
Supreme Court of New Jersey

Docket No. 089292

JERSEY CITY UNITED AGAINST	:	CIVIL ACTION
THE NEW WARD MAP,	:	ON PETITION FOR
DOWNTOWN COALITION OF	:	CERTIFICATION FROM
NEIGHBORHOOD	:	THE FINAL JUDGMENT
ASSOCIATIONS, GREENVILLE	:	OF THE SUPERIOR COURT
NEIGHBORHOOD ALLIANCE,	:	OF NEW JERSEY
FRIENDS OF BERRY LANE	:	APPELLATE DIVISION
PARK, RIVERVIEW	:	DOCKET NOS. A-0356-22
NEIGHBORHOOD	:	A-0560-22
ASSOCIATION, PERSHING	:	Sat Below:
FIELD NEIGHBORHOOD	:	HON. ROBERT GILSON P.J.A.D.
ASSOCIATION, SGT. ANTHONY	:	HON. PATRICK DEALMEIDA,
NEIGHBORHOOD ASSOC.,	:	J.A.D.
(For Continuation of Appearances	:	HON. AVIS BISHOP-THOMPSON,
See Inside Cover)	:	J.A.D.

PETITION FOR CERTIFICATION AND APPENDIX

Yael Bromberg, Esq.
Bromberg Law, LLC
43 West 43rd Street, Suite 32
New York, New York 10036
(212) 859-5083
ybromberg@bromberglawllc.com

On the Brief:

Renée Steinhagen, Esq.
Attorney ID# 38691989
William C. Matsikoudis, Esq.
Attorney ID# 022391997
Yael Bromberg, Esq.
Attorney ID# 036412011

Renée Steinhagen, Esq.
N.J. Appleseed Public Interest
Law Center, Inc.
23 James Street
Newark, New Jersey 07102
(973) 735-0523
renee@njappleseed.org

William C. Matsikoudis, Esq.
Matsikoudis & Fanciullo, LLC
128 Monticello Avenue
Jersey City, New Jersey 07304
(201) 915-0407
bmatsikoudis@mf-legal.com

*Attorneys for Plaintiffs-Petitioners
in Docket No. A-0356-22*

Date Submitted: April 11, 2024



COUNSEL PRESS (800) 4-APPEAL • (328983)

GARDNER AVENUE BLOCK
ASSOCIATION, LINCOLN PARK
NEIGHBORHOOD WATCH,
MORRIS CANAL
REDEVELOPMENT CDC,
HARMON STREET BLOCK
ASSOCIATION, CRESCENT
AVENUE BLOCK ASSOCIATION,
DEMOCRATIC POLITICAL
ALLIANCE, and FRANK E.
GILMORE, in his individual and
official capacity as Ward F
Councilman,

Plaintiffs-Petitioners,

vs.

JERSEY CITY WARD
COMMISSION and JOHN
MINELLA, in his official capacity
as Chair of the Commission

Defendants-Respondents.

JAMES CALDERON,

Plaintiff-Petitioner,

vs.

CITY OF JERSEY CITY WARD
COMMISSION, JOHN MINELLA,
Chairman, SEAN J. GALLAGHER,
Secretary, and Commissioners
DANIEL E. BECKELMAN, PAUL
CASTELLI, JANET LARWA, and
DANIEL MIQUELI,

Defendants-Respondents.

TABLE OF CONTENTS

	Page
APPENDIX TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS AND PROCEDURAL HISTORY.....	4
QUESTIONS PRESENTED	9
REASONS TO GRANT THE PETITION/COMMENTS ON THE APPELLATE DIVISION’S RULING	9
I. The N.J. Supreme Court Has Yet to Interpret the Compactness and Public Meetings Requirements of the MWL, and It Should Provide Needed Guidance Now	9
a. Substantive Challenge based on “Compactness”	9
b. Substantive Procedural Challenge Based on Anemic Public Process	13
II. The N.J. Supreme Court Has Yet to Explore the Relationship between the MWL, the Equal Protection Clause, and the CRA, and It Should Provide Needed Guidance Now	16
III. The NJ Supreme Court Has Yet to Set Forth Elements of a Partisan Gerrymandering Claim Under the New Jersey Constitution and It Should Provide Needed Guidance Now	21
IV. The N.J. Supreme Court Has Yet to Set Forth the Elements of a Speech Retaliation Claim for Elected Officials, and It Should Provide Needed Guidance Now	22
CONCLUSION.....	24

APPENDIX TABLE OF CONTENTS

	Page
Decision and Order of the Superior Court of New Jersey Appellate Division, dated March 12, 2024.....	1a
Amended Notice of Petition for Certification, dated April 11, 2024	30a
Order of Motion for Reconsideration, dated March 26, 2024	38a

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<u>Abrams v. Johnson</u> , 521 U.S. 74 (1997)	18
<u>Davenport v. Apportionment Comm.</u> , 124 N.J. Super. 30 (App. Div. 1973)	3, 11
<u>Davenport v. Apportionment Comm.</u> , 65 N.J. 125 (1974)	10, 11, 21
<u>DeSanctis v. Borough of Belmar</u> , 455 N.J. Super. 316.....	20
<u>Harz v. Borough of Spring Lake</u> , 234 N.J. 317 (2018)	20
<u>In re 2021 Redistricting Cases Matanuska-Sitna Borough</u> , 528 P.3d. 40 (Alaska, 2023)	15
<u>In re Distribution of Casino Simulcasting Special Fund</u> , 398 N.J. Super. 7 (App. Div. 2008)	14
<u>Jackson v. Bodine</u> , 49 N.J. 406 (1967)	10
<u>King v. City of New York</u> , 581 F. Supp. 3d 559 (S.D.N.Y. 2022)	23
<u>League of Women Voters v. Commonwealth</u> , 178 A. 3d 737 (Pa 2018)	16
<u>Pocono Twp. Bd. of Supervisors</u> , 2017 U.S. App. LEXIS 14772 (3d Cir. Pa. Aug. 10, 2017).....	23
<u>Rucho v. Common Cause</u> , 139 S.Ct. 2484 (2019)	21
<u>Shapiro v. McManus</u> , 203 F. Supp. 3d 579 (D. Md. 2016)	22

<u>South Harrison, Tp. Comm. v. Bd. of Chosen Freeholders,</u> 210 N.J. Super. 370 (App. Div. 1986)	14
<u>Tumpson v. Farina,</u> 218 N.J. 450 (2014)	19, 20
<u>Werkheiser v. Pocono Twp.,</u> 210 F. Supp. 633 (W.D. Pa. 2016) <i>aff'd</i> , <u>Pocono Twp. Bd. of Supervisors,</u> 2017 U.S. App. LEXIS 14772 (3d Cir. Pa. Aug. 10, 2017).....	23

Statutes and Other Authorities:

Equal Protection Clause of NJ Constitution	<i>passim</i>
Speech and Association Clauses of NJ Constitution.....	<i>passim</i>
N.J. Const., Art. II, § 2.....	13, 17
N.J. Const., Art. IV, §2, ¶3	17
N.J.S.A. 10:4-6 to -21	13
N.J.S.A. 10:4-7	13, 14
N.J.S.A. 10:4-11	13
N.J.S.A. 40:44-14	20
Ansolabehere and Palmer, <i>A Two Hundred-Year Statistical History of the Gerrymander</i> , 77 OHIO ST. L.J. 741 (2016)	12
Ernest C. Reock, Jr., <i>A Note: Measuring Compactness as a Requirement of Legislative Apportionment</i> , 5 MIDWEST J. OF POL. SCI. 1 (Feb. 1961)	12
<i>O'Rourke, Reapportionment: Law, Politics, Computers</i> (1972).....	11
P.L. 2006, c.70, § 1	15
Polsby and Popper, <i>The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering</i> , 9 YALE L. & POLICY REV. 301 (1991).....	12
Schwartzberg, <i>Reapportionment, Gerrymanders, and the Notion of Compactness</i> , 50 MINN. L. REV. 443 (1966).....	12

STATEMENT OF THE CASE

This is a case of first impression brought under the New Jersey Municipal Ward Law (“MWL”) and the Speech and Association and Equal Protection clauses of the New Jersey Constitution. The case has major implications for local elections in New Jersey: are local officials across New Jersey allowed unchecked power to rig their election maps to punish voters and the candidates whom they elect if those candidates are not aligned with the status quo? Plaintiffs-Appellants (“Plaintiffs”) submit that the answer should be a firm “no.” Maps should be drawn in accordance with the MWL, and established constitutional principles, and Plaintiffs thus respectfully request this Court to accept this appeal to correct the errors made below and to clarify the standards that are required when local ward maps are drawn.

Plaintiffs are thirteen (13) community-based organizations, representing all six wards of Jersey City, and a newly elected independent Councilman, Frank E. Gilmore; together they challenge the Jersey City Ward Commission’s (the “Commission”) 2022 Ward Map, which creates ward boundaries for purposes of electing ward representatives to the Jersey City Council. In their underlying Complaint, Plaintiffs painstakingly detail how the Commission drew a gerrymandered ward map that, among other things, violates the MWL by outright ignoring the statute’s “compactness” requirement. The map splits up

historic neighborhoods, ignores natural boundaries, relies on expiring election districts rather than the norm of census tracts and, creates two wards – D and F – with abysmal scores on two of the most commonly used statistical measures of “compactness.” Indeed, both wards exhibit grossly irregular shapes; one of which, Ward F, visually resembles the Massachusetts district whose irregular shape in 1812 inspired the invention of the term “gerrymandering” in the first place! All of these flaws result in real harm to the voting rights of the residents of those wards. Compactness, a standard redistricting requirement, is universally regarded as an anti-gerrymandering standard and a tool to guarantee that communities of interest are properly represented. It is thus an essential factor to be considered especially in the context of municipalities, such as Jersey City, where neighborhoods and development patterns define very diverse communities of interest.

Plaintiffs also alleged in factual detail the unlawful reason the Commission drew such a warped ward map: the Commission, at the behest of unidentified persons, sought to dilute the strength of the voters of Ward F, who had elected Councilman Gilmore, the only nonincumbent candidate to win election. The Commission was also using its powers to retaliate against Councilman Gilmore and his voters for opposing certain development projects within his ward that he believed did not include sufficient, if any, affordable

housing.

Despite these well-pleaded allegations and New Jersey's liberal pleading standards that require factual allegations must be accepted as true at the motion-to-dismiss stage, the trial court and then the the appellate court dismissed all of Plaintiffs' constitutional claims and the count under the New Jersey Civil Rights Act ("CRA") without allowing for *any* discovery and without conducting the relevant legal analysis necessary to determine if the Complaint had stated viable claims. The lower courts were unwilling to entertain Plaintiffs' claims, even though they arise under clear statutory and constitutional provisions and similar clams have been repeatedly permitted by state courts across the country.

The single statutory claim that the the Appellate Division did not dismiss, alleging a lack of "compactness" under the MWL, was remanded in such a way as to render the claim and the statute meaningless. The Division directed the trial court to consider whether the Commission had a rational basis to adopt the bizarre configurations of Wards D and F, but preemptively denied Plaintiffs the right to pursue *any* discovery or to present *any* expert testimony as to common statistical measures of compactness, and evidence of split neighborhoods and diluted communities of interest. In so doing, the Appellate Division ignored the MWL's legislative history (which clearly shows the Legislature's desire to protect "diverse communities"), decisions of numerous highest courts in other

states, as well this Court's prohibition against "bizzare designs" in Jackson v. Bodine (1967) and an appellate court's focus on the perimeter of a district to measure compactness in Davenport v. Apportionment Comm., (1973).

To make matters even more egregious, Plaintiffs' claim under the Open Public Meetings Act ("OPMA") was dismissed. Contrary to precedent, the Appellate Division upheld the right of the Commission to hold discussions of alternative maps in private working sessions that had less than a quorum as a way *to circumvent* the OPMA. The Division also held that the Commission could approve a ward map without disclosing any of its prior deliberations or any of its reasons for adopting such map instead of any other proposed maps. These holdings are antithetical to the OPMA as well as good, transparent government and severely restrict the public redistricting process contemplated by the MWL.

Suffice to say, the lower courts erred when they refused to permit Plaintiff to maintain their well-pleaded claims challenging the Commission's rigged process for adopting the 2022 Jersey City Ward Maps as well as the substance of the rigged map that resulted from that unlawful process.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiffs adopt and incorporate the allegations in their Verified Complaint as fully set forth herein and provide the following procedural history. After the

Governor promulgated the decennial census data on September 16, 2021, the Commission held its initial meeting on December 15, 2022. (Pa15) A second meeting was scheduled for January 14, 2022, but prior to that meeting a proposed ward map was shared with certain Jersey City Council members and published online via social media. (Pa16) Public outrage across the City ensued because several distinct neighborhoods were negatively impacted. *Id.* The January 14, 2022 meeting was cancelled due to the inability of the Commission to fix a “technical” problem that limited the number of people who could participate by Zoom; and the meeting was rescheduled for January 22, 2022, at which time the Commission adopted the challenged ward map, which is substantially different from the map that was publicly released. *Id.* At the January 22, 2022 Commission meeting *only one map* was presented; it was described as “represent[ing] the least amount of change, both geographically and demographically, while lowering the deviation to the lowest possible percentage of 1.8 percent.” (Pa137) Public comment followed with no response by the Commissioners. Five Commissioners approved the map without stating their reason for doing so, one abstained, and a single commissioner, Gallagher, stated his support because it met “all the criteria set forth in the MWL.” (Pa174-175)

On February 3, 2022, the Commission filed with the Municipal Clerk and Secretary of State its mandated Report, which contained information about the

process conducted and a textual description of the ward boundaries, in addition to a certified copy of the new Jersey City Ward Map. (Pa17) Two days later, on February 5, 2022 the Municipal Clerk published a notice of the ward boundaries in the Jersey Journal. *Id.* Visually, the map that was filed represents a significant departure from previous Jersey City Ward Maps that were promulgated after prior censuses, with the irregular shapes of Ward D and Ward F standing out in particular. (Pa53) Ward F snakes through Jersey City from the newly developed high-rise luxury apartments on the waterfront into the heart of the historical black community, known as Lafayette, in a salamander-like figure, with numerous jagged edges. (Pa19) Ward F is not “compact” based on two statistical tests that courts across the United States employ as accurate measures of how centralized, dispersed or compact a voting district is. (Pa20) These statistical measures of compactness are also automatically generated by the software used by the Commission to create its ward map.¹

The Report that the Commission sent to the Secretary of State indicates the Commission did not *at all* consider the “compactness” of the 2022 Jersey City Ward Map. (Pa40) It also revealed that there were several meetings held between

¹ The map approved by the Commission indicates that it was created using Dave’s Redistricting software. <https://davesredistricting.org/maps#viewmap::f76373d1-6e30-4f19-b053-aef871784101> (this was the link provided by the Commission for the 1/22/2022 map, which is no longer live).

Commission members after the cancelled January 14, 2022 meeting, during which Plaintiffs allege that private discussions took place among the Commissioners as to changes to be made, apparently in response to some of the criticism leveled at the original map released. (*Id.*) When the single map was presented to the public, then, deliberations had already occurred and the proposed map was a *fait accompli*.

On Monday, March 21, 2022, Plaintiffs filed a Verified Complaint in Lieu of Prerogative Writ, which includes for illustrative purposes an alternative Jersey City Ward Map that “achieves much better population deviation, is significantly more compact, splits many less neighborhoods and historic districts, does not split buildings, preserves communities of interest, respects natural boundaries and topography, relocates approximately 15,000 less residents from their ward boundaries, and otherwise better adheres to traditional principles of redistricting” than the Commission’s adopted 2022 ward map. (Pa30-31)

On May 13, 2022, Defendants moved to dismiss the Complaint, and Plaintiffs opposed on July 14, 2022. Notwithstanding that Defendants submitted certifications and exhibits along with their motion, the trial court did not convert the motion to dismiss to a motion for summary judgment, as required. The Court

heard oral argument on August 5, 2022 and issued its decision dismissing the Verified Complaint in its entirety on August 25, 2022.

Plaintiffs appealed this decision on October 7, 2022. (Pa1-2) The Appellate Division rendered its decision on March 12, 2024. (1a) Plaintiffs filed a Notice of Petition for Certification on April 1, 2024, which was amended on April 11, 2024 pursuant to court directive.(30a)

QUESTIONS PRESENTED

1. Did the Appellate Division’s “limited remand” on “compactness” unlawfully restrict Plaintiffs’ ability to pursue discovery and to present expert testimony as to the statistical measurements and evidence regarding communities of interest and neighborhood, which are all needed to decide if the 2022 Jersey City Ward Map actually complies with the requirements of the MWL?
2. Did the Plaintiffs state a claim at the motion-to-dismiss stage for violations of the OPMA when they pleaded factual allegations establishing that the Ward Commission’s deliberations about the 2022 Jersey City Ward Map occurred solely in closed meetings that had less than a quorum of commissioners to deliberately circumvent the OPMA? Also, did the Plaintiffs stat an OPMA claim when they pleaded that the Commission did not provide the public with reasons why it selected the map they approved over others?
3. Did Plaintiffs state a claim at the motion-to-dismiss stage under the Equal Protection Clause of the New Jersey Constitution, as well as under the CRA when they pleaded factual allegations establishing that the 2022 Jersey City Ward Map violates the “compactness” requirement of the MWL?
4. Did the Plaintiffs -- namely, the former and current residents of Ward F -- state a claim at the motion-to-dismiss stage for partisan gerrymandering when they pleaded factual allegations demonstrating that Ward F was

gerrymandered on the basis of their voting history and has a highly irregular shape?

5. Did Plaintiff Councilman Frank E. Gilmore state a claim at the motion-to-dismiss stage for retaliation when he pleaded factual allegations confirming that the Ward Commission drew a map designed to punish him?

REASONS TO GRANT THE PETITION/COMMENTS ON THE APPELLATE DIVISION’S RULING

I. The N.J. Supreme Court Has Yet to Interpret the Compactness and Public Meetings Requirements of the MWL, and It Should Provide Needed Guidance Now.

a. Substantive Challenge based on “Compactness”

The crux of Plaintiffs’ substantive challenge to the 2022 Jersey City Ward Map is the failure to draw “compact” wards, as required by the MWL. Indeed, the map creates, at minimum, two bizarre-shaped wards. The map tears apart long-standing historic neighborhoods, ignores natural boundaries (such as the Palisades Cliffs), and even splits buildings in half. In doing so, Plaintiffs allege that the Commission unnecessarily divided established “communities of interest” that have congealed over the years based on historical development patterns and common concerns arising from a shared neighborhood or locale.

The lower courts shied away from answering important questions that need to be answered as to what the Legislature meant when it added the term “compactness” in the MWL as a distinct requirement, which was not previously included in the prior General Ward Law, what interests the Legislature intended

to protect; and how the Legislature intended the concept to be operationalized. The trial court simply declared, without citation to any authority, that a ward of any shape may be compact. The Appellate Division did something similar, characterizing compactness as an “elusive concept,”² and offering the Merriam-Webster’s dictionary definition of “units closely packed or joined” as its sole source of meaning. (17a) Both the trial court and Appellate Division declined to look at the statutory history of the MWL, which shows that the Legislature specifically sought to provide effective representation to “diverse groups of residents” residing in distinct neighborhoods typically found in large urban municipalities. The lower courts also declined Plaintiffs’ invitation to look at the approximately twenty Supreme Court cases from other states that have spelled out their respective understanding of “compactness” as a concept concerned with preventing irregular or grotesque shapes, ensuring geographical and social cohesion where people live, or maintaining “closely united” districts by taking into consideration existing neighborhoods, topography and transportation options. (Pa19-20 n.8) The lower court also declined to acknowledge this Court’s focus on shape in Jackson v. Bodine, 49 N.J. 406, 419 (1967)(rejecting

² Davenport v. Apportionment Comm., 65 N.J. 125, 133 (1974). *But see* Judge Pashman’s dissent stating “Compactness is not a political concept, but a constitutional tool to better facilitate and guarantee that a community of interest is represented properly.” *Id.* at 149.

“extreme” cases where redistricting “yield[s] such bizzare designs as a ‘shoe lace’ or ‘horse shoe’”) and the Appellate Division’s focus on the perimeter of a district in Davenport v. Apportionment Comm., 124 N.J. Super. 30, 43 (App. Div. 1973) (“Technically, we interpret the requirement of compactness to mean that between two districts of equal area the one with the smaller perimeter is the more compact.”) *quoted in Davenport*, 65 N.J. at 147.

Most importantly, the Appellate Division failed to delineate how a ward redistricting commission should evaluate and measure whether a map satisfies the “compactness” requirement, especially since it prohibited the use of the Polsby-Popper Measure or the Reock Measure that are commonly accepted statistical measures of “compactness” (and which were generated by the very software that was used by the Commission to create its map)³ or consideration of neighborhoods or communities of interest. (20-1a) With no more than a dictionary definition of compactness, the Appellate Division remanded Plaintiffs’ statutory claim under the MWL to the trial court for limited determination, based on either cross-examination of the Commissioners or their 2022 Report, of whether the Commission had a rational basis for finding each

³ See Davenport, *supra*, 65 N.J. at 150-1, noting that all redistricting criteria including compactness “can be translated into practical instructions for computer analysis. See *O’Rourke, Reapportionment: Law, Politics, Computers* (1972).”

ward to be compact.

The Appellate Division’s “limited remand” effectively vacates the MWL’s mandatory requirement of “compactness” of its meaning and functional import despite the profound implication on Plaintiffs’ fundamental right to vote. Compactness is no doubt a traditional redistricting principle designed to prevent gerrymandering and ensure effective representation of the jurisdiction delimited.⁴ It is thus the obligation of this Supreme Court to set clear standards as to what it means for a ward to be “closely packed or joined;” what is the compactness requirement meant to achieve in the context of a municipality such as Jersey City; and how it should be operationalized. Only then should the matter be remanded for a full hearing with the opportunity for Plaintiffs, after discovery, to present expert testimony as to the statistical measures of compactness, and provide evidence that will prove that the Commission failed to consider the compactness of each ward and had no valid basis for creating two grossly irregularly-shaped wards that split neighborhoods, and diluted the

⁴ See e.g., Ansolabehere and Palmer, *A Two Hundred-Year Statistical History of the Gerrymander*, 77 OHIO ST. L.J. 741 (2016); Polsby and Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POLICY REV. 301 (1991); Schwartzberg, *Reapportionment, Gerrymanders, and the Notion of Compactness*, 50 MINN. L. REV. 443 (1966); Ernest C. Reock, Jr., *A Note: Measuring Compactness as a Requirement of Legislative Apportionment*, 5 MIDWEST J. OF POL. SCI. 1, 70-74 (Feb. 1961). Prof. Reock’s analysis is notable since he authored the Musto Commission Report, which was part of the legislative history of the MWL.

voting strength of communities of interest based on local development concerns, especially in Ward F, in violation of the MWL.

b. Substantive Procedural Challenge Based on Anemic Public Process

Another aspect of Plaintiffs’ challenge to the 2022 Jersey City Ward Map is that it was the product of closed-door deliberations among Commission members, which Plaintiffs alleged were designed to circumvent the requirements of the OPMA,⁵ thus violating the MWL’s requirement that *all Commission meetings shall be public*. Unlike in congressional and legislative redistricting, ward redistricting by the Commission under the MWL is subject to the OPMA, N.J.S.A. 10:4-6 to -21. *See* N.J.S.A. 10:4-7 (explicitly exempting Apportionment Commission while not exempting municipal ward commissions from OPMA); *N.J. Const.* Art. II, §2, ¶¶4,5 (providing Redistricting Commission meetings may be closed, except at meeting when certification is approved, and requiring public hearings designed to facilitate public input). Therefore, the Appellate Division’s holding that the Commissioners’ right to consult with a surveyor, an engineer or other assistants “to aid them in the discharge of their duties,” sanctions private working sessions among Commissioners designed to be just short of a quorum cannot be sustained by the

⁵ *See* N.J.S.A. 10:4-11 (“No...public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act.”)

OPMA and its case law. (26a) Permitting Plaintiffs' access to the Commissioner's decisions and deliberations with respect to alternative maps just short of formal action does not "invade the province of the Commissioners." (*Id.*) Instead, it makes public what the Legislature intended to be public when requiring all Commission meetings to be subject to the OPMA.

The OPMA provides that the public has the right "to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies," such as the Commission. N.J.S.A. 10:4-7. Indeed, contrary to the Appellate Division's finding that there was no violation simply because no formal action was taken at such private meetings, the OPMA applies to a public body's gathering "[e]ven though the purpose of a meeting is to discuss and not to vote on public business." South Harrison, Tp. Comm. v. Bd. of Chosen Freeholders, 210 N.J. Super. 370 (App. Div. 1986); *see also* In re Distribution of Casino Simulcasting Special Fund, 398 N.J. Super. 7, 17 (App. Div. 2008) ("vot[ing] at a public meeting and ultimately explain[ing] the result does not cure the problem of private deliberations" and would contravene OPMA's purpose by ironing out negotiations or policies in private and then only giving off an appearance of open government). Accordingly, the "actions" that Plaintiffs are challenging, which consist of discussions or decisions short of adoption of the final map,

must be governed by the Act and publicly disclosed. *Cf. In re 2021 Redistricting Cases Matanuska-Suitna Borough*, 528 P.3d. 40 (Alaska, 2023)(requiring alternative maps to be discussed at public redistricting meetings).

When enacting the MWL, the Legislature clearly intended the Ward Commission to operate similar to a municipal council, where council deliberations regarding an ordinance are made on the record and public comment is permitted at such time to enable the public to influence the decision. The failure of the Ward Commission in this case to discuss alternative maps in public, and to invite members of the public to submit alternative maps and express their concerns prior to the final meeting of the Commission created an anemic, non-transparent process that was not contemplated by the Legislature when it subjected all Commission meetings to the OPMA. And for sure, they did not intend that there would be only one substantive meeting, at which time only one map was presented and approved as a *fait accompli*, without any discussion as to why this map was selected over others. Accordingly, the Appellate Division puts at risk the open and transparent public process that the Legislature intended to govern ward redistricting at the time it enacted the MWL.⁶

⁶ When deciding not to exempt the Commission from the OPMA, “actual or perceived corruption” was the target because, as Woodrow Wilson stated, “corruption thrives in secret places and avoids public places. . . .” P.L. 2006, c.70, §1 (legislative history of the 2006 amendments).

II. The N.J. Supreme Court Has Yet to Explore the Relationship between the MWL, the Equal Protection Clause, and the CRA, and It Should Provide Needed Guidance Now.

The Appellate Division opinion is fundamentally misaligned with well-established redistricting jurisprudence, which widely recognizes “communities of interest” as a traditional districting criterion that must be complied with alongside compactness, contiguity, and preservation of geographic boundaries of counties and other political subdivisions. *See* cases cited at Pb49-50. Though conceptually distinct, “communities of interest” is a standard that is directly related to compactness, and both are informed by fundamental rights connected to the right to vote, equal protection, and effective representation. As the Pennsylvania Supreme Court has noted:

[T]he use of compactness, [and] contiguity . . . maintains the strength of an individual’s vote in electing a . . . representative. When an individual is grouped with other members of his or her community in a . . . district for purposes of voting, the commonality of the interests shared with the other voters in the community increase the ability of the individual to elect a . . . representative for the district that reflects his or her personal preferences It simply achieves *the constitutional goal of fair and equal elections*. (Emphasis added.)

League of Women Voters v. Commonwealth, 178 A. 3d 737, 816 (Pa 2018).

In their Verified Complaint, Plaintiffs, set forth numerous factual allegations that establish an inextricable link between compactness (understood geographically), communities of interest based on localized, socio-economic

development issues, and effective representation. (Pa21-26; Pb50-52) It is this indivisible link, in the Jersey City context, that supports their claim under the Equal Protection Clause, which rests on *the Commission's failure to draw compact maps leading to the unnecessary fracturing of established neighborhoods as well as their associated communities of interest, and diminishment of their voting rights.*

The Appellate Division rejected such claim first by holding that compactness, in the context of ward redistricting, has nothing to do with communities of interest, and cannot be considered because the Legislature did not include such standard in the MWL. (19a) Neither conclusion is accurate. *First*, it is certain that New Jersey Courts have considered communities of interest in congressional and legislative redistricting, when such principle is not included in the relevant constitutional provisions.⁷ (See Pb50) *Second*, the U.S. Supreme Court has found that the Voting Right Act's §2 "compactness inquiry" requires consideration of "traditional districting principles such as maintaining communities of interest and traditional boundaries." Abrams v. Johnson, 521 U.S. 74, 91-92 (1997). This directive to include communities of interest in the

⁷ It should be noted that neither *N.J. Const.* Art. II, §2, governing congressional redistricting, nor Art. IV, §2, ¶3, governing state legislative redistricting, explicitly requires consideration of communities of interest. The former has no standards, and the latter contains a requirement for assembly districts to be "as nearly compact and equal in number of inhabitants. . . ."

compactness analysis is consistent with the statutory history of the MWL, which ties effective representation to maintaining communities of interest, “particularly when a municipality includes diverse groups of people.” (Pa78)

Once it erroneously jettisoned the connection between compactness, communities of interest and fair representation, the Appellate Division was then able to find that Plaintiffs had not alleged “any class of people who were treated differently by the Commission as compared to another class of people” to sustain an Equal Protection claim. (22a) However, consistent with redistricting jurisprudence, Plaintiffs have alleged such class: residents of Ward D and F were treated differently than residents in the other four wards. With respect to both wards, the Commission violated the compactness standard; in Ward F, several neighborhoods were split, and in both wards, new neighborhoods representing different communities of interest were added resulting in fractured and incoherent communities of interest. Accordingly, the failure of the Commission to draw compact maps for each ward denied residents of Ward D and F an equal opportunity to elect representatives of their choice compared to residents living in the other four wards. Such is the constitutional harm Plaintiffs have alleged; not just that people were moved to different wards, as stated by the Appellate Division. (22a)

The failure of the Appellate Division to connect compactness with

effective representation and Plaintiffs’ fundamental right to vote also led the Appellate Division to dismiss Plaintiffs’ CRA claim, even though it did not dismiss their claim under the MWL. Accordingly, before this Court is also the question of whether the MWL itself, even if no equal protection or other constitutional claim is established, confers protections from the deprivation of rights secured by the laws of this State pursuant to the CRA, and therefore permits shifting attorney fees and costs.

Plaintiffs say yes; the Appellate Division implicitly said no, but did not undertake any analysis. In Tumpson v. Farina, 218 N.J. 450, 486 (2014), the N.J. Supreme Court held, for the first time, that a statutory right, such as the rights of initiative and referendum, may be deemed a civil right deserving of protection under the CRA. Indeed, the court held that the initiative and referendum provisions found in the Faulkner Act were the quintessential substantive “rights-creating” statutes that would entitle a plaintiff to injunctive relief under the CRA.

Since 2014, the Supreme Court has further clarified Tumpson to state:

In Tumpson, we applied the three-part Blessing test, albeit without the Gonzaga refinement, and found that the Faulkner Act conferred on the plaintiffs the substantive right of Petition—the right to place a recently enacted rent control ordinance before the voters for their approval or disapproval. Tumpson, 218 N.J. at 477-78. . . . In applying the Blessing test, we held: first, the Legislature, through the Faulkner Act, clearly intended to confer the right of Petition on the plaintiffs and voters of Hoboken; second, the right as enunciated

in the statute was neither “vague” nor “amorphous,” and its application was straightforward; and third, the Clerk was unambiguously required to accept and file the petition. *Id.* 218 N.J. at 477-78. Moreover, because the Clerk’s failure to file the petition gave rise to a cause of action, we determined that “by definition, the right of Petition is substantive in nature.” *Id.* 218 N.J. at 47.

Harz v. Borough of Spring Lake, 234 N.J. 317, 333-34 (2018); *see also* DeSanctis v. Borough of Belmar, 455 N.J. Super. 316, 333-34 (quoting Harz).

Applying the Blessing test in this case, it is clear that the MWL confers on the Plaintiffs, and the voters and residents of Jersey City, the right to reside in a ward that consists of compact territory - a safeguard designed to preserve their communities of interest and guarantee them fair representation, impacting their fundamental right to vote; second, the requirement that each ward be comprised of “contiguous and compact territory” and have a population deviation of only 10% is explicitly required in the statute, N.J.S.A 40:44-14, and is not vague, with its application relatively straightforward; and finally, the Commission is unambiguously required to meet all three requirements, and because its failure to even consider the issue of “compactness” (let alone satisfy such requirement) gives rise to a cause of action under the MWL, the right to reside in a compact district to ensure effective representation, by definition, is substantive in nature and constitutes a civil right to be protected.

III. The NJ Supreme Court Has Yet to Set Forth Elements of a Partisan Gerrymandering Claim Under the New Jersey Constitution and It Should Provide Needed Guidance Now.

Although the Appellate Division cited Davenport, *supra*, 65 N.J. at 134, to affirm the impermissibility of partisan gerrymandering in New Jersey, it simply stated that Plaintiffs did not assert such claim because they “have not alleged gerrymandering based on political party,” (Op16) and have made “no showing” that the Commission “purposely dilute[ed] the votes of certain identifiable groups.” (Op24) It appears that the Appellate Division selectively read the Complaint in this matter. It also ignored Plaintiffs’ briefs and the case law set forth therein regarding partisan gerrymandering prior to and since the U.S. Supreme Court decision in Rucho v. Common Cause, 139 S.Ct. 2484 (2019).

It is accurate to say that the Complaint does not state a claim of gerrymandering based on affiliation with an established political party. However, “partisanship” is typically defined to be broader than simple affiliation with a party, and includes adherence to a particular “faction, cause, or person.” Indeed, it is Plaintiffs’ speech and associational activity in support of Frank E. Gilmore, including their vote for him, that constitutes the predicate of their claim of “partisan” gerrymandering. *See* (Pb32-35). The Complaint also identifies that this claim was brought on behalf of the Plaintiff groups that represent the voters of Ward F and formerly Ward F, and explicitly sets forth allegations of associational harm sufficient to make a showing of purposeful dilution at this

stage of the litigation. (Pa39) *See generally* Pb29-35.

The Appellate Division had an obligation to articulate the standards that would govern a partisan gerrymandering challenge to a municipal ward map and then apply them to the facts alleged in the Complaint to determine whether Plaintiffs have stated a cause of action. It, like the trial court, failed to do so, requiring this court to step in.⁸

IV. **The N.J. Supreme Court Has Yet to Set Forth the Elements of a Speech Retaliation Claim for Elected Officials, and It Should Provide Needed Guidance Now.**

The Appellate Division stated that because redistricting involves movement of residents among wards, residents of old Ward F have no right to vote for Gilmore and he in turn has no right to be elected by the same voters (24-5a); but that is not the harm that either he or the Plaintiffs alleged. The Panel also stated that Gilmore’s claim of retaliation was “speculative” (28a); however, that too is not a basis to reject such claim on a motion to dismiss. Rather, the Panel should have, but did not, address Gilmore’s well-pleaded evidence of retaliation (Pb40-42) nor the well-pleaded harm he did plead—which, according

⁸ Plaintiffs offered the three-prong standard set forth in Shapiro v. McManus, 203 F. Supp. 3d 579, 596-598 (D. Md. 2016) to support their claim that the Commission penalized them because of their associational activity in support of Frank E. Gilmore and, specifically, how they voted in the previous November municipal elections. (Pb31-32) The trial court rejected this standard because it was not formulated by a New Jersey court; the Appellate Division did not address the issue.

to case law dealing with retaliation against elected officials, requires them to establish that the actions taken against them “interfere[d] with their ability to perform their elected duties.” Werkheiser v. Pocono Twp., 210 F. Supp. 633, 641 (W.D. Pa. 2016) *aff’d*, Pocono Twp. Bd. of Supervisors, 2017 U.S. App. LEXIS 14772 (3d Cir. Pa. Aug. 10, 2017); King v. City of New York, 581 F. Supp. 3d 559 (S.D.N.Y. 2022)(action interfered with council member’s ability to represent the voters who elected them). Most importantly, the Appellate Division did not flesh out each of the elements of a retaliatory speech claim instituted by an election official, as did Plaintiffs (Pb39), nor take Councilman Gilmore’s factual allegations in support of each element of his claim seriously. (Pa37-39) The lack of any legal analysis, especially in a published decision on such an important constitutional issue must be addressed by this Court.

CONCLUSION

This first-of-its-kind complaint in New Jersey raises significant legal issues and poses serious constitutional harms concerning the right of Jersey City voters to fair and effective representation. The judiciary has an obligation to protect the voters from the abusive maneuvering alleged, which causes serious harm to the social and political fabric of the City. The fact that no New Jersey court has dealt with the the “compactness” or “public process” requirements embedded in the MWL or constitutional claims alleging partisan

gerrymandering and retaliation was no excuse for the Appellate Court to abdicates its responsibility to the residents of Jersey City. Its reasoning, which upholds a rational basis review of the compactness requirement of the MWL, without the exploration of further evidence such as standard measures of compactness, handicaps the express intent of the MWL to protect democracy on the local level. This Court should grant Plaintiffs' Petition for Certification in order to make clear the substantive standards that should govern municipal ward redistricting in order to ensure a map's validity and lawfulness.

Respectfully submitted,

/s/Renée Steinhagen
Renée Steinhagen, Esq.

/s/Yael Bromberg
Yael Bromberg, Esq.

/s/William Matsikoudis
William Matsikoudis, Esq.

Dated: April 11, 2024

CERTIFICATION OF COUNSEL

The undersigned counsel for the petitioner hereby certifies that this petition presents a substantial question and is filed in good faith and not for the purposes of delay.

/s/Renée Steinhagen
Renée Steinhagen, Esq.

Dated: April 11, 2024

APPENDIX

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0356-22
A-0560-22

JERSEY CITY UNITED AGAINST
THE NEW WARD MAP,
DOWNTOWN COALITION OF
NEIGHBORHOOD ASSOCIATIONS,
GREENVILLE NEIGHBORHOOD
ALLIANCE, FRIENDS OF BERRY
LANE PARK, RIVERVIEW
NEIGHBORHOOD ASSOCIATION,
PERSHING FIELD
NEIGHBORHOOD ASSOCIATION,
SGT. ANTHONY NEIGHBORHOOD
ASSOC., GARDNER AVENUE
BLOCK ASSOCIATION, LINCOLN
PARK NEIGHBORHOOD WATCH,
MORRIS CANAL
REDEVELOPMENT CDC,
HARMON STREET BLOCK
ASSOCIATION, CRESCENT
AVENUE BLOCK ASSOCIATION,
DEMOCRATIC POLITICAL
ALLIANCE, and FRANK E.
GILMORE, in his individual and
official capacity as Ward F
Councilman,

<p>APPROVED FOR PUBLICATION</p> <p>March 12, 2024</p> <p>APPELLATE DIVISION</p>

Plaintiffs-Appellants,

v.

JERSEY CITY WARD COMMISSION
and JOHN MINELLA, in his official
capacity as Chair of the Commission,

Defendants-Respondents.

JAMES CALDERON,

Plaintiff-Appellant,

v.

CITY OF JERSEY CITY WARD
COMMISSION, JOHN MINELLA,
Chairman, SEAN J.
GALLAGHER, Secretary, and
Commissioners DANIEL E.
BECKELMAN, PAUL CASTELLI,
JANET LARWA, and DANIEL
MIQUELI,

Defendants-Respondents.

Argued November 27, 2023 – Decided March 12, 2024

Before Judges Gilson, DeAlmeida, and Bishop-
Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket Nos. L-0960-22 and
L-0821-22.

Renée W. Steinhagen argued the cause for appellants in
A-0356-22 (New Jersey Appleseed Public Interest Law
Center, Inc., Matsikoudis & Fanciullo, LLC, and Yael
Bromberg (Bromberg Law LLC), attorneys; Renée W.
Steinhagen, Yael Bromberg, and William C.
Matsikoudis, on the briefs).

James Calderon, appellant in A-0560-22, argued the cause pro se.

Jason F. Orlando argued the cause for respondents (Murphy Orlando LLC, attorneys; Jason F. Orlando and Tyler Newman, on the briefs).

The opinion of the court was delivered by
GILSON, P.J.A.D.

Following the 2020 decennial United States Census, the City of Jersey City Ward Commission (the Commission) redrew the six election wards for the City of Jersey City (the City). In these two appeals, which we consolidate for purposes of this opinion, plaintiffs challenge the ward boundaries and map adopted by the Commission.

Plaintiffs appeal from orders dismissing their complaints in lieu of prerogative writs, contending that the new ward map violates the Municipal Ward Law (the MW Law), N.J.S.A. 40:44-9 to -18, the New Jersey Civil Rights Act (the CR Act), N.J.S.A. 10:6-1 to -2, and their rights of free speech, free association, and equal protection under the New Jersey Constitution. They also argue that the Commission did not comply with the Open Public Meetings Act (the OPMA), N.J.S.A. 10:4-6 to -21.

Having reviewed these arguments in light of the record and law, we affirm in part and reverse in part. We affirm the dismissal of plaintiffs' claims asserting

violations of their constitutional rights, the CR Act, and the OPMA. We reverse the dismissal of the claims of violations of the MW Law. Resolution of those statutory claims requires some, albeit limited, fact-finding. Thus, we remand the MW Law claims for further proceedings.

I.

The Legislature allows municipalities to adopt a charter or form of government under which a municipality is divided into wards for the purpose of electing members of the municipal governing body. N.J.S.A. 40:44-10. When a municipality adopts that form of government, the MW Law identifies the commissioners who will create the wards and periodically reassess and adjust those wards. See N.J.S.A. 40:44-11, -13. The MW Law provides that the commission shall be composed of the members of the county board of elections and the municipal clerk. N.J.S.A. 40:44-11.

The MW Law also provides that the municipal ward commission "shall" divide the municipality into "compact and contiguous" wards that are roughly equal in population. N.J.S.A. 40:44-14. In that regard, the MW Law states:

The ward commissioners shall fix and determine the ward boundaries so that each ward is formed of compact and contiguous territory. The population of the most populous ward so created shall not differ from the population of the least populous ward so created by more than [ten percent] of the mean population of the

wards derived by dividing the total population of the municipality by the number of wards created. The most recent [f]ederal decennial census shall be used as the population determinant.

[Ibid.]

Wards must be evaluated and, if necessary, adjusted every ten years based on the federal decennial census. In that regard, the MW Law states:

Within [three] months following the receipt by the Governor of each federal decennial census, the ward commissioners shall meet in the manner provided in subsection a. of this section and proceed to make such adjustments in ward boundaries as shall be necessary to conform them to the requirements of this act.

[N.J.S.A. 40:44-13(c).]

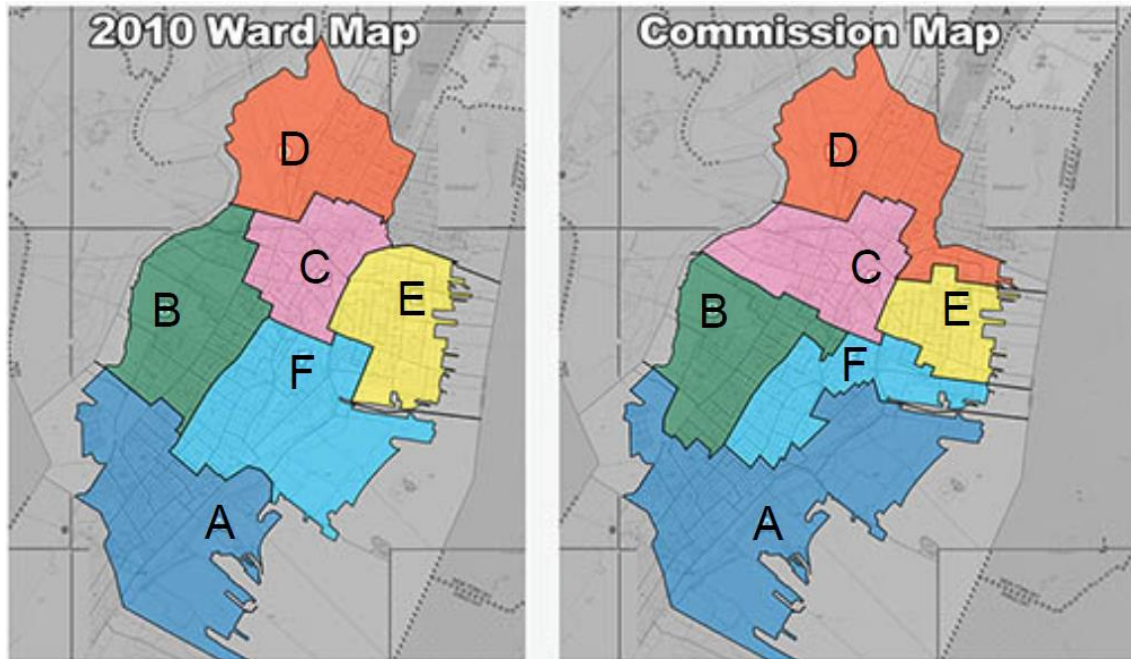
The City is, and has been for decades, divided into six election wards: Wards A, B, C, D, E, and F. In 2020, the United States Census was conducted, and, on September 16, 2021, the Governor promulgated the results. The 2020 Census revealed that Ward E, the largest ward by population in the City, was fifty-nine percent more populous than Ward D, the least populous ward. As of the 2020 Census, Ward E had 69,524 residents, while Ward D had 40,733 residents. Therefore, under the MW Law, the Commission had to redraw the City's ward boundaries and related map.

The MW Law required the Commission to hold at least one meeting, which was to be within three months of the receipt of the 2020 Census by the Governor. Ibid. The MW Law also provided that the Commission can hire and be assisted by a surveyor, an engineer, and "other assistants as shall be necessary to aid [the Commission] in the discharge of [its] duties." N.J.S.A. 40:44-12. The Commission was to prepare a report on the boundaries of the wards, together with a map, and the report was to be certified by at least three Commissioners. N.J.S.A. 40:44-15(a). Thereafter, the certified report and map were to be filed with the county clerk, the Secretary of State, and the municipal clerk. Ibid. Finally, the municipal clerk was to cause notice of the ward boundaries to be published in a local newspaper within two weeks of the filing of the Commission's report. N.J.S.A. 40:44-16.

After receiving the 2020 Census, the Commission held three public meetings on December 15, 2021, January 14, 2022, and January 22, 2022. The Commissioners also conducted several working sessions during that time, but the Commissioners certified that no more than three Commissioners were present at any one working session.

On January 22, 2022, after listening to approximately three hours of public comment, the Commission voted to adopt new boundaries for the six wards and

approved a new ward map (the 2022 Ward Map). The ward maps before and after 2022 are depicted in the two maps set forth below:



As these maps reflect, the City is irregularly shaped because its boundaries are based on rivers, harbors, bays, cliffs, and adjoining municipalities. The Commission made various adjustments to the boundaries of the six wards. Those adjustments particularly affected Wards A, E, and F. The shape of Ward F also changed from a somewhat square shape to a jagged, sideways L-shape.

On February 3, 2022, the Commissioners' certified report and 2022 Ward Map were filed with the county clerk, the City's municipal clerk, and the

Secretary of State. Two days later, on February 5, 2022, notice of the new ward boundaries was published in a local newspaper, The Jersey Journal.

Plaintiffs filed two complaints in lieu of prerogative writs challenging the new ward boundaries and the 2022 Ward Map. The first action was filed on March 7, 2022, by James Calderon, a City resident. Calderon challenged the new wards on two grounds, contending that the Commission had violated (1) the OPMA because the Commissioners had met in private sessions; and (2) the MW Law because the wards, and in particular Wards A and F, were not compact and had broken up the Lafayette neighborhood.

The second action was filed on March 21, 2022, by several community organizations and Frank E. Gilmore, the Ward F Councilperson (collectively, the CO plaintiffs). The CO plaintiffs contended that in redrawing the boundaries of the wards, the Commission "disrupted and carved up long-standing neighborhoods, ignored natural geographic dividers, and even split buildings in half," and thereby "violated basic principles of fair representation and communities of interest" embedded in the statutory requirement that wards be "compact."

The CO plaintiffs' complaint contained four counts. Count one alleged a violation of the MW Law, contending that the wards were not compact, and as

a result violated the equal protection provision of the New Jersey Constitution. Count two alleged that the Commissioners had failed to draw the wards compactly, and that failure violated the CO plaintiffs' rights of free speech and association under the New Jersey Constitution. In count three, the CO plaintiffs alleged a violation of the OPMA, contending that the Commission had met and made decisions on the new ward map in private working sessions. Finally, in count four, they alleged that the Commission and its Chairperson had violated the CR Act by depriving the CO plaintiffs of their "rights to reside in . . . ward[s] that consist[] of compact territory that preserves their communities of interest" and their ability to elect representatives of their choice. They also alleged that the Commission had violated the CR Act by retaliating against Gilmore "for his campaign advocacy around affordable housing, gentrification and displacement by removing a significant number of his supporters" from Ward F.

Plaintiffs sought several forms of relief, including (1) a declaration that the 2022 Ward Map and ward boundaries were invalid; (2) an order directing the Commission to redraw the wards more compactly and without splitting neighborhoods or communities of interest unnecessarily; (3) declarations that the Commission violated the OPMA, the CO plaintiffs' rights to free speech and association, and the MW Law; (4) an order "requiring the Commission to make

sure that the process is transparent and all meetings of the Commission are open to the public"; and (5) an order awarding plaintiffs legal fees.

In response, the Commission moved under Rule 4:6-2(e) to dismiss the complaints for failure to state valid claims. After hearing oral argument, on August 25, 2022, the trial court issued two orders dismissing both complaints with prejudice. The trial court set forth its reasons on the record.

Concerning the CO plaintiffs' complaint, the trial court initially held that the complaint was filed beyond the forty-five-day time limit for a prerogative writs action. The court determined that the Commission had adopted the new ward boundaries on January 22, 2022, but the CO plaintiffs had waited over fifty days to file their complaint on March 21, 2022.

Nevertheless, the court went on to address the merits of the CO plaintiffs' claims, as well as the claims asserted by Calderon. The court held that plaintiffs failed to adequately plead a violation of the MW Law because the court found that the 2022 Ward Map was compact. The court rejected the CO plaintiffs' equal protection claim, reasoning that the CO plaintiffs based their claim on a "common interest" rather than a protected category as required to sustain an equal protection claim. The court then held that the CO plaintiffs' free speech

and association claims were insufficiently pled because the Commission's actions did not restrict those rights.

Addressing plaintiffs' OPMA claims, the court found that they were deficient because plaintiffs did not identify the dates of any allegedly non-conforming meetings where the Commission took official action. The court also found that the working sessions were not subject to the OPMA because there was no quorum of Commissioners present. Finally, the trial court held that the claim that the Commission retaliated against Gilmore in violation of the CR Act failed as a matter of law because the CO plaintiffs did not allege a violation of a substantive right.

Plaintiffs now appeal from the orders dismissing their complaints in lieu of prerogative writs with prejudice.

II.

Collectively, plaintiffs make five arguments in these consolidated appeals. They contend that the Commission violated (1) the MW Law; (2) their rights to equal protection; (3) their rights of freedom of speech and association; (4) the OPMA; and (5) their rights under the CR Act. There is also an initial issue concerning the timeliness of the CO plaintiffs' complaint.

Appellate courts conduct a de novo review of an order dismissing a complaint under Rule 4:6-2(e). Neuwirth v. State, 476 N.J. Super. 377, 389 (App. Div. 2023). "A reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (quoting Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107 (2019)). Courts should search the complaint thoroughly "and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)).

If, however, "the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). Legal sufficiency "requires allegation of all the facts that the cause of action requires." Cornett v. Johnson & Johnson, 414 N.J. Super. 365, 385 (App. Div. 2010), aff'd as modified, 211 N.J. 362 (2012). "In evaluating motions to dismiss, courts consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.'" Banco Popular N. Am. v. Gandi,

184 N.J. 161, 183 (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 221 n.3 (3d Cir. 2004)). "If the court considers evidence beyond the pleadings in a Rule 4:6-2(e) motion, that motion becomes a motion for summary judgment, and the court applies the standard of Rule 4:46." Dimitrakopoulos, 237 N.J. at 107.

A. The Timeliness of the CO Plaintiffs' Complaint.

Rule 4:69-6(a) states that "actions in lieu of prerogative writs must be commenced no later than '[forty-five] days after the accrual of the right to the review, hearing or relief claimed.'" Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 489 (App. Div. 2018) (alteration in original) (quoting R. 4:69-6(a)). Where the forty-five-day mark falls on a Saturday, Sunday, or legal holiday, the period is extended until the next business day. See R. 1:3-1. Courts may extend the time "where it is manifest that the interest of justice so requires." R. 4:69-6(c). In short, this rule is "aimed at those who slumber on their rights." Hopewell Valley Citizens' Grp., Inc. v. Berwind Prop. Grp. Dev. Co., 204 N.J. 569, 579 (2011) (emphasis omitted) (quoting Schack v. Trimble, 28 N.J. 40, 49 (1958)).

Rule 4:69-6(a) does not define when actions in lieu of prerogative writs for ward commission actions accrue. The MW Law also does not specify when the right to review an action by a ward commission accrues. Therefore, we look

to substantive law on when an action accrues. See Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 401 (App. Div. 2008). Substantive law establishes that an action in lieu of prerogative writs challenging an action of a municipal government accrues on the date the action is adopted. See In re Borough of Englewood Cliffs, 473 N.J. Super. 189, 205 (App. Div. 2022) (holding that the right to challenge the Borough Council's approval of a settlement agreement accrued on the date the Council voted to approve the agreement, where no further action was required for approval).

When a ward commission adjusts boundaries following the receipt of a federal decennial census, the commissioners are to meet, take an oath, and then "make such adjustments in ward boundaries as shall be necessary to conform them to the requirements of this act." N.J.S.A. 40:44-13(c). Thereafter, within thirty days, the ward commissioners shall file their report "setting forth and properly describing the ward boundaries fixed and determined." N.J.S.A. 40:44-15(a). The certified report is then to be filed with the county clerk, the Secretary of State, and the municipal clerk. Ibid. These provisions support the interpretation that the Commission's actions are adopted when the report is filed.

The Commission's report was filed on February 3, 2022. The CO plaintiffs filed their complaint in lieu of prerogative writs on March 21, 2022.

Forty-five days from February 3, 2022, was Sunday, March 20, 2022. Thus, the filing on March 21, 2022 was timely. Moreover, because the adoption of the new ward boundaries and ward map is an issue of broad public concern, it would have been in the interest of justice to extend the time to consider the CO plaintiffs' complaint in lieu of prerogative writs. Indeed, it would have been particularly appropriate in this matter to relax the forty-five-day requirement because the complaint by Calderon was timely, and the court was going to consider his claims on the merits. Thus, we reject the trial court's holding that the complaint filed by the CO plaintiffs was untimely and we, accordingly, consider all the claims on their merits.

B. The MW Law Claims.

The MW Law "shall constitute the exclusive method whereby the boundaries of wards, or other similar representation districts, in municipalities shall be fixed and determined." N.J.S.A. 40:44-10. It sets forth three requirements for ward districts. N.J.S.A. 40:44-14. Each ward must be (1) "compact" and (2) "contiguous," and (3) "[t]he population of the most populous ward . . . shall not differ from the population of the least populous ward . . . by more than [ten percent] of the mean population of the wards." Ibid. The third requirement is designed to maintain a roughly equal population distribution

among the wards and has the goal of protecting the one-person, one-vote principle. See Davenport v. Apportionment Comm'n, 65 N.J. 125, 129 (1974) (explaining that the goal of substantial equality of population among legislative districts was "the overriding object of the one-[person], one-vote principle").

Initially, it is important to delineate what these appeals do not involve. There is no claim of invidious discrimination. Moreover, plaintiffs have not alleged gerrymandering based on political party. Instead, they have made broad allegations about the fragmentation of "communities of interest" and neighborhoods. Those allegations, however, do not support a claim that the wards were shaped for partisan advantage that "will not be tolerated." Id. at 134.

Plaintiffs also do not challenge the 2022 Ward Map and the ward boundaries on the grounds that the wards are not contiguous. Indeed, a review of the 2022 Ward Map establishes that each ward is contiguous because none of the wards are broken into more than one area.

Instead, plaintiffs contend that the wards are not compact. The Legislature did not define "compact" in the MW Law. Moreover, there are no published decisions interpreting the MW Law or its use of the word "compact." Accordingly, we look to the plain meaning of the word "compact" and construe

it within the context and purpose of the entire MW Law. See State v. Thompson, 250 N.J. 556, 572 (2022).

The definition of "compact" includes "having a dense structure or parts or units closely packed or joined" and "occupying a small volume by reason of efficient use of space." Merriam-Webster's Collegiate Dictionary 252 (11th ed. 2020). To give meaning to this definition as applied to a municipal ward, we look to cases evaluating challenges to State legislative reapportionments and congressional redistricting in New Jersey. See Steinhardt v. N.J. Redistricting Comm'n (In re Establishment of Cong. Dists.), 249 N.J. 561 (2022); Davenport, 65 N.J. 125.¹

It is fair to presume that in enacting the MW Law, the Legislature considered how State legislative and congressional districts are reapportioned and the law governing the scope of judicial review. In doing so, however, we recognize a fundamental distinction between municipal wards and State legislative or congressional districts. State legislative and congressional districts are created by and defined in the New Jersey Constitution. N.J. Const.

¹ Plaintiffs cite to cases from other jurisdictions and urge us to consider how those courts have evaluated challenges to redistricting plans. We find those cases to be of limited use in these appeals because we are construing the MW Law, a New Jersey statute.

art. IV, § 3, ¶ 1; N.J. Const. art. II, § 2, ¶ 1. In contrast, municipal wards are created by and defined by the MW Law—a statute.

Our Supreme Court has long recognized that "[c]ompactness is an elusive concept" and "may be of limited utility in creating legislative districts in light of the odd configuration of our State and its municipalities." Davenport, 65 N.J. at 133. Moreover, in considering challenges to the State legislative and congressional reapportionment and redistricting plans, our Supreme Court has held that courts have a "limited" role. Id. at 135. The Court has recognized that "[p]olitics and political considerations are inseparable from districting and apportionment." Id. at 134 (quoting Gaffney v. Cummings, 412 U.S. 735, 753 (1973)). Thus, the Court has explained:

Reapportionment is essentially a political and legislative process. The plan must be accorded a presumption of legality with judicial intervention warranted only if some positive showing of invidious discrimination or other constitutional deficiency is made. The judiciary is not justified in striking down a plan, otherwise valid, because a "better" one, in its opinion, could be drawn.

[Id. at 135 (quoting Gaffney, 412 U.S. at 751).]

Recognizing that the Constitution governs State legislative and congressional districts, the Court has also held that commissions that adopt redistricting or reapportionment plans are not subject to the normal arbitrary,

capricious, and unreasonable standard generally used to evaluate agency actions. In re Establishment of Cong. Dists., 249 N.J. at 576-77. Instead, courts are limited to determining whether the redistricting plan is "unlawful or reflects invidious discrimination." Id. at 574.

Applying these principles to municipal wards, we hold that two rules govern a court's limited review of a commission's adjustment of wards when there is no claim of invidious discrimination or partisan gerrymandering. First, the boundaries and map can only be challenged on the basis that they violate any of the three MW Law requirements of compactness, contiguousness, or population deviation. Challenges based on general, but undefined, concepts of "communities of interest" or "historic neighborhoods" are not viable. While communities of interest and neighborhoods are clearly important, the Legislature did not include those considerations in the MW Law.

Second, the role of a court in reviewing compactness is limited. A ward need not be as tight as possible, and the realities of geography will require some amount of elongation and jagged boundaries. A ward need only have a rational basis for its shape, considered within the context of the shape of the overall municipality, the other wards, and the population deviation between the most

populous and least populous wards. The court should not consider whether there is a better or more compact configuration.

Applying these rules to the 2022 Ward Map and the ward boundaries, we reverse for a very limited fact-finding. On a motion to dismiss, and without any factual record, the trial court in these matters simply concluded that the wards were compact. The court needed to conduct some proceeding focused on the question of whether there was a rational basis for the Commission's configuration of the wards. That proceeding, however, should be limited. Given the allegations in plaintiffs' complaints, they are not entitled to discovery, and the fact-finding proceedings should be carefully restricted. The inquiry is simply to determine if the Commissioners had a rational basis for their configuration, so the court can then determine whether the wards are compact, given the flexibility afforded by the MW Law. The trial court will have discretion to allow focused cross-examination of one or more Commissioners, provided that examination is limited to the rational basis for the compactness of the wards. Moreover, plaintiffs cannot challenge the Commission's configuration by arguing that the wards do not comply with other models of compactness. In that regard, we expressly reject the CO plaintiffs' attempt to use the Polsby-Popper Measure or the Reock Measure. Plaintiffs should also

not be allowed to challenge the 2022 Ward Map based on whether it breaks up communities of interest or neighborhoods.

C. The CO Plaintiffs' Constitutional Claims.

The CO plaintiffs allege that the Commission's failure to draw compact wards violated their New Jersey constitutional rights of equal protection, free speech, and free association. However, the CO plaintiffs' allegations, even when given every reasonable inference, fail to state viable constitutional claims.

The principle of equal protection is derived from Article I, Paragraph 1 of the New Jersey Constitution, which states:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

See also State v. Pimentel, 461 N.J. Super. 468, 490 (App. Div. 2019) (recognizing that the principle of equal protection under the New Jersey Constitution derives from this article).

To state an equal protection claim, a claimant must show that the challenged governmental action does not apply "evenhandedly to similarly situated people." Caviglia v. Royal Tours of Am., 178 N.J. 460, 472 (2004) (recognizing that a governmental action is invalid on equal protection grounds

when it does not apply "evenhandedly to similarly situated people"); Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985) (explaining that Article I, Paragraph 1 protects "against the unequal treatment of those who should be treated alike"); see also Lewis v. Harris, 188 N.J. 415, 443 (2006) (recognizing that an equal protection challenge to a governmental action must be based on the contention that the action does not apply "evenhandedly to similarly situated people").

In their complaint, the CO plaintiffs allege that the Commission's failure to draw compact wards led to "the unnecessary splitting of neighborhoods and other communities of interest" into different wards, resulting in a violation of the CO plaintiffs' equal protection rights as guaranteed by the New Jersey Constitution. They point to the splitting of the Lafayette neighborhood, which, according to them, "comprises one [of] the oldest African-American communities in the State of New Jersey." As already pointed out, however, the CO plaintiffs acknowledge that the Commission did not engage in any form of invidious discrimination, including discrimination based on race, in redrawing the City wards.

More fundamentally, the CO plaintiffs' complaint has not identified how any class of people was treated differently by the Commission as compared to another class of people. The CO plaintiffs allege that some residents of the City

were moved to different wards. That, however, is exactly what the MW Law authorizes. Indeed, the CO plaintiffs are not contending that there should be no wards; rather, they are objecting to how the Commission adjusted the wards. Even giving the CO plaintiffs every reasonable inference, their complaint simply does not state a viable equal protection claim.

For similar reasons, the CO plaintiffs' claims of violations of their free speech and association rights also fail. In protecting free speech, the New Jersey Constitution declares: "Every person may freely speak, write and publish his [or her] sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press." N.J. Const. art. I, ¶ 6. Addressing the right of free association, the New Jersey Constitution states: "The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances." N.J. Const. art. I, ¶ 18.

In their complaint, the CO plaintiffs allege that "the Commission's [2022 Ward] Map amounts to an attempt to nullify the end-product of the democratic election process." They assert that the voters in Ward F elected Gilmore as their councilperson because of his advocacy for affordable housing and opposition to

the City's increasing development of luxury high-rises. They then contend that the Commission "tore apart large blocks of voters, split[ting] neighborhoods that were instrumental in electing" Gilmore. They argue that the new ward map thereby infringes on their rights to free speech and assembly by depriving them of the right to "elect the candidate of their choice."

The wards created by the Commission, however, did not impact the CO plaintiffs' rights of free speech and association. The CO plaintiffs have the same free speech and association rights they had before the wards were adjusted in 2022. They are all residents of the City, and ward boundaries do not infringe on their rights of free speech and association. While purposely diluting the votes of certain identifiable groups might infringe on a constitutional right to assemble, there is no showing that the Commission engaged in that kind of diluting. The MW Law expressly states that when wards are redrawn, incumbent councilpersons are not removed from their elected positions. N.J.S.A. 40:44-17. Thus, it is pure speculation as to whether Gilmore will retain his position as councilperson for Ward F at the next election.

More fundamentally, all residents of the City, including the CO plaintiffs, will continue to have the same free speech and association rights to support or oppose the re-election of Gilmore. While some residents who were formerly

part of Ward F may not be able to directly vote for Gilmore, they can exercise their rights of free speech and association to support candidates of their choice in their new wards. In short, creating and adjusting wards necessitates that residents of the City will be divided into different wards. Moreover, when wards need to be adjusted to maintain substantial population equality, some residents will have to be moved to different wards.

D. The OPMA Claims.

Plaintiffs argue that the Commission violated the OPMA by holding unannounced private meetings. They contend that at those meetings, the Commissioners (1) "drafted proposals for various maps[;]" (2) discussed considerations related to these maps; (3) used mapping software to compare "existing ward boundaries with census block data[;]" (4) discussed the extent to which each map would "impose the least amount of demographic change to each ward" and "lowering the deviation between the most populous ward and the least populous to the lowest possible percentage[;]" and (5) selected a map to present to the public, thereby deciding to exclude the presentation of the other maps they were considering from the public. Plaintiffs also assert that these private meetings "were open to all members of the Commission" and "were attended by an effective majority."

Plaintiffs' allegations failed to state a viable OPMA violation. The Commissioners certified that all non-public working sessions involved less than a quorum of the Commissioners. Although consideration of those certifications effectively converted the motion to dismiss into a motion for summary judgment on the OPMA claims, the Commission was still entitled to a dismissal of those claims.

The MW Law contemplates that ward commissioners will engage in working, non-public meetings. See N.J.S.A. 40:44-12 (allowing the commissioners to retain and consult with a surveyor, an engineer, or "other assistants as shall be necessary to aid them in the discharge of their duties"). Plaintiffs should not be permitted to take discovery concerning the non-public meetings in an effort to try to support an OPMA claim, because that discovery would invade the province of the Commissioners. The Commissioners' obligations were to discharge their duties under the MW Law and adopt ward boundaries and a map in accordance with the MW Law. See N.J.S.A. 40:44-13, -15. The OPMA does not prohibit individual commissioners or a group of commissioners, constituting less than a quorum, from meeting with "assistants" and considering information, including alternative maps, in private meetings.

Additionally, plaintiffs cannot show that the Commission took any formal action in a non-public meeting. There is no dispute that the Commission voted to adopt new ward boundaries and a new map at the January 22, 2022 public meeting. Adopting new boundaries and a map are the only actions required of the Commissioners under the MW Law. In short, plaintiffs have not alleged, nor could they allege, viable OPMA claims.

E. The CO Plaintiffs' CR Act Claims.

The CR Act provides that "[a]ny person who has been deprived of . . . any substantive rights, privileges or immunities secured by the Constitution or the laws of this State . . . by a person acting under color of law" may bring an action for damages. N.J.S.A. 10:6-2(c); see also Winberry Realty P'ship v. Borough of Rutherford, 247 N.J. 165, 183 (2021). Accordingly, plaintiffs must show (1) a substantive right conferred by a law or the Constitution; (2) a deprivation of that right; and (3) that the deprivation was made by a person acting under color of law. See Winberry Realty P'ship, 247 N.J. at 183-84.

The CO plaintiffs allege that the Commission's adoption of the new ward boundaries and map violated their rights under the CR Act in two respects. First, they contend that the Commission infringed on their constitutional rights of equal protection, freedom of speech, and freedom of association. For the

reasons that have already been explained, those constitutional claims fail and, therefore, they also do not support viable claims under the CR Act. See AmeriCare Emergency Med. Servs. v. City of Orange Twp., 463 N.J. Super. 562, 574 (App. Div. 2020) (explaining that a CR Act claim is viable only where someone acting under color of law has deprived the plaintiff of a right or has interfered with the plaintiff's enjoyment or exercise of a right); Hurdleston v. New Century Fin. Servs., 629 F. Supp. 2d 434, 443 (D.N.J. 2009) (explaining that because the plaintiff had not shown deprivation of a substantive right, the defendants were entitled to summary judgment on the plaintiff's CR Act claim).


The CO plaintiffs also allege that the Commission retaliated against Gilmore in adopting the new ward boundaries. They alleged that the retaliation took the form of moving certain residents who had voted for Gilmore out of Ward F and removing federal opportunity zones and proposed or approved development projects from Ward F. As already discussed, this claim is speculative and does not rise to the level of a substantive right, privilege, or immunity secured by the Constitution or the laws of New Jersey. Accordingly, this claim was also properly dismissed.

F. Conclusion.

In summary, we affirm the dismissal of plaintiffs' constitutional claims and their claims under the OPMA and the CR Act. We reverse and remand the claims under the MW Law for a focused and limited proceeding on whether the Commission had a rational basis for the ward boundaries and map it adopted. That rational basis may well be set forth in the Commission's report. If so, the Commissioners can certify that rational basis, and the trial court can then determine if that is sufficient. On the current record, plaintiffs are not entitled to discovery from or depositions of the Commissioners.

Affirmed in part, reversed in part, and remanded in accordance with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

RENEE W STEINHAGEN , Esq.
NJ APPLESEED PUBLIC INTEREST LAW
CENTER
23 JAMES STREET
NEWARK, NJ, 07102
973-735-0523
RENEE@NJAPPLESEED.ORG
Attorney Bar ID: 038691989

SUPREME COURT OF NEW JERSEY

App. Div. # A-000356-22
Supreme Court # 089292

CIVIL ACTION

Jersey City United Against
the New Ward Map,
Downtown Coalition of
Neighborhood Associations,
Greenville Neighborhood
Alliance, Friends of Berry
Lane Park, Riverview
Neighborhood Association,
Pershing Field
Neighborhood Association,
Sgt. Anthony Neighborhood
Assoc., Gardner Avenue
Block Association, Lincoln
Park Neighborhood Watch,
Morris Canal Redevelopment CDC,
Harmon Street Block
Association, Crescent
Avenue Block Association,
Democratic Political
Alliance, and Frank E.
Gilmore, in his individual and
official capacity as Ward F
Councilman,

Plaintiffs-Petitioners,

v.

Jersey City Ward Commission
and John Minella, in his official
capacity as Chair of the
Commission,

Defendants.

James Calderon,
Plaintiff,

v.

City of Jersey City Ward
Commission, John Minella,
Chairman, Sean J.
Gallagher, Secretary, and
Commissioners Daniel E.
Beckelman, Paul Castelli,
Janet Larwa, and Daniel

**NOTICE OF PETITION
FOR CERTIFICATION**

Miqueli,
Defendants.

PLEASE TAKE NOTICE that, pursuant to R. 2:12-3, Appellants/Petitioners JERSEY CITY UNITED AGAINST THE NEW WARD MAP, DOWNTOWN COALITION OF NEIGHBORHOOD ASSOCIATIONS, GREENVILLE NEIGHBORHOOD ALLIANCE, FRIENDS OF BERRY LANE PARK, RIVER VIEW NEIGHBORHOOD ASSOCIATION, PERSHING FIELD NEIGHBORHOOD ASSOCIATION, SGT. ANTHONY NEIGHBORHOOD ASSOC., GARDNER AVENUE BLOCK ASSOCIATION, LINCOLN PARK NEIGHBORHOOD WATCH, MORRIS CANAL REDEVELOPMENT CDC, HARMON STREET BLOCK ASSOCIATION, CRESCENT AVENUE BLOCK ASSOCIATION, DEMOCRATIC POLITICAL ALLIANCE, and FRANK E. GILMORE, hereby seek review, by way of a Petition for Certification to the New Jersey Supreme Court, of the March 12, 2024 final judgment and opinion of the Appellant Division. The decision rejects Appellants' challenge to the 2022 Jersey City Ward Redistricting Map ("Ward Map") , which they pled on several statutory and constitutional grounds, and remands their statutory claim pursuant to the Municipal Ward Law ("MWL").

Dated: 04/11/2024

S/ RENEE W STEINHAGEN

Renée Steinhagen, Esq.
Atty. No. 038691989
N.J. APPLESEED PUBLIC
INTEREST LAW CENTER, INC.
23 James Street
Newark, New Jersey 07102
973-735-0523

Yael Bromberg, Esq.
BROMBERG LAW, LLC
Atty. No. 036412011
43 West 43rd Street, Suite 32
New York, New York 10036-7424
(212) 859-5083

William C. Matsikoudis, Esq.
Atty. No. 022391997
MATSIKLOUDIS & FANCIULLO, LLC
128 Monticello Ave., STR. 1
Jersey City, New Jersey 07304
(201) 915-0407

Attorneys for *Appellants/ Petitioners*

JERSEY CITY UNITED AGAINST
THE NEW WARD MAP,
DOWNTOWN COALITION OF
NEIGHBORHOOD ASSOCIATIONS,
GREENVILLE NEIGHBORHOOD
ALLIANCE, FRIENDS OF BERRY
LANE PARK, RIVERVIEW
NEIGHBORHOOD ASSOCIATION,
PERSHING FIELD
NEIGHBORHOOD ASSOCIATION,
SGT. ANTHONY NEIGHBORHOOD
ASSOC., GARDNER AVENUE
BLOCK ASSOCIATION, LINCOLN
PARK NEIGHBORHOOD WATCH,
MORRIS CANAL
REDEVELOPMENT CDC,

X

SUPREME COURT OF NEW JERSEY
DOCKET NO.

APPELLATE DIVISION
DOCKET NO: A-00560-22
A-00356-22

Sat Below:

Robert Gilson P.J.A.D.
Patrick DeAlmeida, J.A.D.
Avis Bishop-Thompson, J.A.D.

Superior Court of New Jersey
Law Division, Hudson County

HARMON STREET BLOCK
ASSOCIATION, CRESCENT
AVENUE BLOCK ASSOCIATION,
DEMOCRATIC POLITICAL
ALLIANCE, and FRANK E.
GILMORE, in his individual and
official capacity as Ward F
Councilman,

Civil Action

Plaintiffs-Appellants,

v.

JERSEY CITY WARD COMMISSION
and JOHN MINELLA, in his official
capacity as Chair of the Commission,

Defendants-Respondents.

_____X

_____X

JAMES CALDERON,

AMENDED NOTICE OF
PETITION FOR CERTIFICATION

Plaintiff-Appellant,

v.

CITY OF JERSEY CITY WARD
COMMISSION, JOHN MINELLA,
Chairman, SEAN J.
GALLAGHER, Secretary, and
Commissioners DANIEL E.
BECKELMAN, PAUL CASTELLI,
JANET LARWA, and DANIEL
MIQUELI,

Defendants-Respondents.

_____X

TO: Heather Joy Baker, Clerk
Supreme Court of New Jersey
R.J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625

Joseph Orlando, Clerk
Superior Court, Appellate Division
R.J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

Jason Orlando, Esq.
MURPHY ORLANDO, LLC
494 Broad Street, 5th Fl.
Newark, New Jersey 07102
Counsel for Respondents

James Calderon
65 Lafayette Street
Jersey City, New Jersey 07304
Pro se Appellant

PLEASE TAKE NOTICE that, pursuant to R. 2:12-3, Appellants/Petitioners
JERSEY CITY UNITED AGAINST THE NEW WARD MAP, DOWNTOWN
COALITION OF NEIGHBORHOOD ASSOCIATIONS, GREENVILLE
NEIGHBORHOOD ALLIANCE, FRIENDS OF BERRY LANE PARK, RIVER
VIEW NEIGHBORHOOD ASSOCIATION, PERSHING FIELD
NEIGHBORHOOD ASSOCIATION, SGT. ANTHONY NEIGHBORHOOD
ASSOC., GARDNER AVENUE BLOCK ASSOCIATION, LINCOLN PARK
NEIGHBORHOOD WATCH, MORRIS CANAL REDEVELOPMENT CDC,

HARMON STREET BLOCK ASSOCIATION, CRESCENT AVENUE BLOCK ASSOCIATION, DEMOCRATIC POLITICAL ALLIANCE, and FRANK E. GILMORE, hereby seek review, by way of a Petition for Certification to the New Jersey Supreme Court, of the March 12, 2024 final judgment and opinion of the Appellant Division. The final judgment and opinion rejects Appellants' challenge to the 2022 Jersey City Ward Redistricting Map ("Ward Map"), which they pled on several statutory and constitutional grounds, and remands their statutory claim pursuant to the Municipal Ward Law ("MWL") to the trial court to determine the rationality of the ward configurations in the map, without permitting Plaintiffs the opportunity for discovery nor to present expert testimony to establish whether the Map satisfies the statutory requirement of "compactness" either by employing accepted geographical-based statistical measures of compactness or principles of communities of interest and neighborhoods. The Appellate Division additionally rejected Appellants' claim that violation of the statutory "compactness" requirement could sustain a claim under the Equal Protection Clause of the N.J. Constitution and New Jersey Civil Rights Act ("CRA") and that the MWL's mandate that Commission meetings are subject to the Open Public Meetings Act requires the Commission to discuss alternative ward maps in public and not to circumvent that Act by holding "working sessions" that deliberately do not have a quorum of commissioners. This appeal involves an interpretation of first impression of the

Municipal Ward Law and presents substantive legal and policy questions of general public importance, which have not, but should be settled by the New Jersey Supreme Court.

The final opinion also rejects, at the pleading stage, Appellants' challenge to the Ward Map that raises three distinct, "substantial" questions arising under Art.1, paras. 1, 6 and 8 of the New Jersey Constitution. None of these three questions has yet been addressed by the New Jersey Supreme Court, although the same or similar questions have been addressed by the highest courts of many other states, and are as follows:

First, whether a cause of action may be maintained against a municipal ward commission that is alleged not to have complied with the MWL's compactness requirement and is thereby alleged to have deprived a municipality's residents of their substantive right to equal treatment, fair representation, and preservation of their neighborhood/community of interest in violation of Art. I, para. 1 of the New Jersey Constitution as well as in violation of the CRA.

Second, whether a cause of action may be maintained against a municipal ward commission that is alleged to have retaliated against the residents of a municipal ward (here, the residents of Jersey City Ward F and those formerly in Ward F) based on their voting record and is thereby alleged to have acted in violation

of the residents' speech and associational rights under Art. I, paras. 6 and 18 of the New Jersey Constitution as well as in violation of the CRA.

Third, whether a cause of action may be maintained against a municipal ward commission that is alleged to have retaliated against an elected official (based on his political advocacy regarding housing development and is thereby alleged to have acted in violation of the elected official's speech and associational rights under Art. I, paras. 6, and 18 of the New Jersey Constitution as well as in violation of the CRA.

Appellant Calderone submitted a Motion to Reconsider the March 12, 2024 decision on March 20, 2024; that Motion was denied with no explanation on March 25, 2024.

Respectfully submitted,

By: /s/Renée Steinhagen
Renée Steinhagen, Esq.
NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER

/s/Yale Bromberg
Yael Bromberg, Esq.
BROMBERG LAW, LLC

/s/ William C. Matsikoudis
William C. Matsikoudis, Esq.
MATSIKLOUDIS & FANCIULLO, LLC

Dated: April 11, 2024

ORDER ON MOTION

JAMES CALDERON
V.
CITY OF JERSEY CITY WARD
COMMISSION, JOHN MINELLA,
CHAIRMAN, SEAN J. GALLAGHER,
SECRETARY, AND COMMISSIONERS
DANIEL E. BECKELMAN, PAUL
CASTELLI, JANET LARWA AND
DANIEL MIQUELI

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-000560-22T2
MOTION NO.: M-003843-23
BEFORE: PART E
JUDGES: ROBERT J. GILSON
PATRICK DEALMEIDA
AVIS BISHOP-THOMPSON

MOTION FILED: 03/20/2024
ANSWER(S)
FILED:

BY: JAMES CALDERON
BY:

SUBMITTED TO COURT: March 25, 2024

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON
THIS 25th day of March, 2024, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RECONSIDERATION DENIED

SUPPLEMENTAL:

FOR THE COURT:



ROBERT J. GILSON, P.J.A.D.

L-821-22 HUDSON
ORDER - REGULAR MOTION JC