry presents "a question of 'fact' triggering the 'fairly debatable' standard." *Id.* at 445. The General Assembly will receive "deference . . . in its value judgment as to the relative degree of compactness required," but only if it "considered the constitutional requirement of compactness in reconciling the different demands upon it." *Id.* at 448. This standard does not

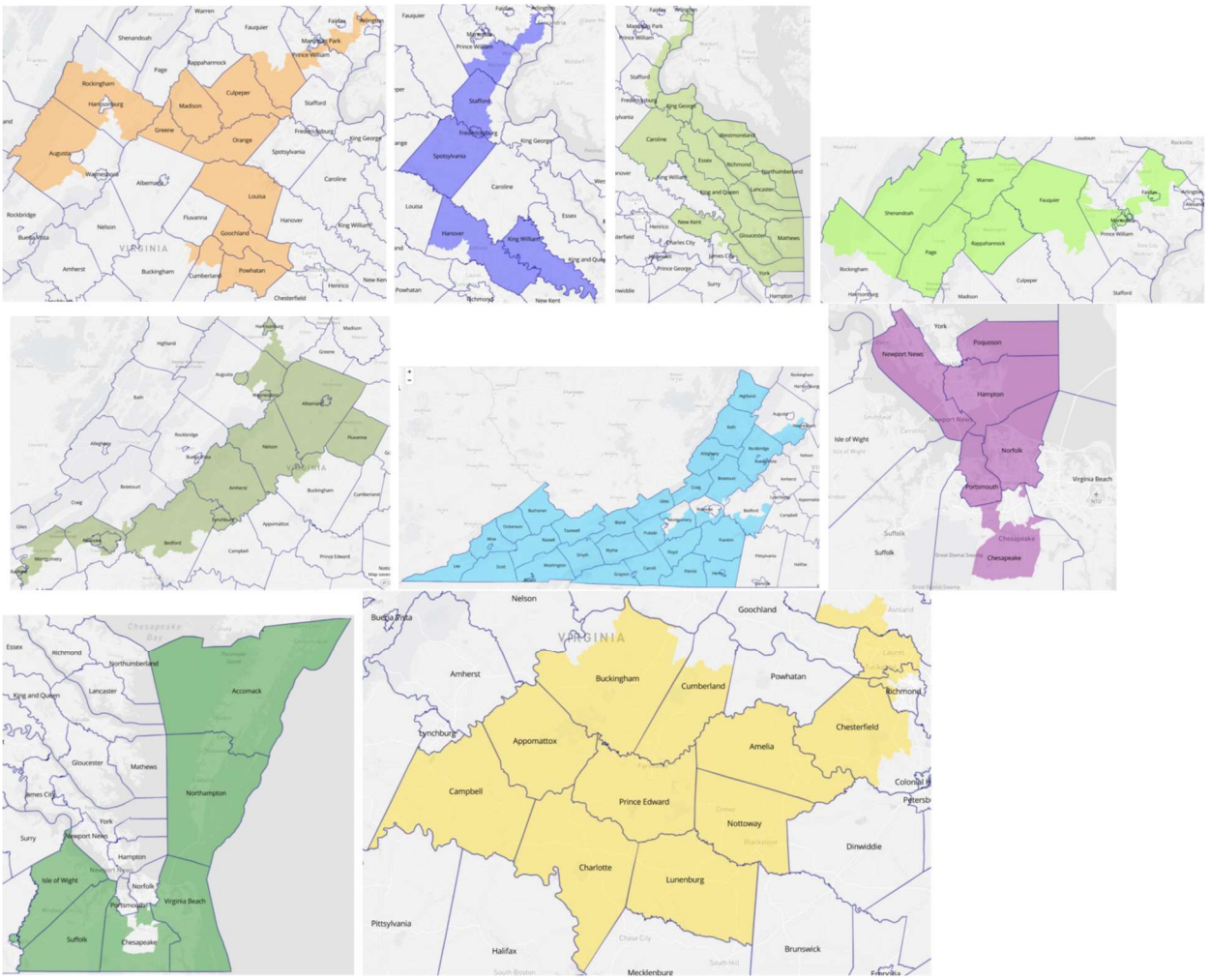
[4] To its credit, the court reached the factual inquiry notwithstanding its threshold view regarding applicability to aid "a potential reviewing court" and mitigate "time limitations." R.0186.

tolerate failings that are "obvious, indisputable and excessive." *Brown v. Saunders*, 159 Va. 28, 45 (1932).

Plaintiffs' showing on this factual question was overwhelming and not genuinely contested. Indeed, the record before the circuit court was devoid of any evidence that the General Assembly considered *any* criteria, including compactness, other than the presumptive effects that the 2026 Plan would have on the partisan makeup of the Virginia congressional delegation. On that record, the circuit court found that the 2026 districts are "undoubtedly less compact than the ones they replace," "are certainly partisan gerrymanders," and "displace both representatives and voters into new, oddly shaped districts." R.0191. The circuit court also determined that the opinions of Petitioners' principal expert, Dr. Barber, "are not unreliable or unsound." R.0190.

Visible Shape. As the circuit court held, the districts are visibly non-compact. R.0191 ("oddly shaped"). That finding is important. 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:



R.0269–290. 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 Legis. 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").

Scores and Appropriate Comparisons. Mathematical scores confirm that 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 useful here. *See* R.0189–190. Although many metrics have been formulated, *see Vesilind*, 295 Va. at 444–45, they represent variations on common themes. R.0309. 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 on other grounds*, 580 U.S. 178 (2017). Districts are likely non-compact if they rank lower than appropriate comparators across scores. R.0306. That is the case here.

Leading compactness scores used by experts on both sides, which the circuit court found credible, *see* R.0189–190, tell a stark story. The average Reock, Polsby-Popper, and Convex Hull scores of the 2026 Plan see a double-digit decline from those of the 2021 Plan, which is substantial. R.0308; R.0691. Moreover, the compactness of each district declines markedly. R.0308–309; R.0691. In gratuitously replacing the 2021 Plan, the General Assembly degraded—dramatically—compactness across all districts under all three measures.

The 2026 Plan is also the least compact plan in Virginia history at least going back to 1952. R.0312–313; R.0695–698. Its average Reock, Polsby-Popper, and Convex Hull scores rank below the averages of every other Virginia plan as far back as may feasibly be measured. R.0312–313. Moreover, the 2026 Plan's individual districts consistently rank below their comparators in prior plans. R.0313–314; R.0697. 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. Moreover, 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*. R.0335–338; R.0697–698.

The 2026 Plan is also *the least or second-least compact plan* in the United States today. R.0315; R.0698–700. The 2026 Plan's average Reock score is dead last among states with at least three congressional districts. R.0315; R.0699. Under the Polsby-Popper score, the 2026 Plan ranks second-to-last, beating only Louisiana's plan. R.0315; R.0699. 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), and the Supreme Court affirmed that ruling this week, *Louisiana v. Callais*, No. 24–109, 2026 WL 1153054, __ U.S.__ (Apr. 29, 2026). 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 Illinois 2021 Congressional—Enacted*, PRINCETON GERRYMANDERING PROJECT, https://gerrymander.princeton.edu/redistricting-report-card/?planId=reciUSTYXwc3SQ11B (last visited May 1, 2026) (issuing "F" grade for "[g]eographic features" because of "[n]on-compact districts"); R.0315; R.0699–700. 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. R.0317; R.0700–701. From no vantage-point are the 2026 districts compact.

Traditional 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 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.

The 2026 Plan attacks, rather than serves, local needs. The General Assembly had no need to redistrict because this 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. R.0317–318; R.0708–710. 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; R.0325–332.

Nor does the 2026 Plan track "communities of interest." *Vesilind*, 295 Va. at 445. The Court's special masters had no trouble discerning that Northern Virginia's communities cannot be mistaken for the Shenandoah, Appalachia, Tidewater, or Piedmont regions. The General Assembly must have known these facts too—and purposefully attacked some communities to favor others. The 2026 Plan splits both Fairfax and Prince William Counties into five districts and the Shenandoah Valley, a traditionally unified area, into five districts. *See* R.0264, R.0320, R.0330; *see also* R.0709–710. Worse, it joins Fairfax and Prince Williams Counties *with* the Shenandoah Valley in bizarre districts. R.0371–374; R.0767–768. In another, it joins Alexandria and Fairfax County with the Northern Neck, Middle Peninsula, and portions of the Lower Peninsula. R.0373–374. 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. R.0367–374; R.0756–757, R.0768–769.

The General Assembly increased district sizes, encumbering travel across districts and representation. R.0310; R.0371–375. "[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. R.0412–416; R.0368–373; R.0759, R.0763, R.0765–767.

Representatives will have no incentive to visit far-flung rural communities that cannot hold them accountable. *See* R.0367–374; R.0759–760, R.0763, R.0765–768. Nor will members be able to "bring with them" to Congress "a local knowledge of their respective districts," THE FEDERALIST NO. 56, at 261 (James 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.

Partisan Justification. 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. The circuit court identified one—and only one—goal behind the bizarre shapes: partisan advantage. R.0191.

Partisan lust is not a factor "that a legislative body must balance in designing a district." *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. And "compactness is 'almost universally recognized' as an appropriate anti-gerrymandering standard." *Schrage*, 430 N.E.2d at 486 (citation omitted). It would flip the 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 Legis. 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. R.0298. 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 1950s to find a consistent, entirely lopsided split. The 2026 plan, in fact, scores among the worst in *national* history under recognized partisan fairness scores. R.0301–304. 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. R.304. It is precisely to such extreme circumstances that the compactness requirement was meant to apply.

b. The Circuit Court Erred in Its Analysis

The circuit court committed legal and clear factual error in rejecting Petitioners' compelling showing of likelihood of success. Petitioners are likely to demonstrate these errors in this Court and prevail in their petition for review.

1. The circuit court began from the wrong starting point in affording deference to "the General Assembly's primacy in considerations of compactness." R.0188. This Court's precedent is clear that, "[w]here there is evidence that the General Assembly *considered* the constitutional requirement of compactness *in reconciling the different demands upon it* in drawing legislative districts, deference is given." *Vesilind*, 295 Va. at 448 (emphasis added). But the record contains *no* evidence that the General Assembly considered anything other than obtaining a 10–1 partisan gerrymander. Indeed, the circuit court missed the significant tension between its "preliminary holding that the compactness requirement has been effectively suspended," R.0186, and its alternative holding that the standard was satisfied. Where the General Assembly claims to have secretly exempted itself from any compactness requirement, it is unbelievable that it factored that in anyway.

Indeed, the evidentiary record contains *no* evidence that the General Assembly considered compactness. Unlike in precedent, 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, R.0176; R.0418–421. While Defendants submitted a skeletal declaration from a member of the House of Delegates, the circuit court correctly excluded it. R.0837–838. Neither Defendants nor the circuit court cited any evidence from the legislative record (of which the court took judicial notice, R.0788–789; R.0465–470) that compactness or communities of interest were considered. The circuit court erred in applying a deferential standard contingent on an evidentiary showing that was simply not made. That error of law infected the court's entire analysis. *Holton v. City of Thomasville Sch. Dist.*, 490 F.3d 1257, 1261 (11th Cir. 2007) (explaining clear-error standard does not apply when "the district court 'applies an incorrect legal standard which taints or infects its findings of facts.'" (citation omitted)).

2. The circuit court committed a second legal error in effectively deeming districts of certain mathematical scores immune from challenge in Virginia. Defendants' expert, Dr. Palmer, examined the scores of districts upheld in *Vesilind*, *Wilkins*, and *Jamerson* "and compared them to the 2026 maps." R.0189. That was the *sole* point of comparison Defendants offered and the *sole* material evidence they put forward. The court interpreted this evidence to establish a showing of compliance with "the standards laid down by" this Court "in *Vesilind*." R.0189.

But this Court laid down no such standard in *Vesilind*. In fact, *Vesilind* anticipated this complacency and made clear that there is no "bright-line standard." 295 Va. at 449. The Court emphasized that its compactness opinions (*Wilkins* and *Jamerson*) "do not even recount the compactness scores of the districts upheld therein." *Id*. It therefore held that the Commonwealth's comparison of compactness scores to those in districts upheld was "not dispositive." *Id.* at 452. Mathematical scores below those upheld are not necessarily infirm, and scores equal to or above those upheld are not necessarily sufficient. The circuit court erred in failing to address the robust factual record Petitioners built and in conferring what was effectively the blanket immunity this Court declined to provide in *Vesilind*.[5]

Like all opinions, *Vesilind* must be read in "context with the facts and holding in that case." *Colonial Ford Truck Sales, Inc. v. Schneider*, 228 Va. 671, 674 (1985). The *Vesilind* plaintiffs did not present evidence that the challenged legislative plans were the least compact in Virginia history, the least compact legislative plans in the nation, dramatically less compact than the districts they replaced, less compact than

[5] Although the circuit court at different points tried to frame its finding as one of fact, its dispositive weight to comparisons to districts in *Vesilind* under compactness scores depended on an error of law: that scores at those levels are *per se* sufficient. *See* R.0190–191; *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985) (trial courts may not "insulate [their] findings from review by denominating them credibility determinations").

plans or districts subject to no compactness requirement, disregarded all traditional criteria, took hours to traverse, or frustrated effective representation.

In this case, the roles in *Vesilind* are effectively reversed. In *Vesilind*, it was the defense that put on a holistic case, presenting evidence that "it was not hard . . . to travel around" districts, that the "geographic area" of districts was "reduced" even where compactness scores became worse, that there was no struggle in "the ease of going back and forth" across districts, and that "compactness prevailed" in the event of "conflict" with other criteria. 295 Va. at 439–43; *see also id.* at 450. In *Vesilind*, it was the challengers who elected to propose a "bright-line test or score" rather than present evidence that the districts were non-compact. *Id.* at 449. Using a bright-line theory, the *Vesilind* challengers lost. Here, it is the opposite. Defendants advanced a bright-line argument, claiming immunity from challenge. Their expert analyzed only the scores of the 2026 districts against the districts challenged in *Vesilind*. R.0486–488. In stark contrast, Plaintiffs' thorough expert analyses, as well as lay testimony, established "probative evidence of unreasonableness." *Vesilind*, 295 Va. at 446. Districts are non-compact if they cannot be easily traversed, are less compact than historical comparators or national comparators, and are visibly irregular. To uphold them would give the compactness requirement no meaning.

3. The circuit court independently erred—and clearly so—in construing the factual record. Several critical facts differentiate this case from *Vesilind*, *Wilkins*,

and *Jamerson*. One is that those cases concerned State House and Senate legislative districts, but congressional districts are significantly larger. Thus, abstract scores and shapes have a different functional meaning here than they did in *Vesilind*.

The circuit court declared that Petitioners "provide not a scintilla of evidence to suggest that the size of a district has any bearing on the mathematical formulas measuring compactness." R.0190. This was doubly erroneous. First, this Court's precedents do not deem *mathematical formulas* dispositive; it also contemplates a "spatial and political assessment of compactness, which include[s] consideration of geographic size, ease of travel and representation, and communities of interest." *Vesilind*, 295 Va. at 445. The court's exclusion of anything beyond "formulas" evidences legal error. Second, Petitioners put on more than a scintilla; an avalanche of evidence shows that the congressional districts are massive, take hours to traverse, and combine communities with no arguably shared interests on opposite sides of the Commonwealth. R.0366–375; R.0758–769; R.0412–415. Dr. Barber explained at length why comparisons between congressional and legislative districts do not work, including the differences in geographic size and treatment of counties, cities, and other political subdivisions. R.0712–713. Defendants' expert, Dr. Palmer, did not analyze geographic size, ease of travel and representation, or communities of interest. R.0863–864. He also admitted he has never submitted an expert report in

any case that compared a state's congressional and legislative districts as he did here. R.0863.

Next, turning to the very factors this Court has deemed important—"ease of travel, communities of interest, incumbency, or political boundaries"—the circuit court found them irrelevant because they were "discarded by the vote of the people's duly elected representatives and the people themselves." R.0190. This again displays multiple misunderstandings. To begin, the reference to the "vote of . . . people themselves" seemed to refer to the circuit court's (incorrect) holding that the compactness requirement was jettisoned in the Amendment. That view is refuted above, and its reappearance in the compactness inquiry shows the lingering and pervasive impacts of legal error.

That point aside, the circuit court misunderstood the role of traditional districting factors. They were *not* mandatory in *Vesilind*, *Wilkins*, or *Jamerson* any more than they are here. Instead, Virginia precedents have always allowed compactness to be offset or balanced against "traditional redistricting elements" like "preservation of existing districts, incumbency, voting behavior, and communities of interest." *Wilkins*, 264 Va. at 464; *see also Jamerson*, 244 Va. at 512–13 (citing favorably goals of avoiding "splitting counties, cities, and towns," "preserving communities of interest," honoring "[p]recincts" and preserving "existing districts and incumbency"). Precedents have upheld irregularly shaped districts only because

they satisfied such legitimate goals. *Wilkins*, 264 Va. at 466; *Jamerson*, 244 Va. at 516–17. Accordingly, implementation of these factors present the type of "reasonableness" that can "make the issue fairly debatable." *Vesilind*, 295 Va. at 446–47. Simply put, these factors permit a *lesser* degree of compactness than would otherwise be required. But none of those factors were used in designing the 2026 Plan. Indeed, those factors fare worse in the 2026 Plan than in the plan it replaces. Contrary to the circuit court's opinion, Petitioners did not argue that those factors are independently enforceable against the plan. The compactness mandate, however, is enforceable.

In its mistaken reliance on *Vesilind*, *Wilkins*, and *Jamerson*, the circuit court also failed to address uncontested evidence that *every* district in the 2026 Plan is irregular or outright bizarre, which marks another material point of distinction. By contrast, the challengers in *Jamerson*, *Wilkins*, and *Vesilind* picked off just a few districts from plans with 40 (Senate) or 100 (House) districts. In *Vesilind*, only *five* House districts (5% of the plan) and *six* Senate districts (15% of the plan) were even *alleged* to contravene the compactness requirement. *See* R.0486. Indeed, Dr. Palmer conceded that he only reviewed the compactness of 3% of the total seats across the plans at issue in *Jamerson*, *Wilkins*, and *Vesilind* (14 districts out of three years of plans that included a total of 420 districts). R.0866–867.

A challenge like that is unfair. "[A] districting plan is like a Rubik's Cube: every adjustment requires still more adjustments." *Banerian v. Benson*, 597 F. Supp. 3d 1163, 1169 (W.D. Mich. 2022) (three-judge court). There will always be least compact districts in a plan, and abstract scores may be degraded to account for needs in neighboring districts. This occurred even in the plan approved by this Court, where the Special Masters felt compelled to configure a few districts that "score relatively poorly" under mathematical measures to achieve other goals. R.0213. But here, the General Assembly made non-compactness the defining feature of the 2026 Plan and every district within it. This undisputed fact rebuts the Commonwealth's effort to frame the 2026 Plan by comparison to just the lowest score of a single district in two past plans. The evidence shows the 2026 Plan and *all* its districts rank lower than Virginia's comparators as far back as may be measured. R.0312–314; R.0695–698.

Finally, the circuit erred in its acquiescence to "partisan gerrymanders." R.0191–192. This Court's precedent has never deemed partisanship the type of factor that can be "evidence of reasonableness" to justify irregular districts. *Vesilind*, 295 Va. at 447. Precedent implicitly forecloses that assertion by demanding a "showing" that the General Assembly's "actions were reasonable." *Id.* at 446. The standard looks to "traditional redistricting elements." *Wilkins*, 264 Va. at 464. While partisan motives cannot form the basis of a constitutional attack on electoral districts,

neither can such motives justify districts that are not compact. Consequently, nothing about Petitioners' compactness claim prevents the General Assembly from acting politically, or even with stark partisan purpose, in redistricting; it must do so, however, with compact districts. There is no tit-for-tat exception to the Constitution. Indeed, states like California and Texas—having no compactness obligation—still configured more compact plans than the 2026 Plan. If the 2026 Plan is deemed compact, the standard will be wiped away.

III. The Balance of Hardships and Public Interest Favor Relief

The remaining preliminary injunction factors—balance of hardships and the public interest—confirm that relief is warranted. VA. SUP. CT. R. 3:26(d).

A. Balance of Hardships

The circuit court's finding that the balance of hardships is "neutral," R.0191, cannot be reconciled with its threshold finding that Petitioners suffer undisputed irreparable harm, R.0175. The court attributed equal harm to (i) Defendants' need to "prepare for a federal election" and (ii) Intervenor's electoral prospects. R.0191. Neither weighs against relief. The 2021 Plan governed both the 2022 and 2024 federal elections. Reverting to that framework imposes no cognizable administrative burden on the Commonwealth's election officials. Moreover, the Commonwealth has "no cognizable interest" in enforcing an unconstitutional districting plan. *Lucas*, 115 Va. Cir. at 543. Nor would the DCCC suffer injury because its candidates of

choice cannot win additional seats from unconstitutionally constituted districts that the circuit court itself acknowledged are extreme "partisan gerrymanders." R.0191. If that were a hardship at all, it should have been afforded little weight in the balance.

B. Public Interest

Rule 3:26(d) requires only that an injunction be "not contrary to" the public interest, a standard that supports relief absent an affirmative showing that an injunction would harm the public interest. The circuit court found relief contrary to the public interest because "[m]illions of Virginians voted in an election" and, from that, concluded that the public interest *favors* the use of an unconstitutional plan. R.0191. This wrongly conflates the vote on the *Amendment* with the *2026 Plan* itself. As explained, voters did not address the 2026 Plan in casting their ballots. Indeed, the General Assembly knew how to give voters advance warning of its intentions: in California, the legislature, in seeking an exemption from that state's commission requirement, put the actual map to voters. *See* CAL. CONST. art. 21, § 4(b) ("the single-member districts . . . in Assembly Bill 604 of the 2025–26 Regular Session . . . shall temporarily be used"). The General Assembly did not put its plan to voters and did not shown it to them with the ballot materials.[6] The General Assembly instead adopted a circumscribed authorization to "modify" districts, under specified conditions, and did not abrogate the independent compactness requirement. Because

[6] *See* R.0422; R.0424.

Petitioners showed a likelihood of two constitutional violations, the circuit court's reasoning falls away. It would *vindicate* the public vote to enjoin a map that goes beyond the authority the people granted or that contravenes independent, mandatory requirements.

CONCLUSION

The Court should enjoin the 2026 Plan during the pendency of this appeal. Alternatively, this Court should set this appeal for expedited consideration and resolution.

Respectfully submitted,

May 1, 2026

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