

JAMES CALDERON,
Pro Se 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.

**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
DOCKET NO.: HUD-L-000821-22
JUDGE JOSEPH A. TURULA**

**CIVIL ACTION
Petition for Certification**

PRO SE PLAINTIFF'S PETITION FOR CERTIFICATION

Date: April 15, 2024

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SUPREME COURT
OF NEW JERSEY

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PRELIMINARY STATEMENT

The complaint in Lieu Of Prerogative Writ is made against the Jersey City Ward Commission and the named commissioners for violation of The Law. This complaint is being raised because the manipulation of redistricting governed areas, Jersey City wards in this case, by individuals and the institutions entrusted to these individuals, is unlawful and deserves to be confronted. As a resident of Jersey City, N.J., Plaintiff has the right for government institutions and the individuals in their capacities to follow The Law. As a person born in the City of Liberty, Jersey City, it is an obligation to stand-up against those that would want to corrupt our institutions and the rights of the residents of our city. The complaint brought in front of the Hudson County Vicinage-Law Division, was for the court to hear our complaint and allegations of unlawful actions by the Jersey City Ward Commission and the named commissioners that decided to violate the law and in turn the rights of the residents. Upon receipt of the complaint the Defendants filed a motion to dismiss.

The complaint alleges the Jersey City Ward Commission and the named commissioners violated the law of the Open Public Meeting Act N.J.S.A. § 10:4-7 (OPMA) and the Municipal Ward Law N.J.S.A. § 40:44-14 (MWL). The allegations stem from the Jersey City Ward Commissioners' vote on a ward map that was not created in the purview of the public as required by law and proven by the

minutes of every public meeting held by the Jersey City Ward Commission and the named commissioners (See Appellate Division Appendix: Exhibit F, Pa224-232). The fact that the map was voted on without the “**public business**” being conducted in accordance with the OPMA is supported by DeFalco Instant Towing, Inc. v. Borough of New Providence, 380 N.J. Super. 152, 881 A.2d 745 (2005). Which states any vote conducted on business not substantiated by the minutes of said public bodies meeting is capricious, unreasonable and arbitrary.

The complaint alleges a second unlawful act: violation of the MWL, a legislative statute that dictates the boundaries of representation of municipal wards. The MWL has a three-prong mandate, to be: 1) contiguous; 2) compact; and 3) for population deviation not to be more than a 10% difference between the most populous ward and the less populous ward (N.J.S.A. § 40:44-14). The Jersey City Ward Commission and named commissioners violated the MWL by creating boundaries that did not meet the mandate of compactness.

On August 5, 2022 the Superior Court held Oral Arguments (See August 5, 2022 Trial Court Oral Argument Transcript, Ex. B) and provided an Oral Opinion on August 25, 2022 (See August 25, 2022 Trial Court Oral Opinion Transcript, Ex. C). The Superior Court made errors that included allowing certifications from each commissioner (Ex B at 13:7-11) and then delivering an opinion to dismiss the complaint on the premise that these certifications are not “considered” in its

decision. (Ex B at 13:5-11). Rule 4:6-2(e) is clear, “*matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable notice of the court’s intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion,*” and was ignored or violated by the Superior Court and again by the Appellate Division:

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 judgement on OPMA claims**, the commission was still entitled to dismissal of those claims.

(See March 12, 2024 Appellate Division Opinion, Ex. A at 26).

Plaintiff’s right to address the “summary judgment” was ignored by both the Superior Court and then by the Appellate Division. Rule 4:6-2 (e) gives specific actions, including giving all parties reasonable notice of this decision. Each court violated this Rule at the expense of Plaintiff’s rights.

On March 12, 2024 the Appellate Division published its opinion on the errors made by the Superior Court that were raised in Plaintiff’s appeal filed February 22, 2023. (Ex. A.) The first error of the Superior Court was to ignore the statutory mandates of the OPMA that defines Public Business as acts to be done in the public purview, including the creation of the Ward Map of Jersey City. Including the error

to make a summary judgment, which the Appellate court agreed was done, “consideration of those certifications effectively converted the motion to dismiss into a motion for summary judgment on OPMA claims” yet gave no remedy to this violation. (Ex. A at 26).

The second error of the Superior Court was again the ignorance of the Municipal Ward Law. The court stated the wards are compact (Ex. C, 18:17) without giving any reasoning or reasonable proof of compactness, aside from saying “...the new wards are compact.” (Ex. C, 18:17). In Pro Se Plaintiffs’ Memorandum of Law in opposition to Defendant’s Motion to dismiss the Complaint, the Superior Court was provided with United States Supreme Court cases such as Bush v. Vera, 517 U.S. 952 (1996) giving precedence on what is considered non-compact districts, gerrymandering and typical violations of compactness, such as bizarrely shaped districts. In the same Memorandum the Court was provided a NJ Supreme Court decision that gave direct opinions that “horseshoe shaped and L shaped districts are not acceptable” Jackman v. Bodine, 49 N.J. 406, 419 (1967). The Superior Court agreed that Ward F and A are “shaped as a horseshoe or as an L as it is here,” (Ex. C, 18:20-21) yet ignored the opinion of the NJ Supreme Court.

In the opinion of the Appellate Division, the first error brought forth in Plaintiff’s Appeal brief, was ignored. The Appellate Division did not address Plaintiff’s claim that the OPMA was violated because “public business” was not

conducted in accordance with the law (See Pro Se Plaintiffs' Appellate Division Brief, Ex. D, at 11). The opinion never mentions the claim that ward map drawing is "Public Business" as defined in the OPMA (Ex. A). The court reiterated the Superior Court's error and ignored the statutory mandate of the OPMA, that "public business must be held in a public meeting." (N.J.S.A. § 10:4-17).

The second error brought forward in Plaintiff's appeal brief was remanded back to the Superior Court, with unjustified limitations. The Appellate Division did give definition to compactness (Ex. A, at 17) but then ignored the definition and diverted to the rationale of the Ward Commissioners as possible proof of Compactness (Ex. A, at 20). It is the duty of the court in accordance with the Constitution of New Jersey to interpret the laws created by the Legislature. (N.J. Const. art. III, § 1). In this opinion the Appellate Division does not fulfill its duties, instead they remand the complaint with irrational limits that impede the execution of the law. In order for the law to be enforced, which is what Plaintiff seeks, it must be interpreted and understood. Neither the Superior Court or Appellate Division fulfill their duties on an important matter that affects the residents of the second largest city in the state.

QUESTION PRESENTED

Does the Constitution of New Jersey matter?

The Constitution of New Jersey in Article III created three branches of government: Executive, Legislative and Judicial. (N.J. Const. art. III) The Constitution states “all political power is inherent in the People.” (N.J. Const. art I. § 2). The People of Jersey City made a strong show of power on January 22, 2022 when hundreds attended the Ward Commission’s third public meeting and voiced their desire for a map that was legal. Plaintiff’s complaint brought this inherent political power to the Judicial Branch for interpretation of the MWL and the OPMA to enforce the law. (Ex. F, Pa3-31). The Constitution of New Jersey states that “no person shall be denied the enjoyment of any civil right, nor be discriminated against in the exercise of any civil right.” (N.J. Const. art. I §5) It is a civil right to have the branches of government serve out their duties. The Constitution of New Jersey gives “the people the right freely to assemble together, to consult for the common good, to make known their opinions to their representative and to **petition for redress of grievances.**” (N.J. Const. art. I §18) This Petition to the highest court in the State of New Jersey is to have the government, specifically the Judicial Branch, redress Plaintiff’s grievances. Plaintiff’s grievances are clear: the Jersey City Ward Commission violated the OPMA and MWL. It is the court’s duty to listen, not ignore as the Superior Cour and Appellate Division have done, Plaintiff’s grievances and

address them. It is a Constitutional Right. The question to this court remains, “Does the Constitution of New Jersey matter?” Plaintiff believes the Constitution of New Jersey is the guiding light and north star of the People and the Law.

ERRORS BY THE SUPERIOR COURT AND APPELLATE DIVISION

The Trial Court Erred in its decision to dismiss the first count of the complaint, violation of the OPMA, by ignoring statutory mandates and creating facts that were not substantiated, while ignoring Plaintiff’s standard of review in its opposition of the Motion to Dismiss. (Ex. C 11:19-25, 12:1-2, 13:5-11).

The Trial Court Erred in its decision to dismiss the second count of the complaint, Violation of the Municipal Ward Law, by ignoring statutory mandates, case law precedents and creating facts that were not substantiated. (Ex. C, 18:8-25, 19:1-17)

The Appellate Division erred in its decision to ignore Plaintiff’s first count in regard to the OPMA. The definition of “public business” was not addressed. (Ex. A) Plaintiff’s allegation that the “public business” of creating a ward map was not done in the public purview was ignored (Ex F, Pa5-8). Plaintiff claims that drawing of the Ward Map is “public business” as defined by the OPMA (N.J.S.A. § 10:4-17). A claim that has not been addressed by the lower courts.

The Appellate Division erred again in its inability to interpret the statute of the MWL. In their opinion, the Appellate Division correctly states that the MWL is

a statute, yet continues in their opinion to grant it Constitutional consideration. The opinion states:

[R]ecognizing that the Constitution governs State Legislative and congressional district, the Court has held that commissions that adopt redistricting and reapportionment plans are not subject to normal arbitrary, capricious, and unreasonable standard generally used to evaluate agency actions.” Establishment of Cong Dists. 249 NJ at 576-77. Instead, courts are limited in determining whether redistricting plan is ‘unlawful or reflects invidious discrimination.’ Id.

(Ex. A, at 18) The Appellate Division’s statement above shows their error clearly. First, Plaintiff’s complaint, unlike in Cong. Dists. by N.J. Redistricting Comm'n, 249 N.J. 561 (App. Div. 2022), does claim that the Ward Map is **unlawful** and that the commissioners committed a crime by violating the law. Second, in Cong. Dists. by N.J. Redistricting Comm'n, the **redistricting commission in the case held ten public meetings, received submissions and draft maps from the public.** This case had different aspects than Plaintiff’s complaint. **Plaintiff’s complaint alleges that the map is unlawful, the MWL is a statute not a constitutional mandate, and the Jersey City Ward Commission did not have public meetings to discuss the redistricting and creation of the Ward Map.**

REASONS TO ALLOW CERTIFICATION

Certification of Plaintiff’s petition must be allowed as redistricting is an important function of the government that affects the greater public, in this case the People of Jersey City. The idea of “compactness” in redistricting of wards **should**

not be an elusive concept. There are clear definitions established by the United States Supreme Court and the New Jersey Supreme Court on what is a bizarrely shaped district, or non-compact district (Bush v. Vera, 517 U.S. 952 (1996); Jackman v. Bodine, 49 N.J. 406, 419 (1967)). The Illinois Supreme Court offers a clear definition of the concept (Ex. F, Pa198-199). And the dictionary gives us a textbook definition that can be adopted (Ex. A, at 17). This petition is an opportunity for the New Jersey Supreme Court to lay the translation for this important statute that will affect future generations and correct the unlawful actions of the Jersey City Ward Commission and named commissioners.

COMMENTS ON THE APPELLATE DIVISION'S OPINION

AND CONCLUSION

The Appellate Division's opinion along with the Superior Court's opinion is riddled with errors. Each opinion violated Rule 4:6-2(e), by allowing a Summary Judgment without the proper due process. Neither the opinion of the Trial Court or the Appellate Division made a justifiable attempt to define compactness and in turn did not address the violation of the MWL. Lastly, neither opinion addressed the definition of "public business" as it relates to the law commonly known as the OPMA. The rule of law is foundational to a just and righteous society. When public stewards violate the law, they are to be confronted and our system of governance should make every attempt to rectify the criminal actions perpetrated by such

individuals. Plaintiff requests that the Supreme Court of New Jersey grant the certification and bring justice to this public matter.

Respectfully Submitted,



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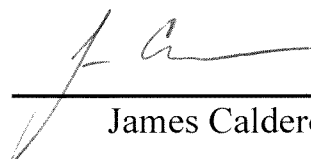
Date April 15, 2024

CERTIFICATE OF GOOD FAITH

On April 15, 2024, Plaintiff filed Petition for Certification to the New Jersey Supreme Court in good faith and not for the purpose of delay.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: March 20, 2024

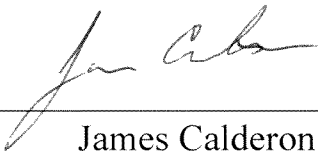

James Calderon

CERTIFICATE OF SERVICE

On April 15, 2024, Plaintiff served Defendants via their counsel in person by hand delivery to Counsel's office at 494 Broad St, 5th floor Newark, NJ 07102 two (2) copies of brief and Appendix.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 15, 2024



James Calderon