

December 16, 2021

Ms. Muriel-Theresa Pitney
Clerk of Court
Supreme Court of Virginia
100 N. 9th St, 5th Floor
Richmond, VA 23219

Dear Ms. Pitney:

On November 13, 2020, Sean Trende declared that application of “modest redistricting, combined with the demands of reapportionment, are likely to lead” Virginia to “no change” in its 7-4 party affiliation split among its congressional delegation, absent “aggressive gerrymander[ing].”¹ One year later, this Court tasked Mr. Trende with redrawing Virginia’s congressional map upon his promise to apply fair and neutral redistricting principles.² This Court now has before it a map that the Special Masters claim produces a “6-5” party affiliation split, in which “Republicans could win a majority of the seats in Virginia’s delegation” some years.³ Thus, upon the advice of Mr. Trende himself, this Court should view this map with some skepticism. By employing strict adherence to modest, traditional redistricting principles, this Court should reject the Special Masters’ congressional map—and any aggressive gerrymander—that causes this unpredictable shift.

The memorandum accompanying the court-appointed Special Masters’ congressional map released on December 8 (the “December 8 Map”) is confounding. Over 55 pages, the Special Masters endeavor to paint a picture of maps drawn in a mindful and rigorous manner. Yet, upon engaging with the content, the vague reference to the constitutional principles that should dominate this court-ordered redistricting process gives way to a haphazard, unprincipled process that is unmoored from the history, tradition, and communities that form the Commonwealth. Indeed, the Special Masters’ first point of order as they write to assure this Court and Virginians that they have performed their duty well is to declare that their “prime directive for drawing these maps comes *not* from the constitutional or statutory provisions described by this Court,” but from the need to “behave in an apolitical and nonpartisan manner.”⁴ It seems the Special Masters have misunderstood the purpose of their work, as appearances of bipartisanship are not a defense to unconstitutional maps.

The December 8 Map falls short on numerous traditional redistricting principles, even failing to achieve the population equality that is the singular driving force behind this entire decennial process.

¹ Sean Trende, *Part 2: What Redrawn House Maps Could Mean in 2023*, Real Clear Politics (Nov. 13, 2020), https://www.realclearpolitics.com/articles/2020/11/13/part_2_what_redrawn_house_maps_could_mean_in_2023_144651.html.

² See Nov. 19, 2021 Redistricting Appointment Order at 1.

³ December 7, 2021 Memo from Bernard Grofman, Ph.D. and Sean Trende to the Chief Justice and Justices of the Supreme Court of Virginia re Redistricting Maps (“Memo”) at 18-19.

⁴ Memo at 2 (emphasis added).

Worse, it does so to the detriment of minority populations, which constituted the whole of Virginia’s population growth over the last decade, and to the detriment of Virginia’s close-knit communities, which it dices and divides with a complete lack of precision. As the Special Masters are no doubt aware, the currently existing congressional map is the result of a years-long litigation dedicated to ensuring fair representation for certain of Virginia’s minority communities while adhering to federal and state legal requirements. Rather than use this court-approved map as a starting point and building upon the redistricting principles it embodied, the Special Masters chose to start from scratch. While the December 8 Map may be, in the Special Masters’ words, a “true joint effort,” it departs significantly from the lessons learned by the Commonwealth and its leaders in the last decade. If adopted, the December 8 Map would likely suffer from the same fate as its 2011 predecessor—years of tumult in the courts.

Our client has a vested interest in avoiding such an outcome. We represent James Farkas, a Virginia voter who successfully challenged the General Assembly’s unconstitutional racial gerrymander of the congressional map following the last census. The federal court reviewing Mr. Farkas’s challenge found that the Virginia General Assembly unjustifiably packed Black voters in Congressional District 3, thereby diluting their voting strength elsewhere in the Commonwealth. As a plaintiff to that litigation, Mr. Farkas now seeks to ensure that the principles behind the federal court’s ruling are preserved—and the errors underlying the General Assembly’s 2011 congressional plan are not replicated—in the redistricting that is now taking place before this Court.

In light of the December 8 Map’s failures, and pursuant to Virginia law and this Court’s rules inviting public participation in the Court’s redistricting deliberations,⁵ we submit the attached congressional map (the “Farkas Map”) on behalf of our client for consideration by the Supreme Court of Virginia and its Special Masters.⁶ The Farkas Map satisfies all applicable provisions of federal and Virginia law. Importantly, it achieves strict population equality, preserves communities of interest, and ensures that the voting strength of Virginia’s growing racial and ethnic minority population is not diluted. We strongly encourage the Special Masters and this Court to adopt the Farkas Map for Virginia’s congressional districts.

I. Background

A. The Virginia General Assembly enacted an unlawful congressional plan in 2011.

During the one hundred years following Reconstruction, Virginia did not elect a single Black representative to Congress.⁷ That changed in 1992, when the U.S. Department of Justice, acting under the power of the federal Voting Rights Act, directed the Virginia General Assembly to draw a

⁵ Va. Code Ann. § 30-399(C) (2020); Sup. Ct. of Va., *Rules and Procedures for Implementing the Requirements of Article II, Section 6-A of the Constitution of Virginia*, R4(a) (Feb. 23, 2021), https://www.vacourts.gov/courts/scv/article_2_section_6a_rules_procedures.pdf.

⁶ Images of the Farkas Map are included in-line in this submission as well as in the attached Appendix. Several mapping files for the Farkas Map have been submitted to the Court alongside this submission, in a .zip file labeled “Farkas Map Mapping Files.”

⁷ David Wasserman, *Is it Time to Rethink Hyper-Minority Districts?*, *The Atlantic* (Sept. 20, 2021), <https://www.theatlantic.com/politics/archive/2021/09/it-time-rethink-hyper-minority-districts/620118/>.

congressional district that provided Black voters an opportunity to elect a representative of their choice.⁸ As a result, District 3 was drawn as a majority-Black district in 1992 and voters in that district elected Representative Bobby Scott to Congress that same year. Representative Scott has represented District 3 continuously since then. He was the only Black member in Virginia’s congressional delegation from 1992 through 2016.

Over time, what began with the Department of Justice’s important effort to ensure that Black voters in Virginia were represented in Congress turned into the Virginia General Assembly packing Black voters into one congressional district, diluting their voting strength elsewhere in the Commonwealth. Although Black voters in District 3 had consistently elected their representative of choice by significant margins, ranging from 69 percent to 97 percent of the vote, the Republican-controlled General Assembly *raised* the Black voting age population (“BVAP”) of District 3—from 53.1 percent to 56.3 percent—following the 2010 Census.⁹ To do so, the General Assembly moved “predominantly white” populations out of District 3 and moved “predominantly African-American” voters into the district.¹⁰

Along with other residents of District 3, Mr. Farkas brought a lawsuit in federal court, arguing that the district was an unconstitutional racial gerrymander. In 2014, the majority of a three-judge panel agreed, finding that the General Assembly had violated the U.S. Constitution by unjustifiably packing Black voters into District 3.¹¹ The court concluded, based on direct and circumstantial evidence, that “race was the predominant factor” in drawing District 3, as mapdrawers sought to ensure the district’s BVAP exceeded 55 percent.¹² Upon reconsideration, the court again declared the General Assembly’s plan unconstitutional¹³ and appointed Dr. Bernard Grofman as a special master to advise the court on the appropriate redistricting remedy.¹⁴ In 66 pages analyzing two map configurations, Dr. Grofman explained the considerations that went into his map-drawing and why his proposed maps addressed the court’s concerns,¹⁵ including that his “concern[] for contiguity and the avoidance of unnecessary splitting of existing political subunit boundaries, and [his] attention to compactness” led to a heavily minority District

⁸ Va. Pub. Access Project, *3rd District, A Brief History* (Sept. 1, 2015), <https://www.vpap.org/updates/1996-3rd-district-brief-history/>.

⁹ *Page v. Va. State Bd. of Elections*, 58 F. Supp. 3d 533, 539 (E.D. Va. 2014), *vacated sub nom. Cantor v. Personhuballah*, 575 U.S. 931 (2015) (vacating for reconsideration in light of *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254 (2015)); Ballotpedia, *Virginia’s 3rd Congressional District*, (last visited Nov. 6, 2021), https://ballotpedia.org/Virginia%27s_3rd_Congressional_District; Ballotpedia, *Bobby Scott (Virginia)*, (last visited Nov. 6, 2021), [https://ballotpedia.org/Bobby_Scott_\(Virginia\)](https://ballotpedia.org/Bobby_Scott_(Virginia)).

¹⁰ *Page*, 58 F. Supp. 3d at 547.

¹¹ *Id.* at 536.

¹² *Id.* at 541-50. The General Assembly used this same 55 percent target when drawing districts for Virginia’s House of Delegates following the 2010 census. A different panel of three federal judges struck down several of those districts as unconstitutional racial gerrymanders in 2018. *See Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 180-81 (E.D. Va. 2018). The U.S. Supreme Court later dismissed an appeal of this decision, leaving the panel’s ruling intact. *Va. H.D. v. Bethune-Hill*, 139 S. Ct. 1945, 1956 (2019).

¹³ *Page v. Va. State Bd. of Elections*, No. 3:13cv678, 2015 WL 3604029, at *18 (E.D. Va. June 5, 2015). Republican members of the Virginia congressional delegation appealed the decision to the U.S. Supreme Court, but the Court rejected the appeal and left the panel’s decision intact. *Wittman v. Personhuballah*, 136 S. Ct. 1732, 1736-37 (2016).

¹⁴ *See* Letter to Couns. of R. from the Ct., *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552 (E.D. Va. 2016) (No. 3:13-cv-00678-REP-LO-AD), ECF No. 236 (“*Personhuballah* Letter”).

¹⁵ *See* Rep. of the Spec. Master, *Personhuballah*, 155 F. Supp. 3d 552, ECF No. 272 (“*Personhuballah* Rep.”).

3 that did not reflect “in any way a predominant concern for race,” but rather “naturally reflect[ed] the underlying demography of the state”¹⁶ Critically, Dr. Grofman explained that when the new District 3 was drawn in accordance with *traditional districting principles alone*, rather than predominantly focusing on race, a substantial minority population in District 4 arose “virtually automatically.”¹⁷

In adopting one of Dr. Grofman’s maps, the court credited his approach to drawing the districts, concluding that Dr. Grofman was “guided by the neutral goals of compactness, contiguity, and avoiding unnecessary city or county splits, rather than any racial considerations.”¹⁸ The court explained that Dr. Grofman’s plan accorded with the principles of Section 2 of the federal Voting Rights Act because Black voters would not be deprived of the opportunity to elect their candidates of choice in either District 3 or District 4.¹⁹ The final, court-adopted plan lowered District 3’s BVAP to approximately 45 percent and increased District 4’s BVAP to about 41 percent.²⁰ Each of these BVAP percentages has proven more than sufficient for the Black communities in those districts to elect the candidates of their choice, in coalition with others. Indeed, during the 2016 election, the newly redrawn District 4 elected its first Black member, Representative Donald McEachin, while the newly redrawn District 3 reelected Representative Scott. Both representatives were subsequently reelected in 2018 and 2020.

B. Virginia’s voters demand an end to gerrymandering with the 2020 constitutional amendment.

Following the unlawful and tumultuous redistricting process of the 2010 cycle, voters successfully placed a proposed amendment to the Virginia Constitution on the 2020 general election ballot, known as the Virginia Redistricting Commission Amendment (the “Amendment”). The Amendment sought to establish a new redistricting commission comprised of 16 members from across the political spectrum, including non-partisan citizens. The Amendment garnered overwhelming support, with almost 66 percent of the electorate voting in favor of adoption.²¹ Nearly every Virginia county showed majority support for the Amendment.²² The results demonstrated the intent of the majority of Virginians to ensure that the General Assembly’s mapping manipulations that resulted in two unconstitutional redistricting maps last cycle would not be repeated.

C. The 2020 Census results reveal significant minority population growth.

The 2020 Census results reveal that Virginia’s population has grown significantly in both number and diversity. Virginia has experienced a nearly 8 percent increase in population over the past decade, adding more than 630,000 people. The majority of these gains are attributable to Virginia’s racial and ethnic minority populations: the minority population increased by more than 7 percent since 2010, while

¹⁶ *Id.* at 15.

¹⁷ *Id.* at 15-16.

¹⁸ *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 562 (E.D. Va. 2016).

¹⁹ *Id.* at 565.

²⁰ *Id.*

²¹ Daniella Cheslow, *Virginia Voters Approve Redistricting Amendment Against Pleas From Democratic Leadership*, WAMU 88.5 (Nov. 4, 2020), <https://wamu.org/story/20/11/04/virginia-voters-approve-redistricting-amendment-against-please-from-democratic-leadership/>.

²² Virginia Dep’t of Elections, *2020 November General Election Referendum Results* (Jan. 21, 2021, 3:02 PM), <https://results.elections.virginia.gov/vaelections/2020%20November%20General/Site/Referendums.html> (last visited Nov. 24, 2021).

the Commonwealth's white population *decreased* by 5.1 percent during that same time period.²³ Notably, Virginia's Black population, which is largely concentrated in the southeastern and northern portions of the Commonwealth, outpaced the general population growth rate, increasing by 8.9 percent to now account for 20.9 percent of the Commonwealth's population.²⁴

D. The Commission fails to adopt a map, triggering this Court's duty to redistrict.

After the selection of members in the fall of 2020, the Virginia Redistricting Commission began meeting in early 2021. It held 38 meetings in Richmond and 16 public hearings across the state during which it considered public comment and proposed maps.²⁵ Unfortunately, however, the Commission deadlocked during its final meetings in September and October and found itself unable to agree on either the process of drawing new redistricting plans or the substance of those plans.²⁶ Without hope of bridging the impasse, the Commission disbanded without proposing maps for the General Assembly's consideration. The Commission's inaction triggered a constitutional failsafe by sending the task of drawing maps directly to this Court.²⁷

E. The Court's Special Masters produce a map that fails to comply with the law.

On November 19, 2021, this Court selected two Special Masters, Dr. Bernard Grofman and Sean Trende, to assist in its mapdrawing duty, directing the Special Masters to work together to produce legally compliant maps within 30 days.²⁸ Less than three weeks later, the Special Masters produced a draft congressional map—the December 8 Map—for the Court's and the public's consideration. Unfortunately, the December 8 Map violates governing legal and traditional redistricting principles.

i. The December 8 Map fails to achieve population equality while fully abandoning a modest change approach.

The most apparent—and entirely unnecessary—violation is the December 8 Map's failure to equally apportion Virginia's population across the 11 congressional districts. Remarkably, it misses this baseline mark while not making any attempt to preserve current districts through modest adjustments.

²³ Adriana Rezal, *States With the Biggest Increases in Racial Diversity*, U.S. News & World Report (Nov. 8, 2021), <https://www.usnews.com/news/best-states/articles/2021-11-08/these-states-saw-the-biggest-shifts-in-racial-diversity>.

²⁴ Staff of America Counts: Stories Behind the Numbers, *Virginia Adds More Than 600,000 People Since 2010*, U.S. Census Bureau: Va.: 2020 Census (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/virginia-population-change-between-census-decade.html>.

²⁵ MyDistricting Virginia, *Meetings and Public Hearings*, Va. Redistricting Comm'n, <https://www.virginiaredistricting.org/PageReader.aspx?page=Hearings> (last visited Nov. 23, 2021).

²⁶ Andrew Cain, *'This isn't working': Virginia's redistricting commission near failure on congressional map*, Richmond Times-Dispatch (Oct. 20, 2021), https://richmond.com/news/state-and-regional/govt-and-politics/this-isnt-working-virginias-redistricting-commission-near-failure-on-congressional-map/article_fb041792-94d9-57ea-bee3-a057e85d49be.html.

²⁷ Va. Const., art. II, § 6-A(g) (“If the Commission fails to submit a plan for districts by the deadline set forth in subsection (d), the Commission shall have fourteen days following its initial failure to submit a plan to the General Assembly. If the Commission fails to submit a plan for districts to the General Assembly by this deadline, the districts shall be established by the Supreme Court of Virginia.”).

²⁸ See Nov. 19, 2021 Redistricting Appointment Order, at 2.

When tasked with drawing maps, courts often employ a “least-change” approach, minimizing their impact on the lines drawn by concordant branches of government or affirmed by previous courts.²⁹ The preparation of new maps, then, typically begins with an analysis of how the previous map can be updated to best reflect traditional redistricting principles and population equality.³⁰ This is particularly important when the previous map—or some portion thereof—has gone through judicial review, as is the case here.³¹ Eschewing this principle entirely, the December 8 Map abandons the meticulous review of courts past in favor of a brazen reimagination that is both unfamiliar with and detached from the communities that will live under this congressional plan for a decade to come.

ii. The December 8 Map appears to impermissibly use race as a predominant factor.

In disregarding the judicial history of Virginia’s maps, the Special Masters fail to integrate the lessons learned with respect to constructing legally compliant districts that do *not* use race as a predominant factor and still permit Virginia’s heavily minority districts to elect candidates of their choice in coalition with others. The Special Masters strenuously insist in their memorandum that they “simply drew districts without race as the predominant interest . . . by drawing districts that comply with traditional good government districting criteria . . . and considered race only *after* we had drawn a map *fully* subject to the constraints of those factors.”³² But when explaining the process that the Special Masters followed to draw historically Black Districts 3 and 4, a different picture emerges.

The Special Masters report their process for drawing District 3 by starting with an overarching assertion that the “Hampton Roads area presently contains one district that consistently elects the candidate of choice of the African-American population.”³³ The Special Masters then assert that they drew the new district lines specifically to comprise “the four major cities in the Hampton Roads area,” without regard for the surrounding communities of interest.³⁴ Next, the Special Masters report that the new urban-concentrated District 3 that they have created “left few options for the 2nd District,” which now creates an odd ‘J’ shape to include portions of the military community, the Eastern Shore, and then clumsily wraps inland. Nonetheless, the Special Masters did not then re-examine their District 3 lines or

²⁹ *E.g.*, *Johnson v. Wis. Elections Comm'n*, -- N.W. 2d --, 2021 WL 5578395 at *14-16 (Nov. 30, 2021); *Wright v. City of Albany*, 306 F. Supp. 2d 1228, 1237 (M.D. Ga. 2003).

³⁰ *Stenger v. Kellett*, No. 4:11CV2230 TIA, 2012 WL 601017, at *3 (E.D. Mo. Feb. 23, 2012) (“A frequently used model in reapportioning districts is to begin with the current boundaries and change them as little as possible while making equal the population of the districts. This is called the ‘least change’ or ‘minimal change’ method, which assumes that if the current district map complied with the redistricting criteria during the previous census, then a new map will likely comply with only limited changes.”). *Martin v. Augusta-Richmond Cty., Ga., Comm'n*, No. CV 112-058, 2012 WL 2339499, at *3 (S.D. Ga. June 19, 2012) (“Keeping the minimum change doctrine in mind, the Court only made the changes it deemed necessary to guarantee substantial equality and to honor traditional redistricting concerns.”); *Below v. Gardner*, 148 N.H. 1, 963 A.2d 785, 794 (2002) (“[B]y using the existing senate districts, we are able to ensure, to the greatest extent practicable, that each senatorial district contains roughly the same constituents as the last validly enacted plan.”).

³¹ *Crumly v. Cobb Cty. Bd. of Elections & Voter Registration*, 892 F. Supp. 2d 1333, 1345 (N.D. Ga. 2012) (“In preparing the draft map, the Court began with the existing map drawn by Judge Carnes in 2002.”).

³² Memo at 5 (emphases added).

³³ *Id.* at 14.

³⁴ *Id.*

look to the prior court-approved map for guidance; rather they remained committed to a District 3 that pulled in as much urban population as possible.

Next, and more overtly, the Special Masters report that they proceeded to draw District 4 to purposefully increase the BVAP. Dr. Grofman found in 2016 that a constitutionally drawn District 3 would result “virtually automatically” in a substantial minority population in District 4.³⁵ And yet, the Special Masters now report that their initial lines for District 4, which aimed to create a “compact district that included only Richmond City and Henrico/Chesterfield counties,” left Black voters comprising “a little more than a third of the population.”³⁶ Without any further examination or explanation of voting trends across coalitions, and without regard to the court-approved existing District 4, the Special Masters simply drew the District anew, employing their own standard of “reasonably compact,” to divide Henrico and Chesterfield counties in a manner that inflated the BVAP by 15 percentage points to 45.3 percent.³⁷

The result of the Special Masters’ approach to Districts 3 and 4 leaves each with BVAP populations that exceed the percentages that have proved more than sufficient for Black voters to have an opportunity to elect their preferred candidates. Notably, the Special Masters’ approach to these minority-opportunity districts stands in sharp contrast to their deference to “Virginia’s lengthy tradition of placing a district in Southside Virginia”³⁸ to create the 73% white District 5,³⁹ and the lamenting concern of the pre- and post-Civil War deference to the Blue Ridge and Appalachian communities of Districts 6 and 9,⁴⁰ which are over 86% and 90% white, respectively. Such racially disparate mapdrawing cannot stand.

iii. The December 8 Map fails to respect communities of interest.

Finally, the December 8 Map sharply divides communities of interest across the state, with the notable exception of providing special care to keep Virginia’s Appalachian communities united.⁴¹ From Northern Virginia’s metropolitan D.C. communities, to the military communities on the Eastern Shore, to the affinity between the Albemarle and Richmond’s Western exurbs, the December 8 Map does little to unite Virginians of common interest under common representation. The overwhelming commentary from Virginians during the public hearing on December 15 before this Court supports the fact that Virginians want to keep their communities together, and the December 8 Map fails to do so. Citizen after citizen informed this Court that the western exurb communities of Richmond are inextricably linked by social, educational, environmental, and economic common interests. Others pleaded for central Virginia to retain its representation and identity in District 7. And several Virginians highlighted the stark disparities in interest between Loudoun County and counties to the south. This failure to keep together the communities in which Virginians live their lives and find their common voice is nonsensical, as well as noncompliant. This Court and the Special Masters can and must do better.

³⁵ *Personhuballah* Rep. at 15-16.

³⁶ Memo at 14.

³⁷ *Id.* at 15.

³⁸ *Id.* at 15.

³⁹ *Id.* at 18.

⁴⁰ *Id.* at 12-13.

⁴¹ *See id.* at 6, 12-14.

F. The Farkas Map accounts for Virginia’s population changes while ensuring compliance with federal and Virginia law.

Mr. Farkas submits the Farkas Map for consideration by the Special Masters and the Court. For the reasons explained below, the Farkas Map provides equally apportioned districts that are compact, share common community interests, and protect the voting power of Virginia’s increasing racial and ethnic minority populations, consistent with all applicable laws and legal precedent. We submit that the Farkas Map achieves these goals more fully and consistently than the Special Masters’ December 8 Map.

II. Legal Standards

A. Population equality

To ensure every voter has an equal voice in government, districts must be evenly apportioned by population. “[A]bsolute population equality is the paramount objective,”⁴² as the Constitution unequivocally requires that elections for the U.S. House of Representatives must be based upon population, first and foremost, such that “one man’s vote in a congressional election is to be worth as much as another’s.”⁴³ Under federal law, therefore, U.S. congressional districts must be as nearly equal in population as is practicable.⁴⁴ Moreover, a court-ordered redistricting plan must conform to a higher standard of population equality than a redistricting plan created by a legislature, permitting only negligible variance.⁴⁵ Likewise, the Virginia Constitution requires that redistricting maps “be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district.”⁴⁶

B. Contiguity and Compactness

The Virginia Constitution requires that every “electoral district shall be composed of contiguous and compact territory.”⁴⁷ A district is not contiguous if it is connected only by “water running downstream or upriver”⁴⁸ “[L]and masses separated by water *may* [] satisfy the contiguity requirement in certain circumstances.”⁴⁹ To comply with the compactness requirement, districts must be drawn “employing one or more standard numerical measures of individual and average district compactness, both statewide and district by district.”⁵⁰ While ease of travel within a district may be considered when evaluating its compactness, it should not be the controlling factor.⁵¹

⁴² *Abrams v. Johnson*, 521 U.S. 74, 98 (1997) (citation and internal quotation marks omitted).

⁴³ *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964).

⁴⁴ *Id.*; see also *Roman v. Sincock*, 377 U.S. 695, 710 (1964) (same for state legislature districts).

⁴⁵ *Abrams*, 521 U.S. at 98; see also *Connor v. Finch*, 431 U.S. 407, 414 (1977) (same for state legislature districts); *Chapman v. Meier*, 420 U.S. 1, 26–27 (1975) (same).

⁴⁶ Va. Const. art. II, § 6.

⁴⁷ *Id.*

⁴⁸ Va. Code Ann. § 24.2-304.04(6) (2020).

⁴⁹ *Wilkins v. West*, 571 S.E.2d 100, 109 (Va. 2002) (emphasis added).

⁵⁰ Va. Code Ann. § 24.2-304.04(7) (2020).

⁵¹ *Wilkins*, 571 S.E.2d at 109.

C. Preservation of Communities of Interest

Virginia law requires that districts “be drawn to preserve communities of interest,” which are defined as “a neighborhood or any geographically defined group of people living in an area who share similar social, cultural, and economic interests.”⁵² The U.S. Supreme Court has recognized that “maintaining communities of interest” constitutes a “traditional districting principle[.]”⁵³

D. Protection of Racial and Ethnic Minority Groups

Both federal and Virginia state law protect the political rights of racial and ethnic minorities in the map-drawing process.

i. Federal law

The Equal Protection Clause of the Fourteenth Amendment protects against the drawing of districts that “rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race without sufficient justification.”⁵⁴ Courts apply a two-step analysis to racial gerrymandering claims. First, courts ask whether “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.”⁵⁵ “Second, if racial considerations predominated over others, the design of the district must withstand strict scrutiny.”⁵⁶ The burden shifts to the map-drawer “to prove that its race-based sorting of voters serves a ‘compelling interest’ and is ‘narrowly tailored’ to that end.”⁵⁷

Separately, Section 2 of the Voting Rights Act prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right . . . to vote on account of race.”⁵⁸ Section 2 protects against “vote dilution” brought about by the “dispersal of [a group’s members] into districts in which they constitute an ineffective minority of voters.”⁵⁹ If a map-drawer invokes the Voting Rights Act to justify race-based districting, “it must show that it had ‘a strong basis in evidence’ for concluding that the statute required its action.”⁶⁰

An “effective minority district” is generally understood as one that “contains sufficient population to provide the minority community with an opportunity to elect a candidate of its choice.”⁶¹

⁵² Va. Code Ann. § 24.2-304.04(5) (2020).

⁵³ See *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006); see also *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (including respect for “communities defined by actual shared interests” in list of “traditional race-neutral districting principles”).

⁵⁴ *Shaw v. Reno*, 509 U.S. 630, 652 (1993).

⁵⁵ *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)).

⁵⁶ *Id.* at 1464. (citing *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 800 (2017)).

⁵⁷ *Id.*

⁵⁸ 52 U.S.C. § 10301(a); see also *id.* § 10303(f)(2).

⁵⁹ *Cooper*, 137 S. Ct. at 1464 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986)).

⁶⁰ *Id.* at 1497 (citing *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1274 (2015)).

⁶¹ Nat’l Conf. of State Leg., *Redistricting Law 2010* at 68 (Dec. 1, 2009), https://www.ncsl.org/Portals/1/Documents/Redistricting/Redistricting_2010.pdf.

ii. State law

The Virginia Constitution requires that redistricting occur “in accordance with the requirements of federal and state laws that address racial and ethnic fairness.”⁶² The Constitution further requires that “[d]istricts shall provide, where practicable, opportunities for racial and ethnic communities to elect candidates of their choice.”⁶³ Virginia also recently adopted a provision modeled after Section 2 of the federal Voting Rights Act, the Virginia Voting Rights Act, prohibiting maps containing districts that result in a denial or abridgment of “the right of any citizen to vote on account of race or color or membership in a language minority group” or “to elect representatives of their choice.”⁶⁴ A district map violates this provision if, “on the basis of the totality of the circumstances, it is shown that districts were drawn in such a way that members of a racial or language minority group are dispersed into districts in which they constitute an ineffective minority of voters or are concentrated into districts where they constitute an excessive majority.”⁶⁵ Furthermore, “[d]istricts shall be drawn to give racial and language minorities an equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice either alone or in coalition with others.”⁶⁶

E. Political Fairness

Virginia law prohibits maps that, “when considered on a statewide basis, unduly favor or disfavor any political party.”⁶⁷ This provision has not yet been interpreted by a Virginia court.

III. The Farkas Map Satisfies all Legal Requirements and Ensures Fair Representation for Virginians.

A. Overview

The Farkas Map takes the existing congressional map as its starting point but improves upon it in nearly all respects in a way that is more consistently compliant with the legal principles articulated above than the December 8 Map. It satisfies population equality requirements, increases district compactness, preserves communities of interest, and protects the voting strength of minority groups.

⁶² Va. Const. art. II, § 6.

⁶³ *Id.*

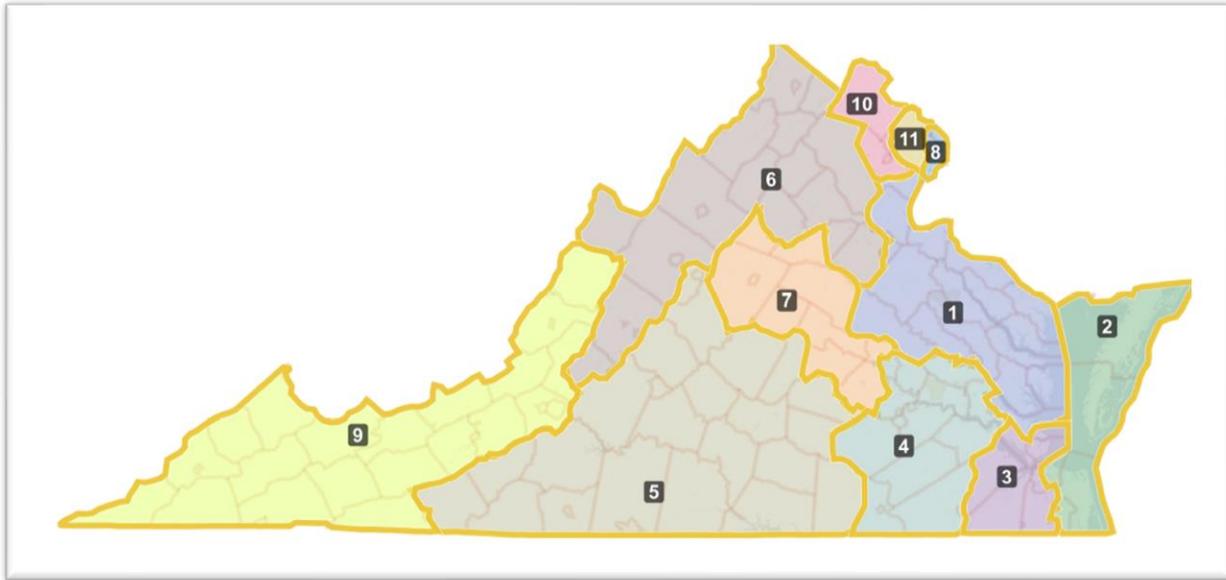
⁶⁴ Va. Code Ann. § 24.2-304.04(3) (2020).

⁶⁵ *Id.*

⁶⁶ *Id.* § 24.2-304.04(4).

⁶⁷ *Id.* § 24.2-304.04(8).

Figure 1: Farkas Map



In the northern Virginia region, the Farkas Map places the entirety of District 11 within Fairfax County, thereby creating a more compact district with a cohesive community. The map also improves the compactness of District 10, which previously ran from the Capital Beltway to the West Virginia border, by instead anchoring it in the suburban Washington, D.C. area. In central and southwestern Virginia, the Farkas Map unites Charlottesville and the surrounding Albemarle County with the suburbs surrounding Richmond in District 7. This change unites communities of interest while also improving the compactness of District 5. The map also addresses population loss in District 9 by moving Roanoke into that district. And finally, in southeastern Virginia, the Farkas Map ensures that Black communities in Districts 3 and 4 maintain their voting strength, consistent with Dr. Grofman’s remedial map and the findings of a Virginia federal court in our client’s case, the *Page* litigation. The map also keeps the military community in District 2 whole by anchoring the district in Norfolk and including Virginia Beach City and Chesapeake City within it.

B. The Farkas Map satisfies traditional redistricting criteria, improving upon the current plan.

i. The Farkas Map meets population equality requirements.

The Farkas Map creates districts of equal population. Six of the districts under the Farkas Map are exactly equal to the ideal population. The other five districts vary only by a single person. By stark contrast, the December 8 Map varies widely from district to district, assuring that the voice of voters in some districts, such as District 10, will carry less weight than voters in others, such as District 6.

Proposed District	Farkas Map		December 8 Map	
	Proposed Population	Deviation from Ideal Population	Proposed Population	Deviation from Ideal Population
1	784,673	+1 person	783,413	-1,259 (-0.16%)
2	784,673	+1 person	784,453	-219 (-0.03%)
3	784,673	+1 person	784,353	-319 (-0.04%)
4	784,672	0	784,366	-306 (-0.04%)
5	784,672	0	785,740	+1,068 (+0.14%)
6	784,672	0	783,436	-1,236 (-0.16%)
7	784,672	0	783,613	-1,059 (-0.13%)
8	784,672	0	784,141	-531 (-0.07%)
9	784,671	-1 person	786,021	+1,349 (+0.17%)
10	784,672	0	786,469	+1,797 (+0.23%)
11	784,671	-1 person	785,388	+716 (+0.09%)
Overall Deviation	2 people (<i>de minimis</i> percentage)		3,056 people (0.39%)	

U.S. congressional districts must be as nearly equal in population as is practicable.⁶⁸ Indeed, the Supreme Court has declared that “[a] court-ordered plan should ‘ordinarily achieve the goal of population equality with little more than *de minimis* variation.’”⁶⁹ The federal court that approved remedial Virginia districts in the *Page* litigation strictly adhered to this requirement, as did Special Master Grofman when submitting his proposal to that court.⁷⁰ Not only does the December 8 Map abandon Virginia’s history of strict adherence to this principle, but, as is apparent from the near perfect equality achieved by the Farkas Map, the December 8 Map does not even achieve population equality as closely as is practicable. Far from it. This failure would subject the December 8 Map to an exacting standard upon review.

“With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features.”⁷¹ The Special Masters report that they “worked diligently to ensure that the congressional districts were *reasonably close* to equipopulous,”⁷² but this is simply not the appropriate legal standard. The Special Masters make no mention of what, if any, historically significant state policy or unique features support these deviations in population.

Indeed, the December 8 Map cannot even survive the less exacting standard applied to districts drawn by state legislatures. The U.S. Supreme Court permits some flexibility to state legislatures to achieve exact population equity, requiring that a state “justify population differences between districts

⁶⁸ *Id.*; see also *Roman v. Sincock*, 377 U.S. 695, 710 (1964) (same for state legislature districts).

⁶⁹ *Abrams*, 521 U.S. at 98-9 (deeming a court-drawn map with a deviation of 0.35% permissible due to the fact that the court—“in detail”—reviewed and accounted for specific historic preferences and unique features that demanded such a deviation).

⁷⁰ *Personhuballah* Rep. at 11 (“Since the present map and all of the maps offered in briefs submitted . . . were either exactly at ideal district size . . . or plus or minus one person, the illustrative maps I have offered to the Court also provide this level of strict population equality.”).

⁷¹ *Chapman*, 420 U.S. at 26.

⁷² Memo at 3 (emphasis added).

that could have been avoided by a good-faith effort to achieve absolute equality.”⁷³ In such instances, courts should consider “the size of the deviations, the importance of the State’s interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely.”⁷⁴ Here, there is an available alternative—the Farkas Map—that, as explained further below, substantially vindicates the other interests this Court must consider.

ii. The Farkas Map creates more compact, contiguous districts.

The Farkas Map creates more contiguous and compact congressional districts than the current map provides. These improvements are evidenced by both improved mathematical compactness scores as well as comparison with the naked eye.

Virginia courts have relied upon two leading mathematical methodologies for measuring district compactness: the Reock method and the Polsby-Popper method.⁷⁵ The Reock score “compares the area of a district to the area of the small circle that can be drawn around the district.”⁷⁶ The Polsby-Popper score “compares the area of a district to the area of a circle with the same perimeter.”⁷⁷ Both methods produce a score between 0 and 1, with 1 being most compact.⁷⁸ Thus, if a score increases from one map to another, that indicates an increase in compactness. The Farkas Map increases the statewide average Reock score over the current map—one that the federal district court already found adhered to principles of compactness⁷⁹—by over 20 percent and increases the statewide Polsby-Popper score by over 47 percent. The Farkas Map is thus even more compact on average than the current map adopted by a three-judge court.

⁷³ *Tennant v. Jefferson Cnty. Com’n*, 567 U.S. 758, 759 (2012) (per curiam) (citations and internal quotation marks omitted).

⁷⁴ *Id.* at 760.

⁷⁵ See, e.g., *Bethune-Hill v. Va. State Bd. of Elections*, 141 F. Supp. 3d 505, 535 (E.D. Va. 2015), *aff’d in part, vacated in part*, 137 S. Ct. 788 (2017) (discussing relative attributes of both the Reock and Polsby-Popper methods). The Special Masters report in their December 7 memorandum to the Court that they have utilized a third measure—“Dave’s Redistricting App”—without explanation as to how this source calculates its scores or what the range of available scoring is. We are aware of no instance of a Virginia court, or any court for that matter, approving of “Dave’s Redistricting App” as a reliable source with which to measure compactness. Quite the opposite: the Southern District of Ohio previously declined to credit maps that were drawn using Dave’s Redistricting App, determining that “testimony that the application allows for the manipulation of districts [and] failure to establish the parameters . . . used to produce the maps is problematic” and ultimately that the evidence “is insufficient to establish the reliability of the methodology used to create the maps.” *Ohio Org. Collaborative v. Husted*, No. 2:15-CV-1802, 2016 WL 8201848, at *8 (S.D. Ohio May 24, 2016).

⁷⁶ *Vesilind v. Va. State Bd. of Elections*, 813 S.E.2d 739, 743 n.3 (Va. 2018) (quoting an explanation provided by an expert witness).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Personhuballah*, 155 F. Supp. 3d at 562, (“[Dr. Grofman’s map] also vastly improves the Third District’s compactness score and meaningfully improves the Plan’s average compactness scores across all the affected districts.”).

The same is true when evaluating compactness of the individual districts. In the vast majority of instances, the Farkas districts are more compact than the existing map whether measured by the Reock or Polsby-Popper methods.

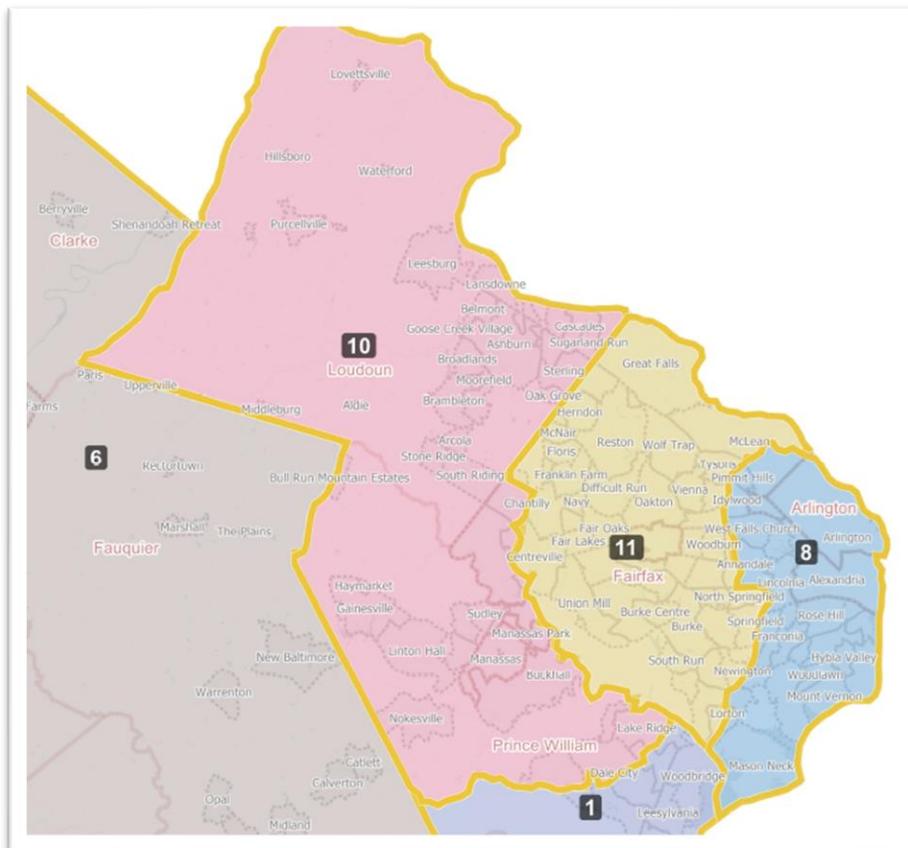
Proposed District	Reock		Polsby-Popper	
	Existing	Farkas	Existing	Farkas
1	0.341	0.346	0.228	0.259
2	0.28	0.245	0.215	0.314
3	0.428	0.472	0.227	0.324
4	0.415	0.565	0.213	0.293
5	0.294	0.435	0.154	0.322
6	0.259	0.3	0.162	0.155
7	0.257	0.353	0.194	0.201
8	0.331	0.321	0.256	0.348
9	0.22	0.178	0.188	0.167
10	0.29	0.35	0.126	0.3
11	0.203	0.423	0.093	0.34
Statewide Average	0.302	0.363	0.187	0.275

These metrics confirm what is observable with the naked eye, particularly with respect to the northern Virginia region. Between Districts 8, 10, and 11 alone, the population increased by nearly 300,000 Virginians, which accounts for almost 50 percent of Virginia’s overall growth since 2010. This growth necessitates more compact boundaries. The existing Districts 8, 10, and 11—intentionally left untouched in Dr. Grofman’s 2016 remedial map—currently sprawl across seven counties and five independent cities, collectively. The Farkas Map, by contrast, reduces this spread to just four counties and four independent cities.⁸⁰ Specifically, while the existing District 11 winds from northern Fairfax County down to southeastern Prince William County, the Farkas Map keeps all of District 11 within Fairfax County’s borders, giving it a much more compact shape with sensible boundaries. Similarly, while the existing District 10 runs from the Capital Beltway to the West Virginia border, across five counties and three independent cities, the Farkas Map reduces District 10 to three counties and two independent cities, concentrated in the suburban Washington, D.C. area.⁸¹ These changes improve upon traditional districting criteria to provide less sprawling and more sensible districts.

⁸⁰ See App., fig.2.

⁸¹ The Farkas Map leaves District 8 largely the same, with a nearly 90 percent overlap with the current District boundaries, given that District 8 saw only modest population gains. The Farkas Map does, however, significantly reduce the jigsaw nature of the current boundary line District 8 shares with District 11. See *id.*

Figure 2: Northern Virginia



Unlike the December 8 Map, the Farkas Map achieves increased compactness without sacrificing other critical considerations like population equality and preservation of communities of interest. Indeed, the Farkas Map and December 8 Map achieve comparable average Reock scores that are just 0.02 points apart.⁸² District-by-district, the Farkas Map outperforms the December 8 Map on Reock scores in six of the eleven districts.⁸³

iii. The Farkas Map reunites and preserves communities of interest.

The Farkas Map reunites communities of interest that were torn apart by the General Assembly in the previous congressional map and which are similarly divided in the December 8 Map. The current map, using 2010 Census geographies, split 14 counties, 37 census-designated places, and 22 voter tabulation districts. The Farkas Map, using 2020 Census geographies, splits only ten counties, 25 census-designated places, and 14 voter tabulation districts. These political subdivisions represent common interests and ought to be kept whole to the extent possible.⁸⁴

⁸² The December 8 Map has an average Reock score of 0.383, according to Princeton University's Gerrymandering Project. Princeton Gerrymandering Project, <https://gerrymander.princeton.edu/redistricting-report-card?planId=recOUne4ZKjEyaVyJ> (last visited December 11, 2021).

⁸³ Compare *supra* p. 13 with Memo at 18.

⁸⁴ *Miller*, 515 U.S. at 916, 919-20.

Region by region, the Farkas Map responds to concerns raised by Virginians during both the Virginia Redistricting Commission’s tenure⁸⁵ and this Court’s process.⁸⁶ For example, numerous commenters emphasized that Charlottesville, home to the University of Virginia, and its surrounding Albemarle County have more in common with suburban Richmond County than the rural mountain areas in District 5. One Charlottesville resident urged this Court to “consider the cohesion of metropolitan areas” and to not “combine Albemarle County with a Congressional district in the Shenandoah Valley.”⁸⁷ Another explained that the current District 5 “lumps [voters] into a New Jersey-sized monolith, meaning we have no common interests . . . with other parts of the district”⁸⁸ Yet another commented that Albemarle has “no cultural, economic, or community connections” with the western portion of the state, but instead is “closely intertwined” with Richmond to the east.⁸⁹ Numerous government metrics affirm this point. For example, the Metropolitan Planning Organization for Richmond—a regional divide utilized by both the Virginia Department of Transportation and the U.S. Department of Transportation—includes the regions to the West of Richmond stretching toward Charlottesville, including Goochland and Powhatan.⁹⁰ The regions are also clearly linked by the I-64 corridor running East-West between the two metropolitan areas.

The December 8 Map, in contrast, exacerbates the splits problem by even further breaking up the Charlottesville and Albemarle County community of interest. The December 8 Map cleaves Albemarle County in half, splitting it between the Fifth District (extending all the way to Virginia’s Southern border) and Tenth District (extending all the way to Virginia’s Northern border). This does not improve on the currently existing map; it makes it worse. Indeed, in the days following the release of the December 8 Map, several Virginians have expressed concern about the split representation of Charlottesville and Albemarle County.⁹¹

The Farkas Map addresses this issue, moving Charlottesville and Albemarle County to District 7 in order to unite it with the Richmond suburbs. This change also improves the compactness of District 5, which in its current form stretches all the way from Virginia’s southern border, through Charlottesville, up to the edge of the Washington, D.C. metro area. In the Farkas Map, District 5 is anchored in the south-central region of the state. It unites Martinsville and its suburbs, which are currently separated across two districts, and it also includes Lynchburg and its surrounding counties. Further west, the map addresses population loss in District 9 by moving Roanoke into the district. This change unites Roanoke and Salem, neighboring cities that were previously placed in separate districts.

⁸⁵ See *Public Comments Submitted to VRC – Organized by Region*, Va. Redistricting Comm’n (Nov. 19, 2021), <https://virginiaredistricting.org/PageReader.aspx?page=SubmittedPublicComments> (hereinafter “VRC Comments”).

⁸⁶ *Public Comments as of 11-23-21 (10:00am)*, Va. Jud. System, https://www.vacourts.gov/courts/scv/districting/public_comments.pdf (hereinafter “Va. Sup. Ct. Comments”).

⁸⁷ Va. Sup. Ct. Comments at 73 (comment of Barbara Gehrung, Nov. 10, 2021).

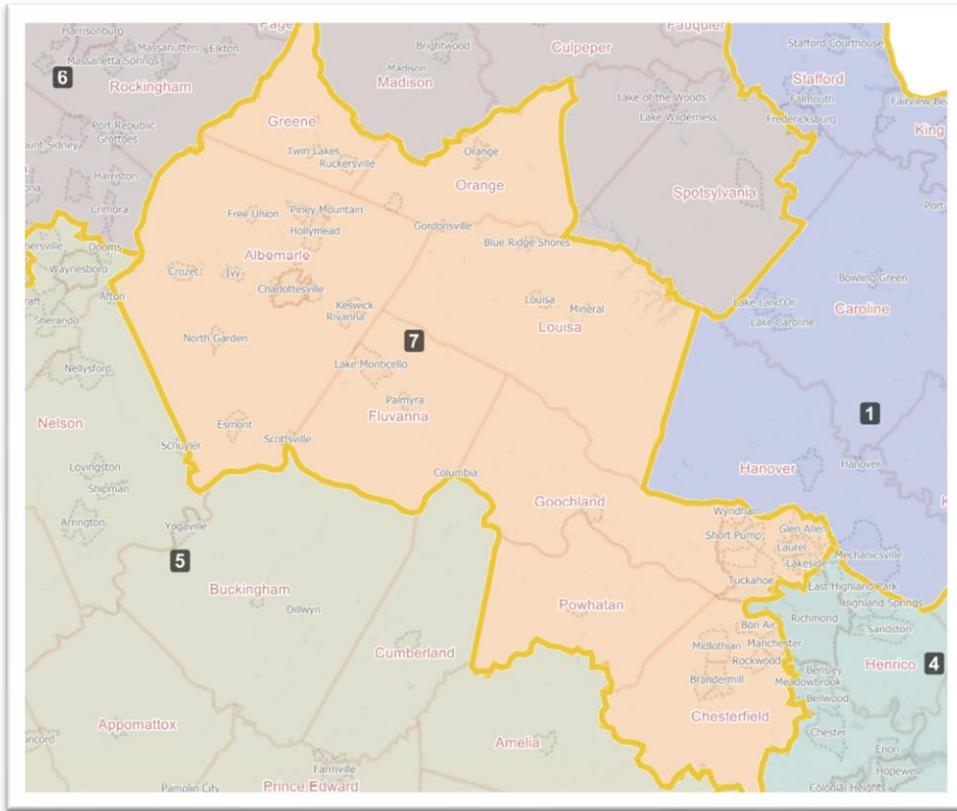
⁸⁸ *Id.* at 200 (comment of Robert E. Beard, Nov. 10, 2021).

⁸⁹ VRC Comments, Central Region at 20-21 (comment of CMS, Oct. 18, 2021).

⁹⁰ PlanRVA, <https://planrva.org/> (last visited Dec. 14, 2021).

⁹¹ See *MyDistricting Virginia*, <https://www.virginiaredistricting.org/legdistricting/comments/plan/513/1> (last visited December 11, 2021) (comments placed near Charlottesville).

Figure 3: Central Virginia

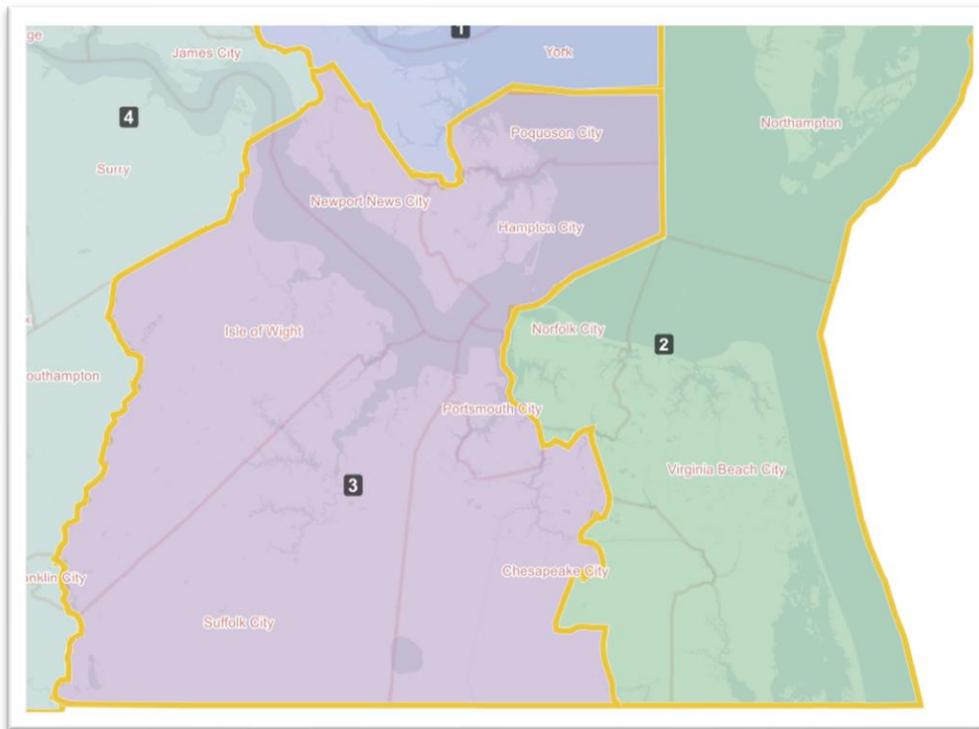


In the northern Virginia region, the Farkas Map unites communities in the Washington, D.C. metropolitan and suburban areas. These communities share similar social, cultural, and economic interests, as they house the metropolitan D.C. workforce. The Farkas Map recognizes this reality and ensures that Districts 8, 10, and 11 are focused in metropolitan and suburban Northern Virginia. This greatly improves upon the current map, which, for example, currently includes a northern district (District 10) that stretches all the way to the West Virginia border, tying the D.C. suburbs with rural communities that do not share common interests. The Farkas Map reduces District 10 to predominantly Loudoun and Prince William counties, tracing the expanding D.C. suburban area and reducing county splits. By contrast, the December 8 Map carves Loudoun County out of the metropolitan D.C. districts, separating it from neighboring Fairfax County communities along Route 7 as well as from neighboring Prince William County. The splitting of communities that serve the Dulles Technology Corridor defies logic because they are all inextricably tied by common interests to the greater D.C. area. Indeed, recognizing the links of these communities to each other and D.C., the U.S. Department of Transportation has worked with local authorities to expand Metrorail service on the new Silver Line to Washington Dulles

International Airport and further west into Loudoun County in a project dubbed the “Dulles Corridor Metrorail Project.”⁹²

In southeastern Virginia, the Farkas Map ensures that the community of veterans and active-duty military in and around Norfolk is kept whole by anchoring District 2 in that county and by including Virginia Beach City and Chesapeake City in the same district. This is not the case with the December 8 Map, which unnecessarily divides these closely linked military communities between Districts 2 and 3. The populations of Norfolk and Virginia Beach share common federal and environmental concerns, and together form the socio-economic backbone of the Hampton Roads region; they should not be divided. As one commenter to this Court explained, “Norfolk and Virginia Beach are tied to the Norfolk Naval Base with all the active duty and veterans who reside here. . . . Please consider a Norfolk/VB district for [District 2].”⁹³ Instead, the December 8 Map lumps Virginia Beach with Isle of Wight and Suffolk, despite those communities having more in common with Portsmouth than Virginia Beach.

Figure 4: Hampton Roads



For all these reasons, the Farkas Map thus reflects and significantly improves upon the preservation of communities of interest across the Commonwealth. The memorandum accompanying the December 8 Map expressed great solicitude for defining and maintaining communities of interest along

⁹² See U.S. Dep’t of Transp., *Dulles Corridor Metrorail Project*, <https://www.transportation.gov/buildamerica/projects/dulles-corridor-metrorail-project> (last visited Dec. 11, 2021); see also Dulles Corridor Metrorail Project, *Silver Line Stations*, <https://www.dullesmetro.com/silver-line-stations/> (last visited Dec. 11, 2021).

⁹³ Va. Sup. Ct. Comments at 166 (comment of Charles F. Stanton, Nov. 10, 2021).

the Blue Ridge and in Appalachia, which are predominantly white, rural communities.⁹⁴ Similar care ought to be applied to preserving the communities described above, which are in many instances more diverse, urban and suburban communities. The Farkas Map fully accounts for those communities that the December 8 Map neglects.

iv. The Farkas Map protects racial and ethnic minority groups.

The Court should ensure that the failures of the General Assembly, which required years of federal litigation to remedy, are not repeated this redistricting cycle. The Court should be guided by race-neutral districting principles and reject any map that unjustifiably overpacks Black voters within districts. This approach does not require significantly altering the Black voting age population in either of Virginia's effective minority districts, Districts 3 and 4, where Black voters have been able to elect their candidates of choice under the current congressional map.⁹⁵

The Special Masters' memorandum suggests that their first and predominant consideration in the Greater Richmond and Hampton Roads areas was race, resulting in an unjustifiable increase of the BVAP percentages in the effective minority districts in those areas. The Special Masters claim that they "considered race only after [they] had drawn a map fully subject to the constraints of [the] traditional" redistricting principles.⁹⁶ But the district-specific descriptions tell another story. In discussing the Richmond and Southside regions, the Special Masters explain that they initially created "a compact district that included only Richmond City and Henrico/Chesterfield counties."⁹⁷ However, the map-drawers then observed that Black Virginians "would total a little more than a third of the population" of the district, and so altered the map.⁹⁸ The map-drawers split both Henrico and Chesterfield Counties, in order to construct a district with a Black CVAP of 45.3%, higher than the 40% Black CVAP in the current District 4.⁹⁹ The only justification they gave was that the high-BVAP district would "likely continue to elect the African-American population's candidate of choice."¹⁰⁰ The Special Masters provided no analysis that would justify this assumption. Similarly, the Special Masters' rationale for drawing District 3 in the Hampton Roads area appears limited to ensure ability-to-elect by including as many urban areas as possible, without providing any justification that such an approach was necessary.¹⁰¹

⁹⁴ See Memo at 13.

⁹⁵ *Personhuballah*, 155 F. Supp. 3d at 562.

⁹⁶ See Memo at 5.

⁹⁷ *Id.* at 15.

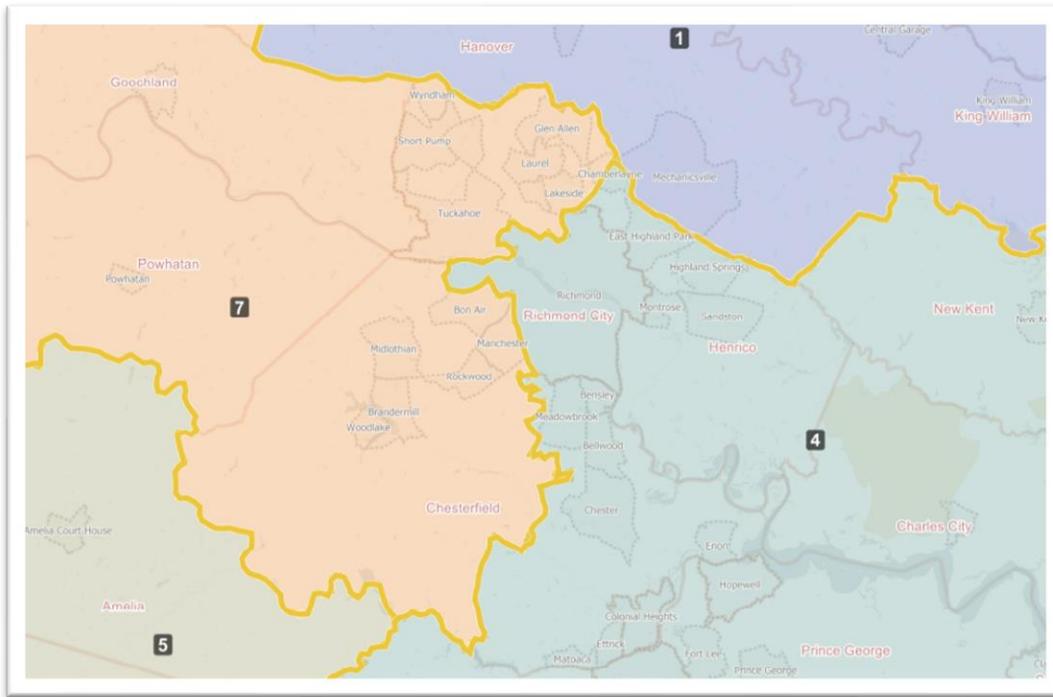
⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

Figure 5: Greater Richmond



The Farkas Map, in contrast, was drawn in accordance with race-neutral districting principles and still maintains the voting strength of Virginia’s Black communities. As explained above, the Farkas Map ensures population equality, creates compact districts, and preserves communities of interest. Doing so results in a map that includes two effective minority districts and does not dilute minority voting strength.

The Farkas Map unites all of Norfolk and Virginia Beach into District 2 and all of Hampton in District 3. In so doing, the Farkas Map decreases the BVAP in District 3 from 47 percent to 41.9 percent, resembling the demographics and configuration of the remedial map proposed by Dr. Grofman in 2016 and adopted by a federal court while retaining the same general configuration and location.¹⁰² District 3 thus remains an effective minority district in which Black voters may continue to influence election outcomes in coalition with others.¹⁰³ In the current configuration of District 3, Representative Scott won over 66 percent of the vote in 2016, over 91 percent in 2018, and over 68 percent in 2020.¹⁰⁴

The BVAP of District 4 rises only nominally to 40.1 percent in the Farkas Map from 39.7 percent in the current map while better adhering to traditional districting principles. Specifically, the Farkas Map removes the irregular arm of Suffolk and Chesapeake counties from District 4 and places them in a more

¹⁰² *Personhuballah*, 155 F. Supp. 3d at 565 (noting BVAP of 45.3 percent in District 3 and 40.9 percent in District 4 at time of adoption of existing maps in 2016).

¹⁰³ See *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (describing an effective minority district as one in which the minority population does not make up a majority of the voting-age population but “at least potentially . . . is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate.”) (plurality opinion).

¹⁰⁴ Ballotpedia, *Virginia’s 3rd Congressional District*, (last visited Oct. 20, 2021), https://ballotpedia.org/Virginia%27s_3rd_Congressional_District.

contiguous and compact manner in District 3. District 4 of the Farkas Map also keeps Franklin City with neighboring Southampton.

While the Farkas Map hews closely to the versions of these minority-opportunity districts approved by the federal court in 2016, the Special Masters’ December 8 map packs a greater percentage of Black voters into each district, particularly District 4.

	Enacted Map BVAP (At Adoption)	Enacted Map BVAP (Current)	Farkas Map BVAP	December 8 Map BVAP
District 3	45.3%	47.2%	41.9%	44.5%
District 4	40.9%	39.7%	40.1%	45.3%

Dr. Grofman’s 2016 analysis of the maps he proposed to the district court demonstrate that the higher percentages are not necessary to achieve adherence to legal standards. The 2016 percentages created “a realistic opportunity [for a Democratic candidate of choice] to win election in CD3 due to cohesive voting from within the African-American community and cross-over voting from non-black Democrats.”¹⁰⁵ The changes to BVAP proposed in the December 8 Map—taken together with the failure to abide by other principles such as population equality and not dividing communities of interest—raises significant concern that Black voters are being improperly packed into these two districts.

The changes made in the Farkas Map abide by all federal and state law imperatives while having the effect of preserving the opportunity of minority voters to elect candidates of their choice in coalition with others. The Farkas Map thus comports with the principles of Dr. Grofman’s 2016 maps that remedied the unconstitutional gerrymander of the Virginia legislature following the 2010 census.

v. The Farkas Map does not unduly favor any political party.

The Farkas Map offers a blueprint for fair, representative redistricting that properly and fully accounts for all legal requirements without unduly favoring any one political party over another. The Farkas Map ameliorates the partisan bias of the December 8 Map and existing map—both with a score of approximately -9.7 percent—to just -0.6 percent based on the turnout from the 2020 presidential race.¹⁰⁶

vi. The December 8 Map ignores important impacts on incumbents.

The U.S. Supreme Court has held that states have a legitimate interest in preserving the constituencies of congressional incumbents.¹⁰⁷ The Special Masters have reported that they created the December 8 Map without any knowledge as to “which incumbents have been placed in [congressional]

¹⁰⁵ *Personhuballah* Rep. at 47.

¹⁰⁶ Partisan bias is the difference between each party’s seat share and 50% in a hypothetical, perfectly tied election. Thus, the closer the partisan bias is to 0, the lower the map’s skew toward one party or the other. A negative partisan bias score indicates bias in favor of the Republican Party, while a positive partisan bias score indicates bias in favor of the Democratic Party.

¹⁰⁷ *White v. Weiser*, 412 U.S. 783, 797 (1973).

districts with other incumbents.”¹⁰⁸ But they and this Court should be aware that the three incumbents whom the December 8 Map most threatens are the only three women in Virginia’s delegation. Indeed, some of the most problematic changes that the December 8 Map seeks to make are precisely the changes that could lead to Virginia not having a single female incumbent. The December 8 Map’s complete uprooting of District 7 can have only one effect on Representative Abigail Spanberger’s tenure in Congress, whether one knows the precise town in which she currently resides or not. Likewise, detaching District 10 from the Washington D.C. metropolitan area to incorporate rural communities to the south threatens Representative Jennifer Wexton’s position, without solving the problem of District 10’s sprawling geographic reach. Finally, splitting the military communities in Norfolk and Virginia Beach directly threatens the incumbency of Representative Elaine Luria, who is well-known for her military service and connection with that community. Representative Luria is also double-bunked with Representative Scott, one of the delegation’s only two Black members and the longest serving incumbent in the state.

Thus, the threat that the December 8 Map poses to the female and minority members—and *only* those members—of Virginia’s delegation is apparent without detailed knowledge of each incumbent’s residential address. As many Virginians explained to this Court during the December 15 public hearing, to turn a blind eye to such a result is hardly in the interest of Virginians.

vii. Nesting is not applicable to congressional maps.

The December 8 Map was drawn to “carve[] . . . Senate districts out of U.S. House districts” “to the extent practicable.”¹⁰⁹ The accompanying report acknowledged that this practice, known as “nesting,” is not required by Virginia law, nor is it required by federal law.¹¹⁰ Moreover, if nesting is applied in redistricting at all, it is typically used when drawing state legislative districts, rather than congressional districts, which are much larger and often do not correspond neatly to the number of state legislative districts.¹¹¹ It is unclear how application of this non-statutory principle served to constrain or guide the Special Masters’ drawing of the congressional districts, specifically. It is clear, however, that the Special Masters report that they employed nesting to keep communities of interest together despite previously acknowledging that they are not fully apprised of the communities of interest that exist in Virginia.¹¹² As discussed above, the December 8 Map unnecessarily fractures multiple important communities of interest across the Commonwealth at the congressional district level. The Special Masters’ application of nesting thus serves only to replicate this noncompliance across all maps. Indeed, there does not appear to be a principled basis for the December 8 Map’s adoption of certain non-statutory criteria, such as nesting, and rejection of others, such as incumbency.

¹⁰⁸ Memo at 10.

¹⁰⁹ *Id.*

¹¹⁰ *See id.*

¹¹¹ *See* Ballotpedia, *Nesting*, <https://ballotpedia.org/Nesting> (last visited December 11, 2021) (discussing nesting in the context of state legislative districts only); *see also Bethune-Hill v. Va. State Bd. of Elections*, 141 F. Supp. 3d 505, 538 (E.D. Va. 2015), *aff’d in part and vacated in part*, 137 S. Ct. 788 (2017) (discussing nesting in the context of state legislative districts); *Davis v. Bandemer*, 478 U.S. 109, 179 n. 18 (1986), *abrogated in part on other grounds by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (J. Powell, concurring in part) (same).

¹¹² *Compare* Memo at 7 (acknowledging lack of awareness of all applicable communities of interest) *with* Memo at 10 (reporting that nesting was used to align communities of interest under common representation).

IV. Conclusion

This Court, with the help of the Special Masters, now has the duty to draw congressional districts that will govern elections over the next ten years. The Farkas Map offers fair, representative congressional districts that are fully compliant with federal and Virginia law. It apportions Virginia's population equitably; improves upon traditional districting metrics of contiguity, compactness, and political subdivision splits; and preserves and reunites long-split communities of interest. In so doing, it ensures that Virginia's growing racial and ethnic minority communities, which have been the main drivers behind Virginia's population growth, retain their opportunity to elect candidates of their choice in coalition with others, without diluting their voting strength by packing them within certain districts

Any map adopted by the Court must contend with these important considerations and requirements in order to comply with the law and the will of Virginia voters. Accordingly, Mr. Farkas respectfully requests that the Special Masters and ultimately the Court adopt the Farkas Map for Virginia's congressional districts.

Respectfully submitted,

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Mssrs. Elias and Brewer are admitted in

*DC, Ms. Gambhir is admitted in CA, and
Ms. Khanna is admitted in WA.*

Enclosures:
Appendix, Figures 1-5
Farkas Map Mapping Files

APPENDIX

FIGURE 1
Farkas Map

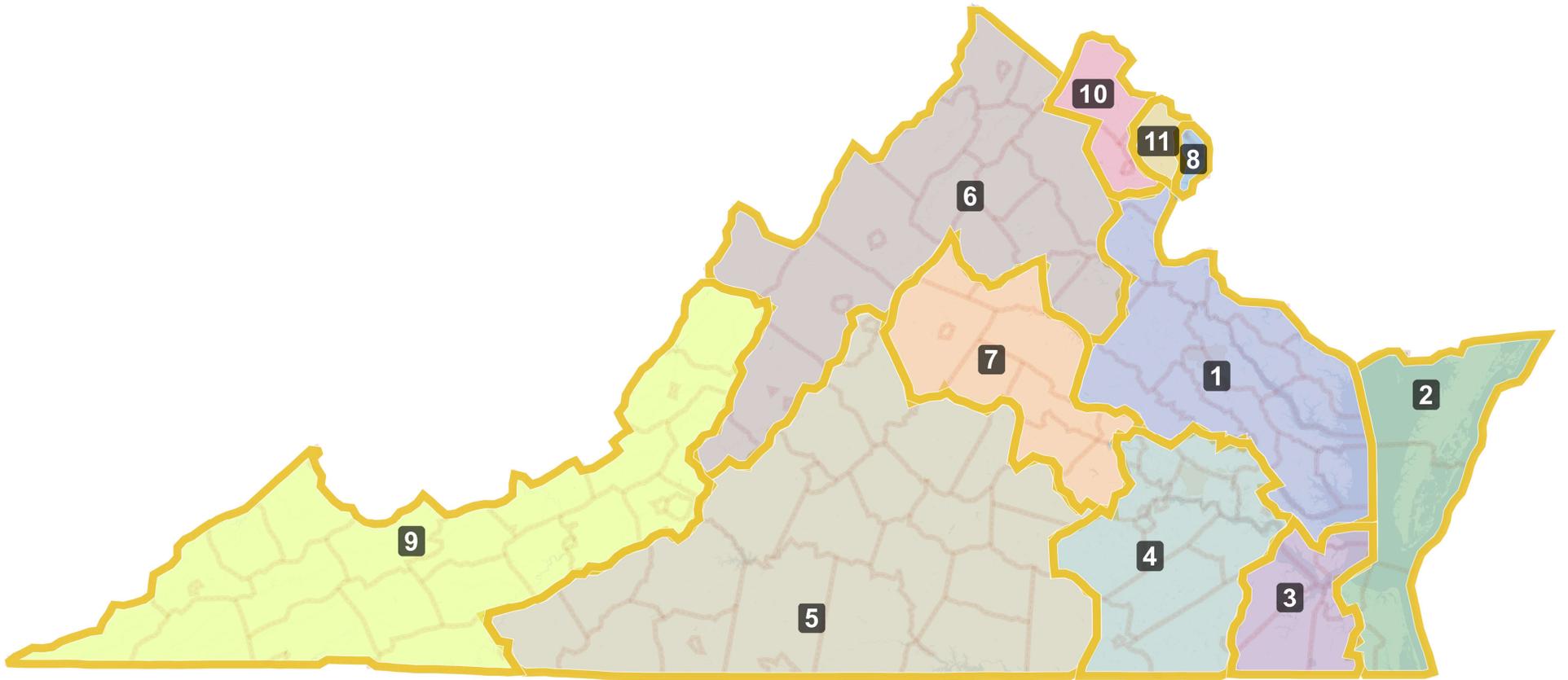


FIGURE 2
Northern Virginia

FIGURE 3
Central Virginia

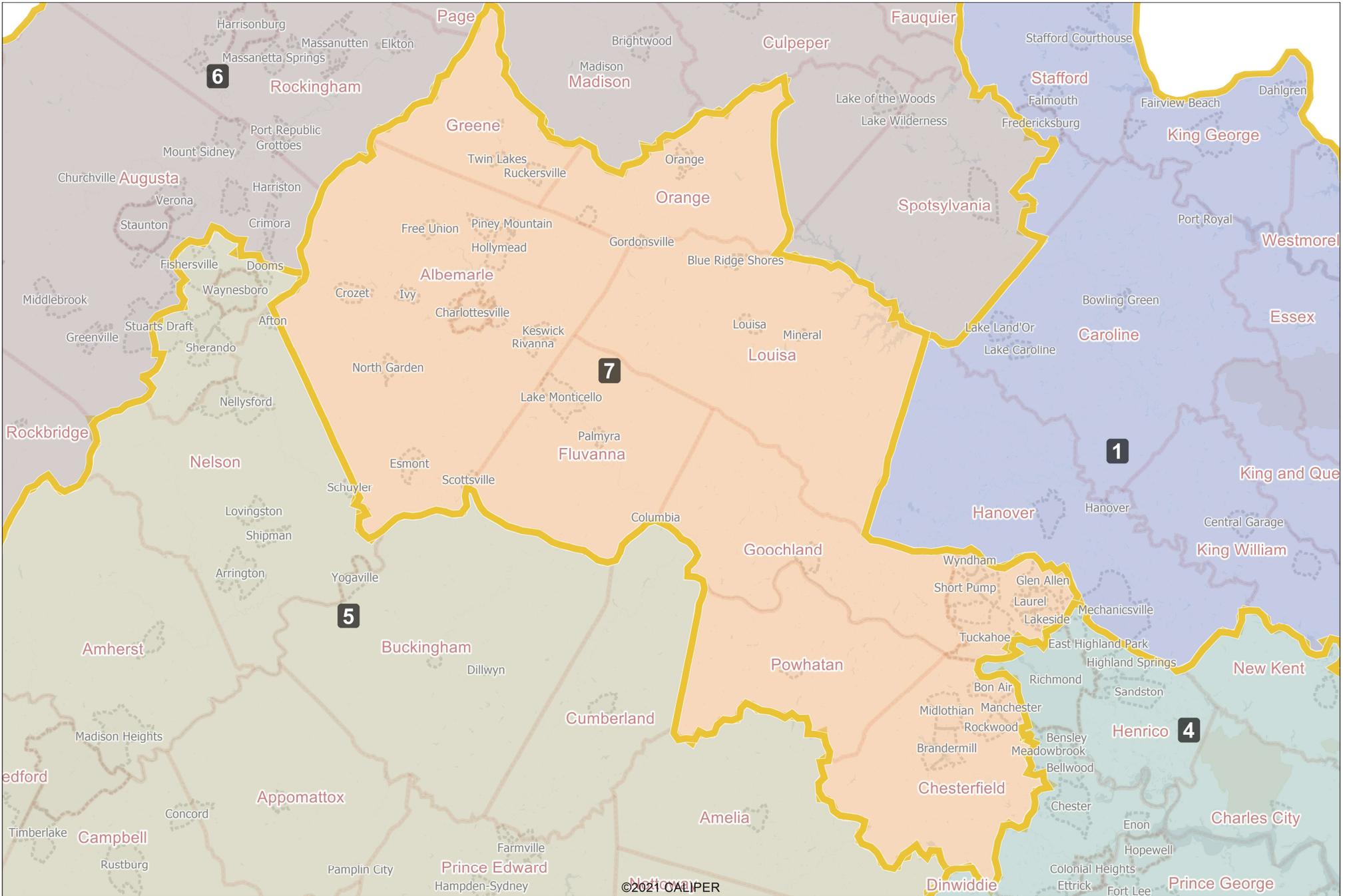


FIGURE 4
Hampton Roads

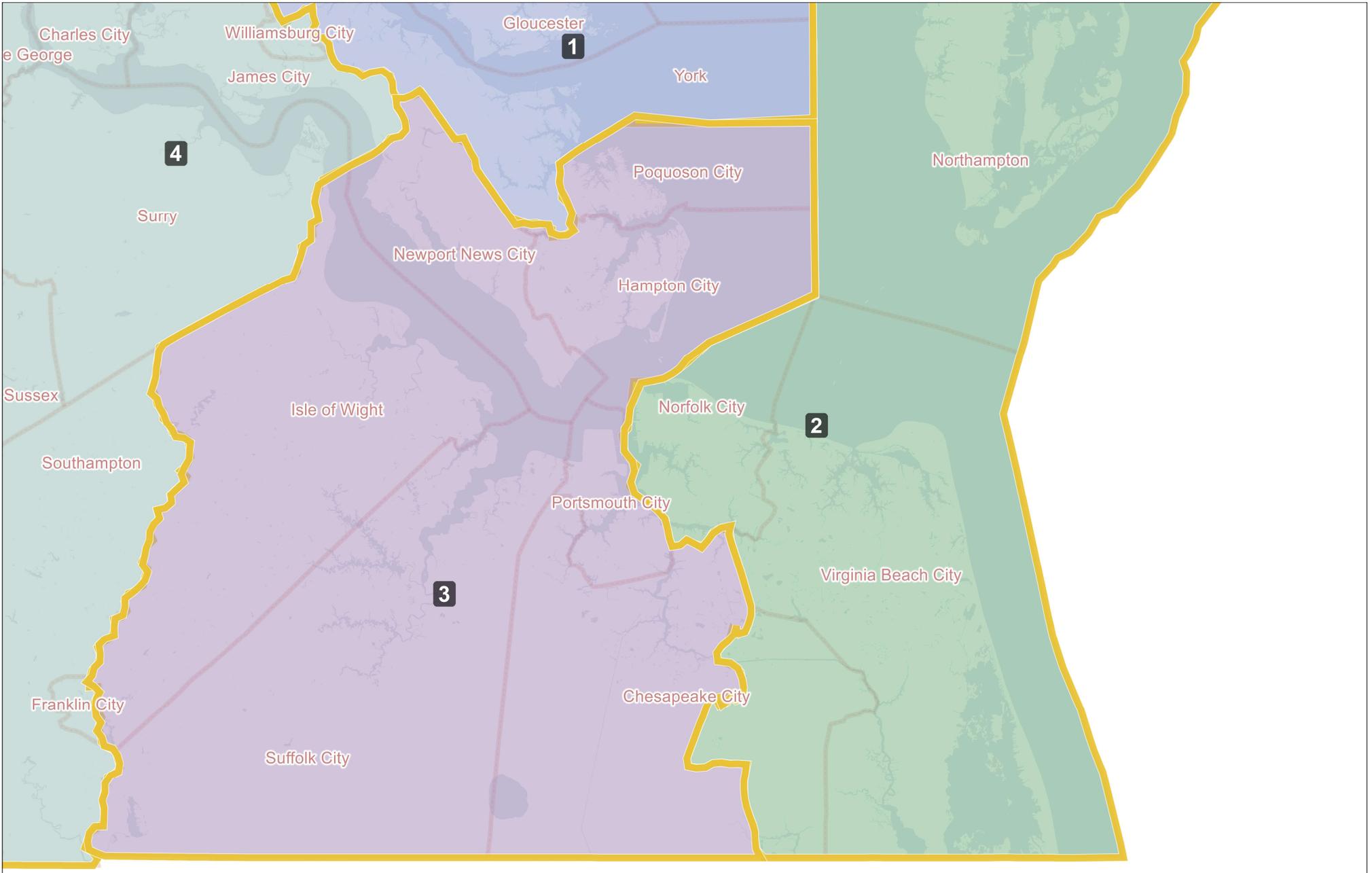


FIGURE 5
Greater Richmond

