Summary of SC100277, *Clara Faatz, et al. v. John Ashcroft, Missouri Secretary of State*
Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted February 1, 2024; opinion issued February 14, 2024

Attorneys: The challengers were represented by Charles W. Hatfield, Alixandra S. Cossette and Gunnar T. Johanson of Stinson LLP in Jefferson City, (573) 636-6263. The state was represented by Maria A. Lanahan and Jason K. Lewis of the attorney general's office in St. Louis, (573) 751-3321.

Two organizations filed briefs as friends of the Court. The House Republican Campaign Committee was represented by Lowell D. Pearson of Husch Blackwell LLP in Jefferson City, (573) 635-9118. The Missouri Senate Campaign Committee Inc. was represented by Edward D. Greim, Todd P. Graves, Cody S. Hagan and Jackson C. Tyler of Graves Garrett LLC in Kansas City, (816) 256-3181.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Two challengers appeal from a judgment finding the senate redistricting map is not unconstitutional. In a 5-2 decision written by Judge Kelly C. Broniec, the Supreme Court of Missouri affirms the circuit court's judgment. The senate redistricting map did not violate the state constitution's requirements for redistricting by splitting Buchanan County and Hazelwood into four separate senate districts.

Judge W. Brent Powell dissents. He would have reversed the circuit court's judgment. He would have concluded the senate redistricting map violated the constitution by allowing for a population deviation of greater than 1 percent and splitting Buchanan County and Hazelwood such that those communities were not preserved.

Facts: Pursuant the Missouri Constitution, the state's legislative districts must be redrawn every 10 years following the federal census. In 2020, the governor appointed a citizens commission to develop maps. When the citizens commission could not agree on a redistricting map for the senate, the constitution required this Court to appoint a judicial commission. In March 2020, the judicial commission released its senate map. Two Missouri citizens (collectively, the challengers) sued the secretary of state and the judicial commission, alleging the map is unconstitutional. In particular, the challengers alleged the map impermissibly split Buchanan County and Hazelwood into two districts each in violation of the Missouri Constitution. The circuit court rejected the challengers' allegations and found the senate redistricting map constitutional. The challengers appeal.

AFFIRMED.

Court en banc holds: (1) The challengers failed to preserve an equal population claim. Although the challengers now assert that, because the populations in the districts containing

Buchanan County and Hazelwood deviate from the ideal population by more than 1 percent, the map is unconstitutional, the challengers failed to allege such a claim in their amended petition. Claims that a redistricting map violates the equal population provision are not so intertwined with a failure to preserve a community claim that, by alleging one, the parties automatically raise the other. Moreover, the record does not reflect that an equal population claim was tried by implied consent of the parties.

(2) The circuit court did not err in concluding compactness takes priority over preserving communities. The plain text of the constitution states the methods for redistricting are listed in order of priority. The plain meaning of article III, section 3(b) is that compactness in subdivision (3) is given a higher priority than preserving communities in subdivision (4). The reference to natural or political boundaries in article III, section 3(b)(3) means that, if a district is not square, rectangular or hexagonal because the district's perimeter follows a natural or political boundary, the district does not necessarily fail subdivision (3)'s compactness requirement.

(3) The circuit court did not err in using mathematical calculations to compare the compactness of the judicial commission's map to the challengers proposed redistricting map. The plain language of article III, section 3(b)(3) generally requires districts to be shaped like certain polygons: squares, rectangles or hexagons. Each shape listed in the constitution has unique mathematical properties. Using a mathematical formula to determine how closely the shape of the districts matched these properties required by the constitution is not erroneous.

(4) The circuit court applied the correct burden of proof. Even with the 2020 amendments to the state constitution, the plaintiff challenging redistricting still has the burden of proving a redistricting plan is clearly and undoubtedly unconstitutional, and that burden must account for the factors the redistricting commission must consider and those it is permitted to consider. The challenger must prove objectively that a constitutional requirement – population equality, compliance with federal law, contiguity, compactness (as much as may be), community preservation (to the extent possible), or partisan fairness and competitiveness (subject to the foregoing factors) – has not been met. To the extent a challenger alleges a district violates a constitutional requirement that contains discretionary language, such as compactness or community preservation, that challenger has the burden to show this violation is not a minimal and practical deviation necessary to comply with other constitutional requirements.

(5) The circuit court did not err in dismissing the judicial commission from the lawsuit because it was not a necessary party. Once the lawsuit has been filed, the judicial commission was no longer a required party because the secretary of state can grant complete relief.

(6) The circuit court did not abuse its discretion in quashing the discovery requests pertaining to the judicial commission. Whether the constitutional requirements are satisfied is determined objectively, requiring no proof of the subjective intent of the redistricting commission. The judicial commission's deliberations, thought processes, or other potential redistricting maps considered are not relevant in determining whether the redistricting map violates the constitution. Although the challengers assert the circuit court made findings about the judicial commission's decisions, such findings are supported by objective observation of the map rather than requiring investigation into the judicial commission's processes.

Dissenting opinion by Judge Powell: The author would reverse the circuit court's judgment and remand (send back) the case for the circuit court to bring the map into compliance with article III, section 3(b) of the Missouri Constitution. He would conclude the redistricting map violated the Missouri Constitution because splitting Buchanan County and Hazelwood into four separate senate districts allowed for a population deviation greater than 1 percent and failed to preserve those communities. He would find the challengers raised their equal population challenge in their amended petition so as to preserve it. He also would find the record reflects the equal population challenge claim was intertwined with the community preservation arguments such that the claim was presented and tried before the circuit court.