

IN THE SUPREME COURT OF MISSOURI

No. SC100277

CLARA FAATZ AND WILLIAM CALDWELL,

Appellants,

v.

JOHN ASHCROFT,

IN HIS OFFICIAL CAPACITY AS MISSOURI SECRETARY OF STATE AND

THE JUDICIAL REDISTRICTING COMMISSION

Respondents.

Appeal from the Circuit Court of Cole County

The Honorable Judge Jon E. Beetem

APPELLANTS' APPENDIX

Charles W. Hatfield, No. 40363

Alixandra S. Cossette, No. 68114

Gunnar T. Johanson, No. 74714

STINSON LLP

230 W. McCarty Street

Jefferson City, Missouri 65101

(573) 636-6263 (phone)

(573) 636-6231 (fax)

chuck.hatfield@stinson.com

alixandra.cossette@stinson.com

gunnar.johanson@stinson.com

Court Document Not an Official Court Document Not an Official Court Document Not an Official Court Document

INDEX

OPINION AND FINAL JUDGMENT.....A1

Mo. Const. art. III, § 3.....A22

Mo. Const. art. III, § 7.....A28

Missouri Senate Redistricting Plan, Buchanan County Map.....A32

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document



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)¹ 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.

¹ 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.

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.”).

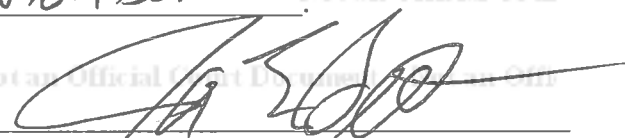
Moreover, Defendant’s evidence also showed that there is a reason for the enacted Senate Map: the challenged districts are more compact than Plaintiffs’ proposed map. Tr. 184:8–9. Plaintiffs failed to address, much less rebut, this evidence. Tr. 81:6–12 (Mr. Nicholson having “no reason to disagree with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



The Honorable Jon E. Beetem
Circuit Judge



Words ▾

1st search term or section nr

And ▾

2nd search term



Constitution

- **Effective - 04 Dec 2020, 3 histories, see footnote** ↓

***III Section 3. Election of representatives — legislative redistricting methods — house independent bipartisan citizens commission, appointment, duties, compensation — court actions, procedure.** — (a) The house of representatives shall consist of one hundred sixty-three members elected at each general election and redistricted as provided in this section.

(b) The house independent bipartisan citizens commission shall redistrict the house of representatives using the following methods, listed in order of priority:

(1) Districts shall be as nearly equal as practicable in population, and shall be drawn on the basis of one person, one vote. Districts are as nearly equal as practicable in population if no district deviates by more than one percent from the ideal population of the district, as measured by dividing the number of districts into the statewide population data being used, except that a district may deviate by up to three percent if necessary to follow political subdivision lines consistent with subdivision (4) of this subsection;

(2) Districts shall be established in a manner so as to comply with all requirements of the United States Constitution and applicable federal laws, including, but not limited to, the Voting Rights Act of 1965 (as amended). The following principles shall take precedence over any other part of this constitution: no district shall be drawn in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color; and no district shall be drawn such that members of any community of citizens protected by the preceding clause have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice;

(3) Subject to the requirements of subdivisions (1) and (2) of this subsection, districts shall be composed of contiguous territory as compact as may be. Areas which meet only at the points of adjoining corners are not contiguous. In general, compact districts are those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries;

(4) To the extent consistent with subdivisions (1) to (3) of this subsection, communities shall be preserved. Districts shall satisfy this requirement if district lines follow political subdivision lines to the extent possible, using the following criteria, in order of priority. First, each county shall wholly contain as many districts as its population allows. Second, if a county wholly contains one or more districts, the remaining population shall be wholly joined in a single district made up of population from outside

the county. If a county does not wholly contain a district, then no more than two segments of a county shall be combined with an adjoining county. Third, split counties and county segments, defined as any part of the county that is in a district not wholly within that county, shall each be as few as possible. Fourth, as few municipal lines shall be crossed as possible;

(5) Districts shall be drawn in a manner that achieves both partisan fairness and, secondarily, competitiveness, but the standards established by subdivisions (1) to (4) of this subsection shall take precedence over partisan fairness and competitiveness. "Partisan fairness" means that parties shall be able to translate their popular support into legislative representation with approximately equal efficiency. "Competitiveness" means that parties' legislative representation shall be substantially and similarly responsive to shifts in the electorate's preferences.

To this end, the average electoral performance of the two political parties receiving the most votes in the three preceding general elections for governor, for United States Senate, and for President of the United States shall be calculated. This index shall be defined as the total votes received by each party in the three preceding general elections for governor, for United States Senate, and for President of the United States, divided by the total votes cast for both parties in these elections. Using this index, the total number of wasted votes for each party, summing across all of the districts in the plan shall be calculated. "Wasted votes" are votes cast for a losing candidate or for a winning candidate in excess of the threshold needed for victory. In any redistricting plan and map of the proposed districts, the difference between the two parties' total wasted votes, divided by the total votes cast for the two parties, shall not exceed fifteen percent.

To promote competitiveness, the electoral performance index shall be used to simulate elections in which the hypothetical statewide vote shifts by one percent, two percent, three percent, four percent, and five percent in favor of each party. The vote in each individual district shall be assumed to shift by the same amount as the statewide vote. In each of these simulated elections, the difference between the two parties' total wasted votes, divided by the total votes cast for the two parties, shall not exceed fifteen percent.

(c) Within sixty days after the population of this state is reported to the President for each decennial census of the United States or, in the event that a redistricting plan has been invalidated by a court of competent jurisdiction, within sixty days that such a ruling has been made, the state committee and the congressional district committees of each of the two political parties casting the highest vote for governor at the last preceding general election shall meet and the members of each committee shall nominate, by a majority vote of the elected members of the committee present, provided that a majority of the elected members is present, members of their party, residents in that district, in the case of a

congressional district committee, as nominees for the house independent bipartisan citizens commission. No party shall select more than one nominee from any one state legislative district. The congressional district committees shall each submit to the governor their list of two elected nominees. The state committees shall each submit to the governor their list of five elected nominees. Within thirty days thereafter, the governor shall appoint a house independent bipartisan citizens commission consisting of one nominee from each list submitted by each congressional district committee and two nominees from each list submitted by each state committee to redistrict the state into one hundred and sixty-three representative districts and to establish the numbers and boundaries of said districts. No person shall be appointed to both the house independent bipartisan citizens commission and the senate independent bipartisan citizens commission during the same redistricting cycle.

If any committee fails to submit a list within such time, the governor shall appoint a member of his or her own choice from the political party of the committee failing to submit a list, provided that in the case of a congressional district committee failing to submit a list, the person appointed to the commission by the governor shall reside in the congressional district of such committee.

Members of the commission shall be disqualified from holding office as members of the general assembly for four years following the date of the filing by the commission of its final redistricting plan.

For the purposes of this Article, the term congressional district committee or congressional district refers to the congressional district committee or the congressional district from which a congressman was last elected, or, in the event members of congress from this state have been elected at large, the term congressional district committee refers to those persons who last served as the congressional district committee for those districts from which congressmen were last elected, and the term congressional district refers to those districts from which congressmen were last elected. Any action pursuant to this section by the congressional district committee shall take place only at duly called meetings, shall be recorded in their official minutes and only members present in person shall be permitted to vote.

(d) The commissioners so selected shall, on the fifteenth day, excluding Sundays and state holidays, after all members have been appointed, meet in the capitol building and proceed to organize by electing from their number a chairman, vice chairman and secretary. The commission shall adopt an agenda establishing at least three hearing dates on which hearings open to the public shall be held to hear objections or testimony from interested persons. A copy of the agenda shall be filed with the clerk of the house of

representatives within twenty-four hours after its adoption. Executive meetings may be scheduled and held as often as the commission deems advisable.

(e) Not later than five months after the appointment of the commission, the commission shall file with the secretary of state a tentative redistricting plan and map of the proposed districts and during the ensuing fifteen days shall hold such public hearings as may be necessary to hear objections or testimony of interested persons. The commission shall make public the tentative redistricting plan and map of the proposed districts, as well as all demographic and partisan data used in the creation of the plan and map.

(f) Not later than six months after the appointment of the commission, the commission shall file with the secretary of state a final statement of the numbers and the boundaries of the districts together with a map of the districts, and no statement shall be valid unless approved by at least seven-tenths of the members.

(g) After the final statement is filed, members of the house of representatives shall be elected according to such districts until a new redistricting plan is made as provided in this section, except that if the final statement is not filed within six months of the time fixed for the appointment of the commission, the commission shall stand discharged and the house of representatives shall be redistricted using the same methods and criteria as described in subsection (b) of this section by a commission of six members appointed from among the judges of the appellate courts of the state of Missouri by the state supreme court, a majority of whom shall sign and file its redistricting plan and map with the secretary of state within ninety days of the date of the discharge of the house independent bipartisan citizens commission. The judicial commission shall make public the tentative redistricting plan and map of the proposed districts, as well as all demographic and partisan data used in the creation of the plan and map. Thereafter, members of the house of representatives shall be elected according to such districts until a redistricting plan is made as provided in this section.

(h) Each member of the commission shall receive as compensation fifteen dollars a day for each day the commission is in session but not more than one thousand dollars, and, in addition, shall be reimbursed for his or her actual and necessary expenses incurred while serving as a member of the commission.

(i) No redistricting plan shall be subject to the referendum.

(j) Any action expressly or implicitly alleging that a redistricting plan violates this Constitution, federal law, or the United States Constitution shall be filed in the circuit court of Cole County and shall name the body that approved the challenged redistricting plan as a defendant. Only an eligible Missouri voter who sustains an individual injury by virtue of residing in a district that exhibits the alleged violation, and whose injury is

remedied by a differently drawn district, shall have standing. If 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. The supreme court shall have exclusive appellate jurisdiction upon the filing of a notice of appeal within ten days after the judgment has become final.

Source: Const. of 1945 (Amended January 14, 1966) (Amended November 2, 1982) (Amended November 6, 2018) (Amended November 3, 2020)

*Transferred 2018; formerly Article III, § 2. No continuity with previous Article III, § 3, repealed November 2, 1982, L. 1982 SJR 39, § 1 2nd Reg. Sess.

CROSS REFERENCE:

Voter qualifications, RSMo 115.133

---- end of effective 04 Dec 2020 ----
use this link to bookmark section III Section 3

- All versions

	Effective	End
III Section 3	12/4/2020	
III Section 3	12/6/2018	12/4/2020
III Section 3	11/2/1982	11/2/1982

Click here for the **Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law**

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website on the effective date of such enacted statutory section.



► Other Information

► Other Links



Missouri Senate



MO.gov



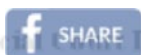
Missouri House

Errors / suggestions -
WebMaster@LR.mo.gov



©Missouri Legislature, all rights reserved.

History and Fun Facts



@13:46:39.4 75 :(Δ ∞

Not an Official Court Document



Words ▾

1st search term or section nr

And ▾

2nd search term



Constitution

Effective - 04 Dec 2020, 3 histories, see footnote ↓

III Section 7. Senate independent bipartisan citizens commission, appointment, duties, compensation — court actions, procedure. — (a) Within sixty days after the population of this state is reported to the President for each decennial census of the United States, or within sixty days after a redistricting plan has been invalidated by a court of competent jurisdiction, the state committee and the congressional district committees of each of the two political parties casting the highest vote for governor at the last preceding general election shall meet and the members of each committee shall nominate, by a majority vote of the elected members of the committee present, provided that a majority of the elected members is present, members of their party, residents in that district, in the case of a congressional district committee, as nominees for the senate independent bipartisan citizens commission. No party shall select more than one nominee from any one state legislative district. The congressional district committees shall each submit to the governor their list of two elected nominees. The state committees shall each submit to the governor their list of five elected nominees. Within thirty days thereafter the governor shall appoint a senate independent bipartisan citizens commission consisting of two nominees from each list submitted by each state committee and one nominee from each list submitted by each congressional district committee, to redistrict the thirty-four senatorial districts and to establish the numbers and boundaries of said districts. No person shall be appointed to both the house independent bipartisan citizens commission and the senate independent bipartisan citizens commission during the same redistricting cycle.

If any committee fails to submit a list within such time, the governor shall appoint a member of his or her own choice from the political party of the committee failing to submit a list, provided that in the case of a congressional district committee failing to submit a list, the person appointed to the commission by the governor shall reside in the congressional district of such committee.

Members of the commission shall be disqualified from holding office as members of the general assembly for four years following the date of the filing by the commission of its final redistricting plan.

(b) The commissioners so selected shall, on the fifteenth day, excluding Sundays and state holidays, after all members have been appointed, meet in the capitol building and proceed to organize by electing from their number a chairman, vice chairman and secretary. The commission shall adopt an agenda establishing at least three hearing dates on which hearings open to the public shall be held to hear objections or testimony from

interested persons. A copy of the agenda shall be filed with the secretary of the senate within twenty-four hours after its adoption. Executive meetings may be scheduled and held as often as the commission deems advisable.

(c) The senate independent bipartisan citizens commission shall redistrict the senate using the same methods and criteria as those required by subsection (b), section 3 of this Article for the redistricting of the house of representatives.

(d) Not later than five months after the appointment of the senate independent bipartisan citizens commission, the commission shall file with the secretary of state a tentative redistricting plan and map of the proposed districts and during the ensuing fifteen days shall hold such public hearings as may be necessary to hear objections or testimony of interested persons. The commission shall make public the tentative redistricting plan and map of the proposed districts, as well as all demographic and partisan data used in the creation of the plan and map.

(e) Not later than six months after the appointment of the commission, the commission shall file with the secretary of state a final statement of the numbers and the boundaries of the districts together with a map of the districts, and no statement shall be valid unless approved by at least seven-tenths of the members.

(f) After the final statement is filed, senators shall be elected according to such districts until a new redistricting plan is made as provided in this section, except that if the final statement is not filed within six months of the time fixed for the appointment of the commission, the commission shall stand discharged and the senate shall be redistricted using the same methods and criteria as described in subsection (b) of section 3 of this Article by a commission of six members appointed from among the judges of the appellate courts of the state of Missouri by the state supreme court, a majority of whom shall sign and file its redistricting plan and map with the secretary of state within ninety days of the date of the discharge of the senate independent bipartisan citizens commission. The judicial commission shall make public the tentative redistricting plan and map of the proposed districts, as well as all demographic and partisan data used in the creation of the plan and map. Thereafter, senators shall be elected according to such districts until a redistricting plan is made as provided in this section.

(g) Each member of the commission shall receive as compensation fifteen dollars a day for each day the commission is in session, but not more than one thousand dollars, and, in addition, shall be reimbursed for his or her actual and necessary expenses incurred while serving as a member of the commission.

(h) No redistricting plan shall be subject to the referendum.

(i) Any action expressly or implicitly alleging that a redistricting plan violates this Constitution, federal law, or the United States Constitution shall be filed in the circuit court of Cole County and shall name the body that approved the challenged redistricting plan as a defendant. Only an eligible Missouri voter who sustains an individual injury by virtue of residing in a district that exhibits the alleged violation, and whose injury is remedied by a differently drawn district, shall have standing. If 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. The supreme court shall have exclusive appellate jurisdiction upon the filing of a notice of appeal within ten days after the judgment has become final.

Source: Const. of 1945 (Amended January 14, 1966) (Amended November 2, 1982) (Amended November 6, 2018) (Amended November 3, 2020)

---- end of effective 04 Dec 2020 ----
[use this link to bookmark section III Section 7](#)

- All versions

	Effective	End
III Section 7	12/4/2020	
III Section 7	12/6/2018	12/4/2020
III Section 7	12/2/1982	12/6/2018

Click here for the **Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law**

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website on the effective date of such enacted statutory section.



► Other Information

► Other Links



Missouri Senate



MO.gov



Missouri House



History and Fun Facts

Errors / suggestions -
WebMaster@LR.mo.gov

©Missouri Legislature, all rights reserved.



@13:00:15.7 44 :(Δ ∞

Not an Official Court Document

Official Court Document Not an Official Court Document Not an Official Court Document

Not an Official Court Document Not an Official Court Document Not an Official Court Document
Andrew
Document Not an Official Court Document Not an Official Court Document Not an Official
al Court Document Not an Official Court Document Not an Official Court Document Not an
an Official Court Document Not an Official Court Document Not an Official Court Document
nt Not an Official Court Document Not an Official Court Document Not an Official Court D
t Document Not an Official Court Document Not an Official Court Document Not an Officia
rial Court Document Not an Official Court Document Not an Official Court Document 12
an Official Court Document Not an Official Court Document Buchanan Not an Official Court Docum
ent Not an Official Court Document 34 Not an Official Court Document Not an Official Court
ut Document Not an Official Court Document Not an Official Court Document Not an Offic
ficial Court Document Not an Official Court Document Not an Official Court Document Not
lot an Official Court Document Not an Official Court Document Not an Official Court Docum
ment Not an Official Court Document Not an Official Court Document Not an Official Cou
Platte

DeKalb

Clinton



Missouri Senate Redistricting Plan

Judicial Redistricting Commission

- Senate District Lines
- Counties

2022



0 1.9 3.8 Miles

Prepared by: The Office of Administration - Redistricting Office