



IN THE 19th JUDICIAL CIRCUIT, COLE COUNTY, MISSOURI

FILED

OCT 11 2023

CLERK, SUPREME COURT,  
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| Judge or Division:<br><b>Judge Jon Beetem</b>  | Circuit Court Case Number:<br><b>22AC-CC03185</b>                              |  |
| Plaintiff/Petitioner:<br><b>Clara Faatz, et al.</b>  | Appellate Number:  | <input type="checkbox"/> Filing as an Indigent   |
|  | Date of Judgment/Decree/Order:<br>(ATTACH A COPY)<br><b>September 12, 2023</b> | Court Reporter:<br><b>Kaye F. Asel</b>   |
| vs.  | Date Post Trial Motion Filed:  | <input type="checkbox"/> Sound Recording Equipment   |
| Defendant/Respondent:<br><b>John Ashcroft, in his official capacity of Missouri Secretary of State</b> | Date Ruled Upon:   | The Record on Appeal will consist of:<br>___ Legal File only or<br><input checked="" type="checkbox"/> Legal File and Transcript |
|  |  | (Date File Stamp)  |

**Notice of Appeal to Supreme Court of Missouri**

Notice is given that **Clara Faatz, et al.** appeals from the judgment/decree/order entered in this action on **September 12, 2023** (date).

Jurisdiction of the Supreme Court is based on the fact that this appeal involves:  
(Check appropriate box)


- The validity of a treaty or statute of the United States
- The title to any state office in Missouri
- The punishment imposed is death
- The construction of the revenue laws of Missouri
- The validity of a statute or provision of the Constitution of Missouri

Unless the basis of jurisdiction involves the death penalty, the appellant shall prepare a concise explanation, not to exceed six pages, of the basis for jurisdiction. This must be filed as part of or simultaneously with this notice of appeal. See Rule 81.08(a) and (b).

|   |  |
|---|--|
| Appellant's Name<br>(If multiple, list all or attach additional pages)<br><b>Clara Faatz and William Caldwell.</b>          | Respondent's Name<br>(If multiple, list all or attach additional pages)<br><b>John Ashcroft, in his official capacity of Missouri Secretary of State</b> |
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| Appellant's Attorney/Bar Number<br>(If multiple, list all or attach additional pages)<br><b>Charles W. Hatfield, #40363</b> | Respondent's Attorney/Bar Number<br>(If multiple, list all or attach additional pages)<br><b>Jeff Johnson, #73249</b>                                    |
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DOC Register Number (If applicable)

Does this appeal involve a felony conviction?  Yes  No

|   |   |
|---|---|
| Has the defendant been released on an appeal bond? <input type="checkbox"/> Yes (ATTACH BOND) <input type="checkbox"/> No   |   |
| Bond Amount   | Surety Name, Address, and Phone Number  |
| <b>Docket Fee Information</b>   |   |
| <input checked="" type="checkbox"/> The docket fee in the amount of \$70.00 is being tendered with this notice of appeal.   |   |
| <input type="checkbox"/> No docket fee is being tendered because:   |   |
| <input type="checkbox"/> a docket fee is not required by law pursuant to _____ (cite specific statute or other authority).  |   |
| <input type="checkbox"/> a motion to prosecute the appeal in forma pauperis has been or will be filed.  |   |
| <input type="checkbox"/> a docket fee in the amount of \$70.00 cannot be tendered at this time but will be submitted at a later date or this appeal will be subject to dismissal pursuant to Rule 84.08(a).   |   |
| Signature of Attorney or Appellant<br><i>Isl Charles W. Hatfield</i>  | Date<br>October 9, 2023   |
| <b>Certificate of Service on Persons other than Registered Users of the Missouri eFiling System</b>   |   |
| I certify that on _____ (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.  |   |
| _____   |   |
| _____   |   |
| Appellant or Attorney for Appellant   |   |
| <b>Directions to Clerk</b>  |   |
| As required by Rule 30.01(c), a copy of the notice of appeal shall be sent by the clerk to the Attorney General when the appeal involves a felony. Transmit a copy of the notice of appeal and all attached documents to the clerk of the Supreme Court of Missouri and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute. |   |
| <b>Memorandum of the Clerk</b>  |   |
| I have this day served a copy of this notice by <input type="checkbox"/> regular mail <input type="checkbox"/> registered mail <input checked="" type="checkbox"/> certified mail <input type="checkbox"/> facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.   |   |
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| I have transmitted a copy of the notice of appeal to the clerk of the Supreme Court.  |   |
| <input checked="" type="checkbox"/> Docket fee in the amount of \$70.00 was received by this clerk on <u>10/9/2023</u> (date) which will be disbursed as required by statute.   |   |
| <input type="checkbox"/> No docket fee was received.  |   |
| <u>10/11/2023</u><br>Date   | <br><u>Mauris A. Eichholz</u><br>Clerk |

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Supreme Court of Missouri (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

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IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

CLARA FAATZ, *et al.*,  
Plaintiffs,  
v.  
JOHN ASHCROFT,  
MISSOURI SECRETARY OF  
STATE,  
Defendant.

No. 22AC-CC03185 100277

OPINION AND FINAL JUDGMENT

On July 12, 2023, the Court called for Trial Plaintiffs' Amended Petition. In addition to the stipulated facts, the Court heard from witnesses Mr. Sean Soendker Nicholson and Mr. Sean Trende.

Plaintiffs Clara Faatz and William Caldwell bring this cause alleging that the Missouri Senate Districts that they live in (Districts 12 and 13) violate Article III, section 3(b)(4) of the Missouri Constitution (through incorporation by Article III, section 7). Specifically, they allege that the "New Senate Map does not preserve communities because the district lines drawn in the New Senate Map divide Buchanan County," Am Pet. ¶ 40, and that "the district lines impermissibly divide the municipality of Hazelwood," *id.* ¶ 60. They request that the Court declare "the New Senate Map is invalid" because it divides Buchanan County and the City of Hazelwood and that it violates Article III, section 7 of the Missouri Constitution.

They also ask that the Court enjoin Defendant (the Secretary of State)<sup>1</sup> from using the New Senate Map and have proposed a remedy Map, Exhibit B to their Amended Petition.

Before discussing the facts found and the points of law, the Court will only consider declaring Districts 12 and 13 unconstitutional and whether to adopt Plaintiffs' Map that alters Districts 12, 13, 14, 34, and 21. The Constitution's text shows that Plaintiffs only have standing to challenge the district in which they live.

Mo. Const. art. III, § 7(i). As a result, they are not entitled to a declaration that the entire New Senate Map is unconstitutional.

After considering the parties' arguments, the factual record, and the relevant law, the Court finds that the New Senate Map is constitutional in all respects presented here, and the Court enters judgment in favor of the Defendant.

**Findings of Fact**

At trial, the Court admitted the Parties' Joint Stipulation of Facts and adopts them in full below:

1. Plaintiff William Caldwell is a Missouri citizen, resident of Buchanan County, a taxpayer, and an eligible voter in the State of Missouri. Caldwell resides in a district he alleges violates the Missouri Constitution.

<sup>1</sup> This Court previously dismissed the Judicial Redistricting Commission as a defendant.

2. Plaintiff Clara Faatz is a Missouri citizen, resident of the municipality of Hazelwood, a taxpayer, and eligible voter in the State of Missouri. Faatz resides in a district she alleges violates the Missouri Constitution.
3. Defendant John R. Ashcroft is the Secretary of State of Missouri.
4. Every ten years after a decennial census, a Senate Independent Bipartisan Citizens Commission appointed by the Governor is charged with drawing Missouri's state senate legislative districts.
5. Marc Ellinger was the chairman of the Senate Independent Bipartisan Citizens Commission for the 2022 redistricting process.
6. True and correct copies of maps Mr. Ellinger submitted to the Senate Independent Bipartisan Citizens Commission are included in the Joint Stipulation of Facts and Exhibits as Exhibits JT7, JT-8, and JT-9.
7. Susan Montee was the vice-chairwoman of the Senate Independent Bipartisan Citizens Commission for the 2022 redistricting process.
8. True and correct copies of maps Ms. Montee submitted to the Senate Independent Bipartisan Citizens Commission are included in the Joint Stipulation of Facts and Exhibits as Exhibits JT10, JT-11, JT-12, JT-13, JT-14, and JT-15.
9. The Senate Independent Bipartisan Citizens Commission did not agree on or adopt any map submitted by Mr. Ellinger or Ms. Montee.
10. On December 23, 2021, the Senate Independent Bipartisan Citizens Commission notified Secretary Ashcroft that the Commission had not agreed upon a new state senate map.

11. After the Senate Independent Bipartisan Citizens Commission failed to agree on a state senate map, the Supreme Court of Missouri appointed a Judicial Redistricting Commission composed of six judges of the Missouri Court of Appeals to draw a new Missouri state senate map.

12. On March 14, 2022, the Judicial Redistricting Commission released its tentative map.

13. On March 15, 2022, the Judicial Redistricting Commission notified Secretary Ashcroft that the Commission had developed its redistricting Map dividing Missouri into 34 senate districts and establishing the populations and boundaries of said districts.

14. A true and correct copy of the Judicial Redistricting Commission's Senate Redistricting Plan is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-1. This is referred to as the New Senate Map or the enacted Senate Map.

15. The map drawn by the Judicial Redistricting Commission splits Buchanan County between two districts- District 12 and District 34.

16. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 12 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-4.

17. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 34 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-5.

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18. The map drawn by the Judicial Redistricting Commission contains Districts 13 and 14 which cross the municipal line of the municipality of Hazelwood.

19. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 13 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-2.

20. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 14 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-3.

21. On March 14, 2022, the Judicial Redistricting Commission made public its tentative map.

22. For purposes of this case, there is no difference between the Commission's tentative plan and map filed on March 14, 2022 and its final map filed on March 15, 2022. The only difference between the tentative and final map are data on Pages 18 and 20 of the final map (included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-1), which did not impact the final map and plan boundaries.

23. On February 17, 2022, the Judicial Redistricting Commission issued a notice of public hearing to be held on February 25, 2022. The Commission held a hearing on that date.

24. A true and correct copy of the Judicial Redistricting Commission's Notice of Public Hearing is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-20.



25. A true and correct copy of the sign-in sheet of the February 25, 2022 Public Hearing is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-21.
26. Neither Plaintiffs Caldwell nor Faatz participated in the February 25 hearing.
27. No Plaintiff submitted comments to the Judicial Redistricting Commission during the development of its map.
28. A true and correct copy of The Missouri Roster 2023-2024 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-6
29. A true and correct copy of Defendant Secretary of State John R. Ashcroft's Supplemental Answers to Plaintiffs' First Set of Interrogatories is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-16.
30. A true and correct copy of Defendant Secretary of State Ashcroft's Responses to Plaintiffs' First Requests for Admission is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-17.
31. A true and correct copy of the Judicial Redistricting Commission's March 15, 2022 Transmittal Letter to the Secretary of State is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT18.
32. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 Statewide Map is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-19.
33. A true and correct copy of the curriculum vitae of Sean Trende is included

in the Joint Stipulation of Facts and Exhibits as Exhibit JT-22.

Additionally, based on the testimony and admitted exhibits the Court finds the following facts:

34. The Court finds that the testimony of Mr. Nicholson was not helpful to the Court. The testimony showed that Mr. Nicholson was “active in organizing citizen input and activity around [the] Citizens Commission,” and in that process he drew maps used a computer program to do so. Tr. 41:21–22; 43:15–24. He also claimed to have “drafted at least most of the maps... that are listed as or affiliated with Susan Montee on the OA website.” Tr. 51:24–52:3. This testimony is irrelevant to the case because Plaintiffs have not challenged any actions of the Citizens Commission—a separate and distinct map drawing body that failed to pass a map. Additionally, testimony as to what various proposed maps did or did not do is unhelpful because those maps were not adopted and no one fully vetted those maps. Mr. Nicholson testified that “[n]o one did a VRA analysis of any of the plans as they were being thrown back and forth in the final days of the commission process.” Tr. 126:17–25.

35. Mr. Nicholson also testified as to how he drew Plaintiffs’ Proposed Map. His testimony showed that he did not have extensive experience in evaluating a map with the constitutional requirements related to redistricting. He had to rely on a computer program and could not corroborate that the information provided to him was correct. Tr. 99:14–111:3. He was not well versed on the “generally accepted measurements” for redistricting, notwithstanding that many are not set forth in the constitution. Tr. 112:22–116:15. For example, he did not know how the metrics for the

computer program calculated any of its metrics that he relied on or what they meant. *Id.* It was revealed that the computer program does not actually have this information accessible to the public. Tr. 188:20–189:13. Mr. Nicholson’s process was further not reliable because he relied on “compactness scores for this plan” rather than compactness scores for each district, Tr. 80:22–25, as the Missouri Constitution requires. To the extent Mr. Nicholson merely agreed with Mr. Trende, his testimony is duplicative and unhelpful. This Court did not find that Mr. Nicholson to be a useful fact witness.

36. Mr. Trende testified for the Defendant. The Court finds that he is well qualified based on his education and experience to provide opinions on legislative map drawing. Tr. 168:16–175:10.

37. The census data’s late arrival compressed the time for states around the country to complete redistricting. Tr. 199:9–12.

38. He explained that a Convex Hull score, a generally accepted measurement of compactness, describes how closely a district resembles a square or a rectangle or a hexagon. As a result, the higher the Convex Hull score, the more it complies with the Missouri Constitution’s compactness criteria. Tr. 192:3–193:6.

39. Mr. Trende testified that the Senate Map had a lower population deviation than Plaintiffs’ Proposed Map. He also explained that in Plaintiffs’ Proposed Map “[t]he challenged districts becomes less compact and the population deviations increase.” Tr. 198:20–21.

40. Mr. Trende also ran a few different simulations on the Buchanan County

claim and the City of Hazelwood claim to determine whether splitting those subdivisions made sense. In each simulation, the computer was only drawing maps for the challenged districts. Tr. 201:23–25. The constraints for the simulations required population deviations below three percent, no more than one political subdivision line could be crossed, the districts must be contiguous, and the computer preferred more compact districts. Tr. 202:21–203:10; Tr. 205:9–17.

41. The simulations showed that “about 23 percent of the time the City of Hazelwood was split,” Tr. 204:9–10, and Buchanan County “gets split in about 11 percent of the maps,” Tr. 205:18–206:2. Each simulation was run 5,000 times. Tr. 206:3–8.

42. Mr. Trende testified that this shows that Buchanan County “is a typical county to split.” Tr. 207:1–3.

43. He also explained that for City of Hazelwood, “[t]he tendency is to split the more populated cities because if you are trying to make things overall populous that is where you want to balance out.” Tr. 204:14–17. He testified that in St. Louis, “it is really hard to draw within those boundaries. So if you couldn’t do it and you come up with a city to split, these are the ones you would tend to split or among the ones you would tend to split.” Tr. 207:8–12.

44. Plaintiffs’ Proposed Map does not make the “least changes” to the final map drawn by the Judicial Redistricting Commission (the “enacted Map”) because it moves six counties from District 12 into the unchallenged District 21. Additionally,

Plaintiffs' Proposed Map favored keeping political subdivisions together at the expense of compactness.

45. Defendant prepared a proposed Remedial Map (the "Defense Map" or "Defendant's Remedial Map") for illustrative purposes to highlight the deficiencies in Plaintiffs' Map and as a proposal in the event that this Court found that the Judicial Redistricting Commission's map was not compliant with the Missouri Constitution.

46. Defendant's Remedial Map keeps SD 21 unchanged as it is unchallenged. Buchanan County remains split, but the population deviations for both SD 34 and 12 are under one percent. This deviation is achieved by shifting a few precincts from SD 34 to SD 12 and shifting Sullivan County to SD 18. Tr. 208:5-16.

47. In comparing Plaintiffs' Proposed Map and Defendant's Remedial Map, the Defense Map better complies with the Missouri Constitution on the western side of the State for moving fewer counties and being more compact. Tr. 210:21-212:18.

48. Overall the best remedial map, to the extent that any alternative map would need to be developed, is the Defense Map. Tr. 213:10-13. Still, the enacted Map had higher Convex Hull scores for Districts 12, 13, and 14, which this Court finds is an appropriate tool to evaluate compactness, as Mr. Trende explained.

49. Mr. Trende testified that "if there is no discretion, this [map drawing] just goes on and on [unchecked], because there is an infinite number of maps. Once a map gets passed and put into law, I can run my simulations longer and eventually I'll find a more compact map and eventually it will be substantially more so." Tr. 207:15-25.

50. He ran two additional simulations on Districts 13 and 14 to demonstrate that with enough time and resources a better map can always be found. Tr. 213:14–216:8. In simulation 3A, he ran a simulation of 5,000 maps to find the most compact map that did not cross political subdivision lines. *Id.* In doing so, the simulation found a map “more compact than any of the maps drawn so far.” Tr. 215:10–215:15.

51. Mr. Trende also ran simulation 3B, which simply ran simulation 3A 50,000 times instead of 5,000. Tr. 215:10–216:5. He testified that an even more compact map appeared on the 8,500 try. Tr. 215:15–17. He explained that when the “next plaintiff who comes along and runs the sim[ulation]s for 50,000 is going to find a map that is substantially more compact than the court adopted for 5,000 sim[ulation]s.” Tr. 215:18–22. If the simulation ran 500,000 times, the computer would find another, better map. *Id.* The simulations would “never” stop finding unique maps. Tr. 216:6–9.

### Legal Standard

A Missouri redistricting plan “is assumed to be constitutional and will not be held unconstitutional unless the plaintiff proves that it ‘clearly and undoubtedly contravene[s] the constitution.’” *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012). The plan must be upheld unless it “plainly and palpably affronts fundamental law embodied in the constitution, and doubts will be resolved in favor of the constitutionality of the plan.” *Id.* (quotations omitted). The “standard of review must reflect deference to the predominate role of the [redistricting body] and the inability of anyone to draw compact districts with numerical precision,” while upholding the “mandatory language

of the constitution.” *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012) (*Pearson I*). Plaintiffs “must prove that any minimal and practical deviation from population equality or compactness in a district does not result from application of recognized factors that may have been important considerations in the challenged map.” *Johnson*, 366 S.W.3d at 30.

“Plaintiffs at all times have the burden of proving the Map is unconstitutional.” *Pearson v. Koster*, 367 S.W.3d 36, 47 (Mo. banc 2012) (*Pearson II*). “The burden of persuasion and the burden of production never shift to the defendants.” *Id.* When the burden of proof is placed on a party for a claim that is denied, the trier of fact has the right to believe or disbelieve that party’s uncontradicted or uncontroverted evidence.” *Johnson*, 366 S.W.3d at 19. “If no evidence is presented or ‘[i]f the trier of fact does not believe the evidence of the party bearing the burden, it properly can find for the other party.’” *Id.* (quoting *White v. Director of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010)). “Generally, the party not having the burden of proof on an issue need not offer any evidence concerning it.” *White*, 321 S.W.3d at 305.

### Conclusions of Law

#### **I. Constitutional requirements for redistricting.**

The constitutional provisions at issue have been amended twice since the 2010 redistricting cycle, an effort that spawned much litigation. Two provisions provided the standards for redistricting. In 2012, the relevant text of Article III, section 5 required that “the state shall be divided into convenient districts of contiguous territory, as compact and nearly equal in population as may be.” A 1982 amendment created Article

III, section 7 stating:

The commission shall reapportion the senatorial districts by dividing the population of the state by the number thirty-four and shall establish each district so that the population of that district shall, as nearly as possible, equal that figure; no county lines shall be crossed except when necessary to add sufficient population to a multi-district county or city to complete only one district which lies partly within such multi-district county or city so as to be as nearly equal as practicable in population. Any county with a population in excess of the quotient obtained by dividing the population of the state by the number thirty-four is hereby declared to be a multi-district county.

Together, the Constitution required that each district (1) be contiguous, (2) be compact, (3) have equal population, and (4) that county lines shall only be crossed as necessary to add population for a district to be as “nearly equal as possible” in population.

The Supreme Court has expounded three “fundamental” ideas about redistricting. *Pearson I*, 359 S.W.3d at 39. “First, redistricting is predominately a political question” recognizing that “maps could be drawn in multiple ways, all of which might meet the constitutional requirements.” *Id.* “Second, compactness and numerical equality are mandatory.” *Id.* “Third, compactness and numerical equality cannot be achieved with absolute precision.” *Id.* It further recognized the importance of preserving “the integrity of the existing lines of our various political subdivisions” as an unenumerated factor. *Johnson*, 366 S.W.3d at 29. The Court further explained that “the language used in the requirements themselves creates a level of flexibility in their compliance.” *Id.* at 24. As a result, the Court rejected a claim that a ten percent deviation in population was unconstitutional. *Id.* at 22–23.

In 2018, Missourians amended the redistricting criteria, including by expressly



using the same criteria for districts for each chamber. Mo. Const. art. III, § 7 (referring to Article III, section 3). As relevant here, the Constitution listed the required criteria “in order of priority.” *Id.* § 3(c)(1). *First*, “[l]egislative districts shall each have a total population as nearly equal as practicable to the ideal population for such districts.” *Second*, the districts must comply with the federal Constitution and applicable federal laws. *Id.* at § 3(c)(1)(a). It also prohibited racially gerrymandered districts. *Id.* at § 3(c)(1)(b). *Third*, “[d]istricts shall be designed in a manner that achieves both partisan fairness and, secondarily, competitiveness,” according to standards in the provision. *Id.* After those criteria were met, and “[s]ubject to” those requirements, “districts shall be composed of contiguous territory.” *Id.* at § 3(c)(1)(c). And then, “[t]o the extent consistent with paragraphs a. to c. of this subdivision, district boundaries shall coincide with the boundaries of political subdivisions of the state.” *Id.* at § 3(c)(1)(d). *Finally*, “[p]reference shall be that districts are compact in form, but the standards established by paragraphs a. to d. of this subdivision take precedence over compactness.” *Id.* at § 3(c)(1)(e). The Amendment also noted that “compact districts are those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries.” *Id.*

In addition to a host of new criteria and assigning a priority order, the Amendment expressly subordinated political subdivisions to equal population, partisan fairness, and partisan competitiveness. Compactness also fell from being co-equal to equal population to the *seventh* consideration.

Missourians amended the redistricting provisions again in 2020. The relevant

changes largely reordered the criteria: (1) equal population, (2) U.S. Constitution and federal obligations, (3) and (4) contiguity and compactness, (5) political subdivisions, (6) partisan fairness, and (7) competitiveness. Mo. Const. art. III, § 3(b) (2020). These restored compactness and contiguity to their pre-2018 prominence. Indeed, the Amendment specifically subordinates following political subdivision lines because a map shall follow political subdivision lines “[t]o the extent consistent with subdivisions (1)–(3),” which includes the contiguity requirement and the compactness requirement. Mo. Const. art. III, § 3(b)(4) (2020). Subdivision 1 expressly contemplates that political subdivision lines will be crossed. Mo. Const. art. III, § 3(b)(1) (2020). The 2020 changes provide discretion and choices for the redistricting commissions to sacrifice a lower priority, such as following political subdivision lines, for a higher priority, like compactness.

One other constitutional provision bears on this case. In article III, § 7, the Constitution provides that “[i]f the court renders a judgment in which it finds that a completed redistricting plan exhibits the alleged violation, its judgment shall adjust only those districts, and only those parts of district boundaries, necessary to bring the map into compliance.” This provision means that the Court must respect the boundaries drawn by any commission and that any remedy must only make the least changes necessary to redress the alleged violations and nothing further.

**II. The enacted Senate Map does not violate article III, section (b)(4) of the Missouri Constitution.**

Plaintiffs allege that their Districts are unconstitutional because the “New Senate Map does not preserve communities because the district line drawn in the New Senate Map divide[s] Buchanan County,” Am. Pet. ¶ 40, and “the New Senate Map impermissibly divide[s] the municipality of Hazelwood,” Am. Pet. ¶ 67; *see also* Pet. ¶¶ 46, 66. By invoking the phrase “preserve communities,” Plaintiffs challenge that the Senate Map violates article III, § 3(b)(4) that states “[t]o the extent consistent with subdivisions (1) to (3) of this subsection, communities shall be preserved.”

The evidence clearly shows that to the extent any political subdivision lines were crossed, the Judicial Commission chose districts that were more compact. Ex. [insert].

This Missouri Constitution plainly allows this map drawing choice because the compactness requirement in subdivision 3 has priority over the political subdivision requirement in subdivision 4. The evidence at trial confirmed that the enacted Senate Map was more compact than either of the proposed remedial Maps. ¶¶ 39, 46, 47. The enacted Senate Map’s population deviations are also lower than Plaintiffs’ Proposed Map. ¶ 39. Further, Plaintiffs’ Proposed Map, and thus their constitutional theory, favored keeping political subdivisions together at the expense of compactness. ¶ 44.

That is contrary to the Missouri Constitution.

Plaintiffs may later argue that their theory is that the enacted Senate Map violates the Missouri Constitution because the population deviation in SD 34, 13, and 14, all exceed one percent *and* those districts (and SD 12) do not follow political subdivision lines—violations of two constitutional subdivisions. As a threshold matter,

this claim is not referenced in either of the filed petitions, which exclusively invoke subdivision 4. The Amended Petition only uses the word deviate three times, twice in quoting subdivision 1 and once in explaining that their proposed Senate Map complies with subdivision 1. Am. Pet. ¶¶ 23, 47. When Defendant moved for judgment after plaintiffs rested, plaintiffs did not dispute that their case was limited to the contention that the enacted Senate Map fails to comply with “subdivision (b)(4) of Article III, Section 3.” Tr. 161:15–19. The Court finds that the issue of whether Senate Districts 12, 13, 14, and 34 violate the equal population provision has not been tried by either express or implied consent.

Even considering such an argument, Plaintiffs claim fails. Under their reading, a district deviating more than one percent from the ideal population must follow political subdivisions—as subdivision one expressly references that requirement. Yet that reading fails to give full force to the text. The provision permits a deviation “up to three percent if necessary to follow political subdivision lines consistent with subdivision (4) of this subsection.” Mo. Const. art. III, § 3(b)(1). Subdivision one incorporates subdivision 4, which includes the language “[t]o the extent consistent with subdivisions (1) and (3)” the latter being the compactness requirement that takes precedence over following political subdivisions lines. As a result, the compactness requirement retains the same force as above and permits any alleged deviation from political subdivisions in this case.

Moreover, the Constitution does not require numerical precision or any other kind of perfection from the redistricting commissions, who are chosen to fulfill this legislative

task. The evidence clearly shows that to the extent there is any perceived imperfection in the Senate Map, the choices made by the Judicial Redistricting Commission are reasonable. ¶¶ 41–43. In random simulations, splitting Buchanan County occurred 11 percent of the time, when including nearly 20 counties from SDs 12, 21, and 34. *Id.* And in SD 13 and 14, the simulations split Hazelwood 23% of the time, with dozens of possible municipalities. *Id.* Mr. Trende explained why it was reasonable to split Hazelwood: splitting more populous municipalities allow map drawers to more easily achieve equal population criteria. ¶ 43. The evidence also shows that splitting these two political subdivisions are natural choices that do not show any indication of improper manipulation of the districts.

Splitting one county and one municipality represent the least amount of discretion—or, at worst, an appropriate amount here—that can be afforded any redistricting commission. There are an infinite number of possible maps, but there are only so many Commissioners and so little time to produce a map. There can almost always exist a “better” map, as Mr. Trende showed by running the same simulation 5,000 times and then 50,000 times, and as he further illustrated by the phenomenon of “infinite regression.” ¶¶ 48–50. This Court will not fault the Judicial Redistricting Commission for making less than “ideal” choices within the constitutional framework, especially as compounded by the short amount of time that the Judicial Redistricting Commission had to complete its task. Any other amount of deference would inevitably *require* the courts to draw a map in litigation. This Court’s conclusion, again, is based on an appropriate amount of deference in light of the circumstances here, the plain

language of the Missouri Constitution, and the Supreme Court's framework for redistricting analysis in *Johnson*.

**III. Plaintiffs have failed to show that the enacted Senate Map does not result from the application of any recognized factors.**

Plaintiffs cannot simply show some error in "mathematical precision" to succeed. They must show that "any minimal and practical deviation from population equality or compactness in a district does not result from application of recognized factors that may have been important considerations in the challenged map." *Johnson*, 366 S.W.3d at 30. They cannot meet this burden because the evidence shows that any deviation results from valuing compactness over political subdivisions, as the Constitution permits.

Plaintiffs must adduce "evidence that objectively shows that county lines, political subdivisions, or historical boundary lines were not a basis for the district boundary or that it goes beyond a 'minimal and practical deviation.'" *Johnson*, 366 S.W.3d at 31. In doing so, they must show that "federal laws or other recognized factors did not affect the district boundary." *Id.* Plaintiffs have failed in that endeavor. They presented no evidence establishing that any other map achieved Plaintiffs' goals without violating any other provision of the constitution. Despite providing proposed maps from the Citizens' Commission, the evidence showed that no one had reviewed them for compliance with federal law. ¶ 34. Similarly, no witness had done any racial gerrymandering analysis. Tr. 216:17–218:09. And Mr. Nicholson had not reviewed whether the districts he drew satisfied the compactness criteria, because he only looked at the compactness score (a metric he does not know how the website calculated) for the

whole plan. ¶ 35. Plaintiffs have failed to produce such objective evidence that the enacted Senate Map's boundaries go beyond a "minimal and practical deviation."

This Court finds instructive the following passage from *Johnson*: "The use of all three terms "practicable," "possible" and "as may be" in sections 5 and 7 of article III in referring to the population requirement for Senate districts, along with the fact that 'practicable' is a synonym of 'possible,' WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1771 (1993), both reinforce the conclusion that the term 'possible' is not used in the strict sense of equal to the absolute degree." *Johnson*, 366 S.W.3d at 27. And, as *Johnson* reasoned, the Supreme Court "also recognized that population density may affect boundary lines, stating that population density of the state is, of course, uneven and any effort to accomplish both the overriding objective of [population equality] and the preservation of county lines reasonably may be expected to result in the establishment of districts that are not aesthetically pleasing models of geometric compactness." *Id.* at 426 (quotations omitted).

Even if there were some evidence, Defendant's evidence showed that any deviation is minimal and practical. ¶¶ 41–43; Tr. 184:4–7 ("[I]t is not unusual or atypical to split Buchanan County or the City of Hazelwood."). In random simulations, splitting Buchanan County occurred 11 percent of the time, when including nearly 20 counties from SDs 12, 21, and 34. *Id.* And in SD 13 and 14, the simulations split Hazelwood 23% of the time, with dozens of possible municipalities. Mr Trende explained why it was reasonable to split Hazelwood: splitting more populous municipalities allow map drawers to more easily achieve equal population criteria. ¶ 43. The evidence also

shows that splitting these two political subdivisions are natural choices that do not show any indication of improper manipulation, i.e., partisan or racial gerrymandering. *E.g.*, Tr. 207:1-3 (“There is nothing that jumps out about [the split] as untoward. If you are going to a county, [Buchanan County] is a typical county to split.”).

Moreover, Defendant’s evidence also showed that there is a reason for the enacted Senate Map: the challenged districts are more compact than Plaintiffs’ proposed map. Tr. 184:8-9. Plaintiffs failed to address, much less rebut, this evidence. Tr. 81:6-12 (Mr. Nicholson having “no reason to disagree with [Mr. Trende’s compactness] analysis” of Plaintiffs’ map.)


Because Plaintiffs have failed to carry their burdens of proof and persuasion, the Court finds for Defendant.

**Conclusion**

For the reasons stated, the Court finds in favor of Defendant and holds that the Judicial Redistricting Commission’s Senate Map is constitutional. It is therefore

**ORDERED, ADJUDGED, AND DECREED** that judgment be entered for Defendant.

SO ORDERED this 12<sup>th</sup> day of SEPTEMBER.

  
The Honorable Jon E. Beetem  
Circuit Judge



Based on the Supreme Court Rules governing eFiling, an eService email has been issued to the following parties:

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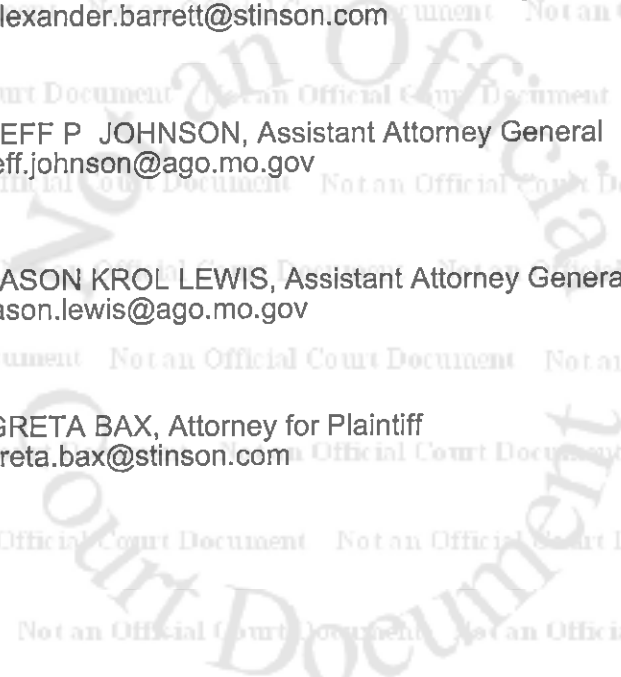
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IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

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CLARA FAATZ, et al.

100277

Plaintiffs,

v.

Case No. 22AC-CC03185

JOHN R. ASHCROFT, et al.,

Defendants.

**JURISDICTIONAL STATEMENT IN SUPPORT OF PLAINTIFFS' NOTICE OF APPEAL TO THE MISSOURI SUPREME COURT**

Plaintiffs-Appellants Clara Faatz and William Caldwell ("Plaintiffs") file this jurisdictional statement in support of their Notice of Appeal to the Missouri Supreme Court. Rule 81.08. This is an appeal from a Judgment declaring the Judicial Redistricting Commission's State Senate Map as unconstitutional under Article III, Section 7 of the Missouri Constitution. *See Judgment*, September 12, 2023 ("... the Court finds in favor of Defendant and holds that the Judicial Redistricting Commission's Senate Map is constitutional.").

The entry of the Circuit Court's Judgment permits the Missouri Supreme Court to consider the substance of this appeal. The constitution mandates that "[t]he supreme court shall have exclusive appellate jurisdiction" for "[a]ny action expressly or implicitly alleging that a redistricting plan violates [the Missouri] Constitution [...]." Mo. Const. art. III, § 7(i).

Here, Plaintiffs brought an action in the Circuit Court of Cole County alleging that the 2022 State Senate Map drawn by the Judicial Redistricting Commission violates the Missouri Constitution because the Map unlawfully splits Buchanan County between two districts and the municipality of Hazelwood between two districts. *See First Amended Petition for Declaratory and Injunctive Relief*, May 5, 2023. The Circuit Court found that the 2022 State Senate Map complies

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with Article III, Section 7.

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This Court has the exclusive appellate jurisdiction to review the Circuit Court's Judgment  
and determine whether the State Senate Map complies with constitutional requirements.

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**IN THE CIRCUIT COURT OF COLE COUNTY**  
**STATE OF MISSOURI**

CLARA FAATZ, *et al.*, )  
 )  
 *Plaintiffs,* )  
 )  
 v. ) No. 22AC-CC03185  
 )  
 JOHN ASHCROFT, )  
 MISSOURI SECRETARY OF )  
 STATE, )  
 )  
 *Defendant.* )

**OPINION AND FINAL JUDGMENT**

On July 12, 2023, the Court called for 'Trial Plaintiffs' Amended Petition. In addition to the stipulated facts, the Court heard from witnesses Mr. Sean Soendker Nicholson and Mr. Sean Trende.

Plaintiffs Clara Faatz and William Caldwell bring this cause alleging that the Missouri Senate Districts that they live in (Districts 12 and 13) violate Article III, section 3(b)(4) of the Missouri Constitution (through incorporation by Article III, section 7). Specifically, they allege that the "New Senate Map does not preserve communities because the district lines drawn in the New Senate Map divide Buchanan County," Am Pet. ¶ 40, and that "the district lines impermissibly divide the municipality of Hazelwood," *id.* ¶ 60. They request that the Court declare "the New Senate Map is invalid" because it divides Buchanan County and the City of Hazelwood and that it violates Article III, section 7 of the Missouri Constitution.

They also ask that the Court enjoin Defendant (the Secretary of State)<sup>1</sup> from using the New Senate Map and have proposed a remedy Map, Exhibit B to their Amended Petition.

Before discussing the facts found and the points of law, the Court will only consider declaring Districts 12 and 13 unconstitutional and whether to adopt Plaintiffs' Map that alters Districts 12, 13, 14, 34, and 21. The Constitution's text shows that Plaintiffs only have standing to challenge the district in which they live. Mo. Const. art. III, § 7(i). As a result, they are not entitled to a declaration that the entire New Senate Map is unconstitutional.

After considering the parties' arguments, the factual record, and the relevant law, the Court finds that the New Senate Map is constitutional in all respects presented here, and the Court enters judgment in favor of the Defendant.

#### Findings of Fact

At trial, the Court admitted the Parties' Joint Stipulation of Facts and adopts them in full below:

1. Plaintiff William Caldwell is a Missouri citizen, resident of Buchanan County, a taxpayer, and an eligible voter in the State of Missouri. Caldwell resides in a district he alleges violates the Missouri Constitution.

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<sup>1</sup> This Court previously dismissed the Judicial Redistricting Commission as a defendant.

2. Plaintiff Clara Faatz is a Missouri citizen, resident of the municipality of Hazelwood, a taxpayer, and eligible voter in the State of Missouri. Faatz resides in a district she alleges violates the Missouri Constitution.

3. Defendant John R. Ashcroft is the Secretary of State of Missouri.

4. Every ten years after a decennial census, a Senate Independent Bipartisan Citizens Commission appointed by the Governor is charged with drawing Missouri's state senate legislative districts.

5. Marc Ellinger was the chairman of the Senate Independent Bipartisan Citizens Commission for the 2022 redistricting process.

6. True and correct copies of maps Mr. Ellinger submitted to the Senate Independent Bipartisan Citizens Commission are included in the Joint Stipulation of Facts and Exhibits as Exhibits JT7, JT-8, and JT-9.

7. Susan Montee was the vice-chairwoman of the Senate Independent Bipartisan Citizens Commission for the 2022 redistricting process.

8. True and correct copies of maps Ms. Montee submitted to the Senate Independent Bipartisan Citizens Commission are included in the Joint Stipulation of Facts and Exhibits as Exhibits JT10, JT-11, JT-12, JT-13, JT-14, and JT-15.

9. The Senate Independent Bipartisan Citizens Commission did not agree on or adopt any map submitted by Mr. Ellinger or Ms. Montee.

10. On December 23, 2021, the Senate Independent Bipartisan Citizens Commission notified Secretary Ashcroft that the Commission had not agreed upon a new state senate map.

11. After the Senate Independent Bipartisan Citizens Commission failed to agree on a state senate map, the Supreme Court of Missouri appointed a Judicial Redistricting Commission composed of six judges of the Missouri Court of Appeals to draw a new Missouri state senate map.

12. On March 14, 2022, the Judicial Redistricting Commission released its tentative map.

13. On March 15, 2022, the Judicial Redistricting Commission notified Secretary Ashcroft that the Commission had developed its redistricting Map dividing Missouri into 34 senate districts and establishing the populations and boundaries of said districts.

14. A true and correct copy of the Judicial Redistricting Commission's Senate Redistricting Plan is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-1. This is referred to as the New Senate Map or the enacted Senate Map.

15. The map drawn by the Judicial Redistricting Commission splits Buchanan County between two districts- District 12 and District 34.

16. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 12 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-4.

17. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 34 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-5.

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18. The map drawn by the Judicial Redistricting Commission contains Districts 13 and 14 which cross the municipal line of the municipality of Hazelwood.

19. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 13 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-2.

20. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 for District 14 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-3.

21. On March 14, 2022, the Judicial Redistricting Commission made public its tentative map.

22. For purposes of this case, there is no difference between the Commission's tentative plan and map filed on March 14, 2022 and its final map filed on March 15, 2022. The only difference between the tentative and final map are data on Pages 18 and 20 of the final map (included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-1), which did not impact the final map and plan boundaries.

23. On February 17, 2022, the Judicial Redistricting Commission issued a notice of public hearing to be held on February 25, 2022. The Commission held a hearing on that date.

24. A true and correct copy of the Judicial Redistricting Commission's Notice of Public Hearing is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-20.



25. A true and correct copy of the sign-in sheet of the February 25, 2022 Public Hearing is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-21.
26. Neither Plaintiffs Caldwell nor Faatz participated in the February 25 hearing.
27. No Plaintiff submitted comments to the Judicial Redistricting Commission during the development of its map.
28. A true and correct copy of The Missouri Roster 2023-2024 is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-6
29. A true and correct copy of Defendant Secretary of State John R. Ashcroft's Supplemental Answers to Plaintiffs' First Set of Interrogatories is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-16.
30. A true and correct copy of Defendant Secretary of State Ashcroft's Responses to Plaintiffs' First Requests for Admission is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-17.
31. A true and correct copy of the Judicial Redistricting Commission's March 15, 2022 Transmittal Letter to the Secretary of State is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT18.
32. A true and correct copy of the 2022 Judicial Redistricting Commission Senate Redistricting Plan Secretary of State Filing March 2022 Statewide Map is included in the Joint Stipulation of Facts and Exhibits as Exhibit JT-19.
33. A true and correct copy of the curriculum vitae of Sean Trende is included

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in the Joint Stipulation of Facts and Exhibits as Exhibit JT-22.

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Additionally, based on the testimony and admitted exhibits the Court finds the following facts:

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34. The Court finds that the testimony of Mr. Nicholson was not helpful to the Court. The testimony showed that Mr. Nicholson was “active in organizing citizen input and activity around [the] Citizens Commission,” and in that process he drew maps used a computer program to do so. Tr. 41:21–22; 43:15–24. He also claimed to have “drafted at least most of the maps... that are listed as or affiliated with Susan Montee on the OA website.” Tr. 51:24–52:3. This testimony is irrelevant to the case because Plaintiffs have not challenged any actions of the Citizens Commission—a separate and distinct map drawing body that failed to pass a map. Additionally, testimony as to what various proposed maps did or did not do is unhelpful because those maps were not adopted and no one fully vetted those maps. Mr. Nicholson testified that “[n]o one did a VRA analysis of any of the plans as they were being thrown back and forth in the final days of the commission process.” Tr. 126:17–25.

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35. Mr. Nicholson also testified as to how he drew Plaintiffs’ Proposed Map. His testimony showed that he did not have extensive experience in evaluating a map with the constitutional requirements related to redistricting. He had to rely on a computer program and could not corroborate that the information provided to him was correct. Tr. 99:14–111:3. He was not well versed on the “generally accepted measurements” for redistricting, notwithstanding that many are not set forth in the constitution. Tr. 112:22–116:15. For example, he did not know how the metrics for the

computer program calculated any of its metrics that he relied on or what they meant. *Id.* It was revealed that the computer program does not actually have this information accessible to the public. Tr. 188:20–189:13. Mr. Nicholson’s process was further not reliable because he relied on “compactness scores for this plan” rather than compactness scores for each district, Tr. 80:22–25, as the Missouri Constitution requires. To the extent Mr. Nicholson merely agreed with Mr. Trende, his testimony is duplicative and unhelpful. This Court did not find that Mr. Nicholson to be a useful fact witness.

36. Mr. Trende testified for the Defendant. The Court finds that he is well qualified based on his education and experience to provide opinions on legislative map drawing. Tr. 168:16–175:10.

37. The census data’s late arrival compressed the time for states around the country to complete redistricting. Tr. 199:9–12.

38. He explained that a Convex Hull score, a generally accepted measurement of compactness, describes how closely a district resembles a square or a rectangle or a hexagon. As a result, the higher the Convex Hull score, the more it complies with the Missouri Constitution’s compactness criteria. Tr. 192:3–193:6.

39. Mr. Trende testified that the Senate Map had a lower population deviation than Plaintiffs’ Proposed Map. He also explained that in Plaintiffs’ Proposed Map “[t]he challenged districts becomes less compact and the population deviations increase.” Tr. 198:20–21.

40. Mr. Trende also ran a few different simulations on the Buchanan County

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claim and the City of Hazelwood claim to determine whether splitting those subdivisions made sense. In each simulation, the computer was only drawing maps for the challenged districts. Tr. 201:23–25. The constraints for the simulations required population deviations below three percent, no more than one political subdivision line could be crossed, the districts must be contiguous, and the computer preferred more compact districts. Tr. 202:21–203:10; Tr. 205:9–17.

41. The simulations showed that “about 23 percent of the time the City of Hazelwood was split,” Tr. 204:9–10, and Buchanan County “gets split in about 11 percent of the maps,” Tr. 205:18–206:2. Each simulation was run 5,000 times. Tr. 206:3–8.

42. Mr. Trende testified that this shows that Buchanan County “is a typical county to split.” Tr. 207:1–3.

43. He also explained that for City of Hazelwood, “[t]he tendency is to split the more populated cities because if you are trying to make things overall populous that is where you want to balance out.” Tr. 204:14–17. He testified that in St. Louis, “it is really hard to draw within those boundaries. So if you couldn’t do it and you come up with a city to split, these are the ones you would tend to split or among the ones you would tend to split.” Tr. 207:8–12.

44. Plaintiffs’ Proposed Map does not make the “least changes” to the final map drawn by the Judicial Redistricting Commission (the “enacted Map”) because it moves six counties from District 12 into the unchallenged District 21. Additionally,

Plaintiffs' Proposed Map favored keeping political subdivisions together at the expense of compactness.

45. Defendant prepared a proposed Remedial Map (the "Defense Map" or "Defendant's Remedial Map") for illustrative purposes to highlight the deficiencies in Plaintiffs' Map and as a proposal in the event that this Court found that the Judicial Redistricting Commission's map was not compliant with the Missouri Constitution.

46. Defendant's Remedial Map keeps SD 21 unchanged as it is unchallenged. Buchanan County remains split, but the population deviations for both SD 34 and 12 are under one percent. This deviation is achieved by shifting a few precincts from SD 34 to SD 12 and shifting Sullivan County to SD 18. Tr. 208:5-16.

47. In comparing Plaintiffs' Proposed Map and Defendant's Remedial Map, the Defense Map better complies with the Missouri Constitution on the western side of the State for moving fewer counties and being more compact. Tr. 210:21-212:18.

48. Overall the best remedial map, to the extent that any alternative map would need to be developed, is the Defense Map. Tr. 213:10-13. Still, the enacted Map had higher Convex Hull scores for Districts 12, 13, and 14, which this Court finds is an appropriate tool to evaluate compactness, as Mr. Trende explained.

49. Mr. Trende testified that "if there is no discretion, this [map drawing] just goes on and on [unchecked], because there is an infinite number of maps. Once a map gets passed and put into law, I can run my simulations longer and eventually I'll find a more compact map and eventually it will be substantially more so." Tr. 207:15-25.

50. He ran two additional simulations on Districts 13 and 14 to demonstrate that with enough time and resources a better map can always be found. Tr. 213:14–216:8. In simulation 3A, he ran a simulation of 5,000 maps to find the most compact map that did not cross political subdivision lines. *Id.* In doing so, the simulation found a map “more compact than any of the maps drawn so far.” Tr. 215:10–215:15.

51. Mr. Trende also ran simulation 3B, which simply ran simulation 3A 50,000 times instead of 5,000. Tr. 215:10–216:5. He testified that an even more compact map appeared on the 8,500 try. Tr. 215:15–17. He explained that when the “next plaintiff who comes along and runs the sim[ulation]s for 50,000 is going to find a map that is substantially more compact than the court adopted for 5,000 sim[ulation]s.” Tr. 215:18–22. If the simulation ran 500,000 times, the computer would find another, better map. *Id.* The simulations would “never” stop finding unique maps. Tr. 216:6–9.

#### Legal Standard

A Missouri redistricting plan “is assumed to be constitutional and will not be held unconstitutional unless the plaintiff proves that it ‘clearly and undoubtedly contravene[s] the constitution.’” *Johnson v. State*, 366 S.W.3d 11, 20 (Mo. banc 2012). The plan must be upheld unless it “plainly and palpably affronts fundamental law embodied in the constitution, and doubts will be resolved in favor of the constitutionality of the plan.” *Id.* (quotations omitted). The “standard of review must reflect deference to the predominate role of the [redistricting body] and the inability of anyone to draw compact districts with numerical precision,” while upholding the “mandatory language

of the constitution.” *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012) (*Pearson I*). Plaintiffs “must prove that any minimal and practical deviation from population equality or compactness in a district does not result from application of recognized factors that may have been important considerations in the challenged map.” *Johnson*, 366 S.W.3d at 30.

“Plaintiffs at all times have the burden of proving the Map is unconstitutional.” *Pearson v. Koster*, 367 S.W.3d 36, 47 (Mo. banc 2012) (*Pearson II*). “The burden of persuasion and the burden of production never shift to the defendants.” *Id.* When the burden of proof is placed on a party for a claim that is denied, the trier of fact has the right to believe or disbelieve that party’s uncontradicted or uncontroverted evidence.” *Johnson*, 366 S.W.3d at 19. “If no evidence is presented or ‘[i]f the trier of fact does not believe the evidence of the party bearing the burden, it properly can find for the other party.’” *Id.* (quoting *White v. Director of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010)). “Generally, the party not having the burden of proof on an issue need not offer any evidence concerning it.” *White*, 321 S.W.3d at 305.

### Conclusions of Law

#### **I. Constitutional requirements for redistricting.**

The constitutional provisions at issue have been amended twice since the 2010 redistricting cycle, an effort that spawned much litigation. Two provisions provided the standards for redistricting. In 2012, the relevant text of Article III, section 5 required that “the state shall be divided into convenient districts of contiguous territory, as compact and nearly equal in population as may be.” A 1982 amendment created Article

III, section 7 stating:

The commission shall reapportion the senatorial districts by dividing the population of the state by the number thirty-four and shall establish each district so that the population of that district shall, as nearly as possible, equal that figure; no county lines shall be crossed except when necessary to add sufficient population to a multi-district county or city to complete only one district which lies partly within such multi-district county or city so as to be as nearly equal as practicable in population. Any county with a population in excess of the quotient obtained by dividing the population of the state by the number thirty-four is hereby declared to be a multi-district county.

Together, the Constitution required that each district (1) be contiguous, (2) be compact, (3) have equal population, and (4) that county lines shall only be crossed as necessary to add population for a district to be as “nearly equal as possible” in population.

The Supreme Court has expounded three “fundamental” ideas about redistricting.

*Pearson I*, 359 S.W.3d at 39. “First, redistricting is predominately a political question” recognizing that “maps could be drawn in multiple ways, all of which might meet the constitutional requirements.” *Id.* “Second, compactness and numerical equality are mandatory.” *Id.* “Third, compactness and numerical equality cannot be achieved with absolute precision.” *Id.* It further recognized the importance of preserving “the integrity

of the existing lines of our various political subdivisions” as an unenumerated factor.

*Johnson*, 366 S.W.3d at 29. The Court further explained that “the language used in the requirements themselves creates a level of flexibility in their compliance.” *Id.* at 24. As a result, the Court rejected a claim that a ten percent deviation in population was unconstitutional. *Id.* at 22–23.

In 2018, Missourians amended the redistricting criteria, including by expressly



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using the same criteria for districts for each chamber. Mo. Const. art. III, § 7 (referring to Article III, section 3). As relevant here, the Constitution listed the required criteria “in order of priority.” *Id.* § 3(c)(1). *First*, “[l]egislative districts shall each have a total population as nearly equal as practicable to the ideal population for such districts.” *Second*, the districts must comply with the federal Constitution and applicable federal laws. *Id.* at § 3(c)(1)(a). It also prohibited racially gerrymandered districts. *Id.* at § 3(c)(1)(b). *Third*, “[d]istricts shall be designed in a manner that achieves both partisan fairness and, secondarily, competitiveness,” according to standards in the provision. *Id.* After those criteria were met, and “[s]ubject to” those requirements, “districts shall be composed of contiguous territory.” *Id.* at § 3(c)(1)(c). And then, “[t]o the extent consistent with paragraphs a. to c. of this subdivision, district boundaries shall coincide with the boundaries of political subdivisions of the state.” *Id.* at § 3(c)(1)(d). *Finally*, “[p]reference shall be that districts are compact in form, but the standards established by paragraphs a. to d. of this subdivision take precedence over compactness.” *Id.* at § 3(c)(1)(e). The Amendment also noted that “compact districts are those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries.” *Id.*

In addition to a host of new criteria and assigning a priority order, the Amendment expressly subordinated political subdivisions to equal population, partisan fairness, and partisan competitiveness. Compactness also fell from being co-equal to equal population to the *seventh* consideration.

Missourians amended the redistricting provisions again in 2020. The relevant

changes largely reordered the criteria: (1) equal population, (2) U.S. Constitution and federal obligations, (3) and (4) contiguity and compactness, (5) political subdivisions, (6) partisan fairness, and (7) competitiveness. Mo. Const. art. III, § 3(b) (2020). These restored compactness and contiguity to their pre-2018 prominence. Indeed, the Amendment specifically subordinates following political subdivision lines because a map shall follow political subdivision lines “[t]o the extent consistent with subdivisions (1)–(3),” which includes the contiguity requirement and the compactness requirement. Mo. Const. art. III, § 3(b)(4) (2020). Subdivision 1 expressly contemplates that political subdivision lines will be crossed. Mo. Const. art. III, § 3(b)(1) (2020). The 2020 changes provide discretion and choices for the redistricting commissions to sacrifice a lower priority, such as following political subdivision lines, for a higher priority, like compactness.

One other constitutional provision bears on this case. In article III, § 7, the Constitution provides that “[i]f the court renders a judgment in which it finds that a completed redistricting plan exhibits the alleged violation, its judgment shall adjust only those districts, and only those parts of district boundaries, necessary to bring the map into compliance.” This provision means that the Court must respect the boundaries drawn by any commission and that any remedy must only make the least changes necessary to redress the alleged violations and nothing further.

II. **The enacted Senate Map does not violate article III, section (b)(4) of the Missouri Constitution.**

Plaintiffs allege that their Districts are unconstitutional because the “New Senate Map does not preserve communities because the district line drawn in the New Senate Map divide[s] Buchanan County,” Am. Pet. ¶ 40, and “the New Senate Map impermissibly divide[s] the municipality of Hazelwood,” Am. Pet. ¶ 67; *see also* Pet. ¶¶ 46, 66. By invoking the phrase “preserve communities,” Plaintiffs challenge that the Senate Map violates article III, § 3(b)(4) that states “[t]o the extent consistent with subdivisions (1) to (3) of this subsection, communities shall be preserved.”

The evidence clearly shows that to the extent any political subdivision lines were crossed, the Judicial Commission chose districts that were more compact. Ex. [insert]. This Missouri Constitution plainly allows this map drawing choice because the compactness requirement in subdivision 3 has priority over the political subdivision requirement in subdivision 4. The evidence at trial confirmed that the enacted Senate Map was more compact than either of the proposed remedial Maps. ¶¶ 39, 46, 47. The enacted Senate Map’s population deviations are also lower than Plaintiffs’ Proposed Map. ¶ 39. Further, Plaintiffs’ Proposed Map, and thus their constitutional theory, favored keeping political subdivisions together at the expense of compactness. ¶ 44. That is contrary to the Missouri Constitution.

Plaintiffs may later argue that their theory is that the enacted Senate Map violates the Missouri Constitution because the population deviation in SD 34, 13, and 14, all exceed one percent *and* those districts (and SD 12) do not follow political subdivision lines—violations of two constitutional subdivisions. As a threshold matter,

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this claim is not referenced in either of the filed petitions, which exclusively invoke subdivision 4. The Amended Petition only uses the word deviate three times, twice in quoting subdivision 1 and once in explaining that their proposed Senate Map complies with subdivision 1. Am. Pet. ¶¶ 23, 47. When Defendant moved for judgment after plaintiffs rested, plaintiffs did not dispute that their case was limited to the contention that the enacted Senate Map fails to comply with “subdivision (b)(4) of Article III, Section 3.” Tr. 161:15–19. The Court finds that the issue of whether Senate Districts 12, 13, 14, and 34 violate the equal population provision has not been tried by either express or implied consent.

Even considering such an argument, Plaintiffs claim fails. Under their reading, a district deviating more than one percent from the ideal population must follow political subdivisions—as subdivision one expressly references that requirement. Yet that reading fails to give full force to the text. The provision permits a deviation “up to three percent if necessary to follow political subdivision lines consistent with subdivision (4) of this subsection.” Mo. Const. art. III, § 3(b)(1). Subdivision one incorporates subdivision 4, which includes the language “[t]o the extent consistent with subdivisions (1) and (3)” the latter being the compactness requirement that takes precedence over following political subdivisions lines. As a result, the compactness requirement retains the same force as above and permits any alleged deviation from political subdivisions in this case.

Moreover, the Constitution does not require numerical precision or any other kind of perfection from the redistricting commissions, who are chosen to fulfill this legislative

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task. The evidence clearly shows that to the extent there is any perceived imperfection  
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in the Senate Map, the choices made by the Judicial Redistricting Commission are  
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reasonable. ¶¶ 41–43. In random simulations, splitting Buchanan County occurred 11  
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percent of the time, when including nearly 20 counties from SDs 12, 21, and 34. *Id.* And  
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in SD 13 and 14, the simulations split Hazelwood 23% of the time, with dozens of possible  
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municipalities. *Id.* Mr. Trende explained why it was reasonable to split Hazelwood:  
splitting more populous municipalities allow map drawers to more easily achieve equal  
population criteria. ¶ 43. The evidence also shows that splitting these two political  
subdivisions are natural choices that do not show any indication of improper  
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manipulation of the districts.

Splitting one county and one municipality represent the least amount of  
discretion—or, at worst, an appropriate amount here—that can be afforded any  
redistricting commission. There are an infinite number of possible maps, but there are  
only so many Commissioners and so little time to produce a map. There can almost  
always exist a “better” map, as Mr. Trende showed by running the same simulation  
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5,000 times and then 50,000 times, and as he further illustrated by the phenomenon of  
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“infinite regression.” ¶¶ 48–50. This Court will not fault the Judicial Redistricting  
Commission for making less than “ideal” choices within the constitutional framework,  
especially as compounded by the short amount of time that the Judicial Redistricting  
Commission had to complete its task. Any other amount of deference would inevitably  
require the courts to draw a map in litigation. This Court’s conclusion, again, is based  
on an appropriate amount of deference in light of the circumstances here, the plain

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language of the Missouri Constitution, and the Supreme Court's framework for  
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redistricting analysis in *Johnson*.

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**III. Plaintiffs have failed to show that the enacted Senate Map does not  
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Plaintiffs cannot simply show some error in "mathematical precision" to succeed.

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They must show that "any minimal and practical deviation from population equality or  
compactness in a district does not result from application of recognized factors that may  
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have been important considerations in the challenged map." *Johnson*, 366 S.W.3d at 30.

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They cannot meet this burden because the evidence shows that any deviation results  
from valuing compactness over political subdivisions, as the Constitution permits.

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Plaintiffs must adduce "evidence that objectively shows that county lines, political  
subdivisions, or historical boundary lines were not a basis for the district boundary or  
that it goes beyond a 'minimal and practical deviation.'" *Johnson*, 366 S.W.3d at 31. In  
doing so, they must show that "federal laws or other recognized factors did not affect the  
district boundary." *Id.* Plaintiffs have failed in that endeavor. They presented no

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evidence establishing that any other map achieved Plaintiffs' goals without violating  
any other provision of the constitution. Despite providing proposed maps from the

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Citizens' Commission, the evidence showed that no one had reviewed them for  
compliance with federal law. ¶ 34. Similarly, no witness had done any racial  
gerrymandering analysis. Tr. 216:17–218:09. And Mr. Nicholson had not reviewed  
whether the districts he drew satisfied the compactness criteria, because he only looked

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at the compactness score (a metric he does not know how the website calculated) for the

whole plan. ¶ 35. Plaintiffs have failed to produce such objective evidence that the enacted Senate Map's boundaries go beyond a "minimal and practical deviation."

This Court finds instructive the following passage from *Johnson*: "The use of all three terms "practicable," "possible" and "as may be" in sections 5 and 7 of article III in referring to the population requirement for Senate districts, along with the fact that 'practicable' is a synonym of 'possible,' WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1771 (1993), both reinforce the conclusion that the term 'possible' is not used in the strict sense of equal to the absolute degree." *Johnson*, 366 S.W.3d at 27. And, as *Johnson* reasoned, the Supreme Court "also recognized that population density may affect boundary lines, stating that population density of the state is, of course, uneven and any effort to accomplish both the overriding objective of [population equality] and the preservation of county lines reasonably may be expected to result in the establishment of districts that are not aesthetically pleasing models of geometric compactness." *Id.* at 426 (quotations omitted).

Even if there were some evidence, Defendant's evidence showed that any deviation is minimal and practical. ¶¶ 41-43; Tr. 184:4-7 ("[I]t is not unusual or atypical to split Buchanan County or the City of Hazelwood."). In random simulations, splitting Buchanan County occurred 11 percent of the time, when including nearly 20 counties from SDs 12, 21, and 34. *Id.* And in SD 13 and 14, the simulations split Hazelwood 23% of the time, with dozens of possible municipalities. Mr Trende explained why it was reasonable to split Hazelwood: splitting more populous municipalities allow map drawers to more easily achieve equal population criteria. ¶ 43. The evidence also

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shows that splitting these two political subdivisions are natural choices that do not show any indication of improper manipulation, *i.e.*, partisan or racial gerrymandering. *E.g.*, Tr. 207:1-3 (“There is nothing that jumps out about [the split] as untoward. If you are going to a county, [Buchanan County] is a typical county to split.”).

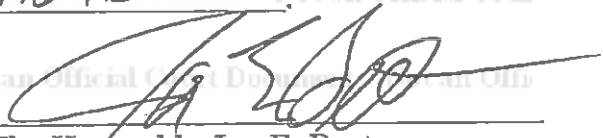
Moreover, Defendant’s evidence also showed that there is a reason for the enacted Senate Map: the challenged districts are more compact than Plaintiffs’ proposed map. Tr. 184:8-9. Plaintiffs failed to address, much less rebut, this evidence. Tr. 81:6-12 (Mr. Nicholson having “no reason to disagree with [Mr. Trende’s compactness] analysis” of Plaintiffs’ map.)

Because Plaintiffs have failed to carry their burdens of proof and persuasion, the Court finds for Defendant.

**Conclusion**

For the reasons stated, the Court finds in favor of Defendant and holds that the Judicial Redistricting Commission’s Senate Map is constitutional. It is therefore **ORDERED, ADJUDGED, AND DECREED** that judgment be entered for Defendant.

SO ORDERED this 12<sup>th</sup> day of SEPTEMBER

  
The Honorable Jon E. Beetem  
Circuit Judge



*Certificate of True Copy*

I, Mark A. Eichholz, clerk of the Circuit Court and in and for Cole County, certify that the forgoing is a true, accurate and complete copy of the original in the cause therein named, as the same appears on record and on file in this office.

WITNESS my hand and the seal affixed hereto on Wednesday, October 11, 2023

Clerk Mark A. Eichholz  
Clerk of the Circuit Court  
Per: /s/ Sheryl Baysinger, Deputy Clerk