SUPREME COURT OF NEW JERSEY
Docket No. 089292

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, 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-Respondents. _____ James Calderon, Plaintiff-Petitioner, v. Jersey City Ward Commission and John Minella, Chairman, Sean J. Gallagher, Secretary, and Commissioners Daniel E. Beckelman, Paul Castelli, Janet Larwa, and Daniel Miqueli, Defendants-Respondents.		On Petition for Certification from Final Judgment of the Superior Court of New Jersey, Appellate Division Docket Nos. Below: A-0356-22 A-0560-22 Sat Below: Hon. Robert Gilson, P.J.A.D. Hon. Patrick DeAlmeida, J.A.D. Hon. Avis Bishop-Thompson, J.A.D.

MERITS BRIEF OF PROPOSED AMICI CURIAE CITY OF JERSEY CITY AND COUNCILMAN AT LARGE DANIEL RIVERA

LITE DEPALMA GREENBERG & AFANADOR, LLC
Bruce D. Greenberg (NJ ID #014951982)
570 Broad Street, Suite 1201
Newark, New Jersey 07102
Tel: 973-623-3000
bgreenberg@litedepalma.com
Attorneys for Proposed Amici Curiae
City of Jersey City and Councilman at Large Daniel Rivera

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PRELIMINARY STATEMENT

Amici Curiae City of Jersey City and Councilman at Large Daniel Rivera submit this brief to make two points in particular. Amici also join in the arguments made by defendants-respondents.

First, plaintiffs' position reflects the apparent belief that the redistricting was done to retaliate against Councilman Frank Gilmore. That is not so.

The redistricting occurred at the time required by the Municipal Ward Law ("MWL"). The timing had nothing to do with Councilman Gilmore or any particular political positions he might hold. As a result of increased population in Jersey City since the previous census, there was a 59% population deviation between the most populous and least populous wards, which if allowed to continue would have directly violated the MWL. That fact demanded a significant reconfiguration of the wards. The resulting map offers a minimal 1.8% population deviation that is well within what the MWL requires. And the redistricting was done by a Commission appointed by Governor Murphy, not by any person in power in Jersey City. By statute, those appointees serve staggered two-year terms, which are independent of any local developments such as the election of Councilman Gilmore.

Finally, the members of the Commission were dictated by the MWL. A number of those members do not live in Jersey City and thus had no reason to align with or against any particular Jersey City Councilman.

Second, plaintiffs' position that this Court should rewrite the MWL to require preservation of "communities of interest" not only ignores the law but represents bad policy, even if this Court were to enter the policy thicket as plaintiffs demand. Packing persons who hold the same view of a particular political or social issue (assuming, contrary to fact, that it were possible to identify such a "community of interest" and to disentangle it from other such purported communities) into a single ward may actually harm the ability of those persons to get their way before the Jersey City Council. It is often the case that proponents of a particular viewpoint are better served if they live in multiple districts, where more than just one ward councilman might be persuaded to adopt their political perspective. And at large Council members are more likely to agree with that position if its advocates do not live in only one part of the city.

Plaintiffs thus have a myopic view of the political interests of the citizens of Jersey City as a whole, focusing instead on plaintiffs' own narrow desires. It is no accident that Councilman Gilmore is the only elected official to complain about the redistricting, and that all other members of the Council accepted the redistricting as fair, reasonable, and in compliance with the MWL.

Plaintiffs' grievance with the redistricting attacks what this Court has recognized is a political process in which the Court has no valid role. Since the resulting ward map satisfies the three criteria that the Legislature carefully and deliberately chose to include in the MWL, this Court should not disturb that map and should dismiss plaintiffs' complaint with prejudice and without the need for any further proceedings.

ARGUMENT

POINT I

THERE WAS NO RETALIATION IN THE REDISTRICTING

Plaintiffs' perception that the map adopted by the Commission reflects a desire to get back at Councilman Gilmore ignores the larger factual and legal landscape in which the redistricting took place. A proper view of that landscape shows that there was no retaliation of any kind against Councilman Gilmore, or against other person or group.

The MWL "appl[ies] to and govern[s] any municipality having adopted a charter or form of government, or ordinance, providing that the municipality shall be divided into wards, or other similar representation districts, for the purpose of the election or appointment of any municipal officers." N.J.S.A. 40:44-10. The MWL "shall constitute the exclusive method whereby the boundaries of wards, or other similar representation districts, in municipalities shall be fixed and

determined." Ibid. Thus, the Commission was required to operate in accordance with the MWL, no matter who that statute may have favored or disfavored in this particular redistricting.

N.J.S.A. 40:44-13(c) requires that "[w]ithin 3 months following the promulgation by the Governor pursuant to law 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 [the MWL]." That provision mandated that the Commission meet and conduct a redistricting when it did. The status of Councilman Gilmore had nothing to do with that timing.

The membership of the Commission is also dictated by the MWL itself. N.J.S.A. 40:44-11 states that "[t]he members of the county board of elections of the county in which the municipality is located, together with the municipal clerk, shall constitute the ward commissioners." A different statute, N.J.S.A. 19:6-17a, requires that county boards of elections be bipartisan, evenly divided between the two parties that "at the last preceding general election, held for the election of all of the members of the General Assembly, cast the largest number of votes in this State for members of the General Assembly …." That has meant that the county board of elections has comprised even numbers of Democrats and Republicans.

Moreover, that same statute directs that members of county boards of elections "shall be legal voters of the counties for which they are respectively appointed." There is no requirement that board members other than the Municipal Clerk come from any particular municipality within a county. Indeed, the Commission here included at least three members who were not residents of Jersey City. See Certification of Councilman at Large Daniel Rivera, dated November 26, 2024, ("Rivera Cert."), ¶6.

Finally, pursuant to N.J.S.A. 19:6-18, the Board of Elections members of the Commission were appointed by Governor Murphy, not by anyone in Jersey City. The final two sentences of N.J.S.A. 19:6-18 provide that those members serve staggered two-year terms. Therefore, the identity of these Commissioners was preordained by the Legislature, and they were appointed by the Governor in accordance with the staggered terms requirement. The composition of the Commission thus had nothing to do with Councilman Gilmore or any other officeholder, candidate, or interest group. And the Commission consisted of Democrats and Republicans, citizens of Jersey City and of other municipalities, a diverse group (to say the very least), not a cabal.

As stated in the Rivera Cert., by 2020, the population of Jersey City had increased dramatically (by approximately 43,600 persons), a 17.6% increase since the previous, 2010 census. See Jersey City, NJ Population by Year - 2024 Update |

Neilsberg (last visited on November 25, 2024) (showing city's population as 248,324 in 2010 and 291,949 in 2020). Much of that population increase affected Ward E in particular. Rivera Cert., ¶5.

The effect of that was that the then-existing wards ran afoul of N.J.S.A. 40:44-14, which contains the three criteria that the Legislature requires of ward maps. In addition to mandating that "each ward is formed of compact and contiguous territory," N.J.S.A. 40:44-14 directs that:

> 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 10% 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 Federal decennial census shall be used as the population determinant.

The ward map created following the previous census reflected a 59% population deviation between the most and least populous wards (Wards D and E). Rivera Cert., ¶5. That map could not lawfully continue after the 2020 census. Instead, compliance with the MWL required a dramatically different ward map. That, too, was the product of a statutory command and had nothing to do with Councilman Gilmore or anyone's position on any political or social issue.

The Commission's map that plaintiffs attack reflects a minimal 1.8% population deviation between the most and least populous wards, comfortably within the 10% deviation that the MWL permits. That minuscule deviation makes the map an excellent one, especially since, among the three factors that the

Legislature included in the MWL, "population equality must be distinctly paramount." Jackman v. Bodine, 49 N.J. 406, 419 (1967) (comparing population equality with compactness under New Jersey Constitution provisions relating to legislative districting).

This Court has repeatedly stated in redistricting cases that "[t]he judiciary is not justified in striking down a plan, otherwise valid, because a 'better' one, in its opinion, could be drawn." Davenport v. Apportionment Comm'n, 65 N.J. 125, 135 (1974); see also Matter of Congressional Districts by New Jersey Redistricting Comm'n, 249 N.J. 561, 569 (2022) (quoting Davenport). But that is what plaintiffs demand here. The Court should affirm the rulings of both courts below that rejected that demand.

POINT II

PLAINTIFFS' FOCUS ON "COMMUNITIES OF INTEREST" IGNORES THE LANGUAGE OF THE MWL AND REPRESENTS BAD POLICY

As discussed supra, in enacting the MWL, the Legislature incorporated three guideposts: contiguity, compactness, and low population deviations. N.J.S.A. 40:44-14. Plaintiffs have insisted that the courts, now including this Court, redraft the MWL to add "communities of interest" as a factor. That is not the role of the courts, as the Court has said for over 70 years. E.g., Craster v. Board of Comm'rs, 9 N.J. 225, 230 (1952) (stating that courts "cannot write in an additional qualification which the Legislature pointedly omitted in drafting its own

enactment"); see O'Connell v. State, 171 N.J. 484, 488 (2002) ("A court may neither rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language.").

But the error of plaintiffs' position extends beyond their improper view of the law. Assuming that the Court could rewrite the MWL to incorporate "communities of interest" (and that there could be agreement on which of the many such "communities" that might be perceived should be kept together, how the members of that community should be identified, and how keeping that community together might affect other communities who might also demand to be kept together, all of which are insuperable problems), that would be bad public policy.

Plaintiffs' position comes close to requiring "packing" voters who hold a particular viewpoint on a political or social issue into a single ward. As this Court said in a different redistricting context that also involved Jersey City, "packing" "risks narrowing political influence to only a fraction of political districts." McNeil v. Legislative Apportionment Comm'n, 177 N.J. 364, 383 (2003).

"Packing" and "unpacking" (that is, distributing voters among more than one district) each has "its own array of electoral risks and benefits." Ibid. Those include enabling persons with a particular viewpoint about a political or social issue to have more influence in multiple districts, so as to potentially enhance their

ability to have their perspective adopted by the whole legislative body, not merely the representative of a "packed" district. See ibid.; see also Rivera Cert., ¶8 (noting that At Large Council members are more likely to respond to issues advanced by persons in multiple wards rather than those in only a single ward). For that reason, McNeil concluded that both the "packing" and the "unpacking" tools must be available in redistricting. See 177 N.J. at 383-84.

Plaintiffs seem to believe that changing ward boundaries means that interests will go unrepresented. This Court squarely rejected that notion in Scrimminger v. Sherwin, 60 N.J. 483 (1972). There, in the content of ignoring county lines in redistricting for the Legislature, the Court stated that "if the county is ignored in drawing district lines, its interests will not go unrepresented. A Senator must be mindful of the interests of the county or counties in which his constituents live. True, there may be exceptional situations in which there are conflicting interests within a county, but when that is so, something may well be gained by letting those diverse interests have independent voices through Senators elected in smaller one-man districts." Id. at 497. That principle applies in the MWL context as well.

"Reapportionment is essentially a political and legislative process." Davenport, 65 N.J. at 135. More recently, this Court stated that "[p]olitics and political considerations are inseparable from districting and apportionment." Matter of Congressional Districts, 249 N.J. at 567-68 (quoting Gaffney v.

Cummings, 412 U.S. 735, 753 (1973)). Only Councilman Gilmore has contested the results of the political process that resulted in the challenged ward map. All other municipal elected officials have, implicitly or explicitly, endorsed the fairness of that map. Rivera Cert., ¶7.

Judicial intervention to consider overthrowing a map that complies with the MWL is "warranted only if some positive showing of invidious discriminaton [sic] or other constitutional deficiency is made." Davenport, 65 N.J. at 135. Plaintiffs have conceded that they have no claim of invidious discrimination. Therefore, the Commission's map is "entitled to a presumption of validity." McNeil, 177 N.J. at 384; see Davenport, 65 N.J. at 135 ("The plan must be accorded a presumption of legality ….") . The map meets the three criteria stated in the MWL. This Court should uphold the map and dismiss this case without need for further proceedings.

CONCLUSION

For the reasons set forth above, amici curiae City of Jersey City and Councilman at Large Daniel Rivera respectfully submit that this Court should affirm the dismissal with prejudice of plaintiffs' Complaint by the Law Division and modify the decision of the Appellate Division to remove any requirement of further proceedings.

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LITE DEPALMA GREENBERG & AFANADOR, LLC

/s/ Bruce D. Greenberg

Bruce D. Greenberg (NJ ID #014951982)
570 Broad Street, Suite 1201
Newark, New Jersey 07102
Tel: 973-623-3000
bgreenberg@litedepalma.com

Attorneys for Proposed Amici Curiae City of Jersey City and Councilman at Large Daniel Rivera