

**SUPREME COURT OF NEW JERSEY**  
**Docket No. 089292**

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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 Association, Gardner Avenue Block Association, Lincoln Park Neighborhood Watch, Morris Canal Redevelopment CDC, Harman Street Block Association, Crescent Ave. 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

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James Calderon,  
Pro Se 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,

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Defendants-Respondents.

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**CIVIL ACTION**

**ON CERTIFICATION TO THE  
SUPERIOR COURT OF NEW JERSEY,  
APPELLATE DIVISION  
Docket No. A-0356-22  
Docket No. 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.**

**BRIEF OF AMICI NEW JERSEY LEAGUE OF MUNICIPALITIES, NEW JERSEY  
ASSOCIATION OF COUNTIES AND NEW JERSEY INSTITUTE OF LOCAL  
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### **STATEMENT OF FACTS**

In the interests of brevity, Amici New Jersey League of Municipalities, New Jersey Association of Counties and New Jersey Institute of Local Government Attorneys adopt the Statement of Facts in the brief filed by Defendants-Respondents in opposition to the grant of certification in this matter.

### **PROCEDURAL HISTORY**

In the interests of brevity, Amici New Jersey League of Municipalities, New Jersey Association of Counties and New Jersey Institute of Local Government Attorneys adopts the Statement of Procedural History in the brief in the brief filed by Defendants-Respondents in opposition to the grant of certification in this matter.

### **PRELIMINARY STATEMENT**

The Court's grant of certification in this matter, result in 3 open issues:

- Whether defendants violated the Municipal Ward Law because wards were not compact; and as a result.
- the ward design violated the equal protection provision of the New Jersey Constitution; and
- the defendants had violated the New Jersey Civil Rights Act by depriving the plaintiffs of their "rights to reside in ... wards that consist of compact territory that preserves their communities of interest" and their ability to elect representatives of their choice and by retaliating against plaintiff Gilmore "for his campaign advocacy around affordable housing, gentrification and displacement by removing a significant number of his supporters" from the ward Gilmore previously represented.

There is no claim in this matter of invidious discrimination or gerrymandering based on political party affiliation. It is Amici position that the Appellate Division answered all 3 questions correctly.

## **ARGUMENT**

### **POINT 1**

**THE APPELLATE DIVISION CORRECTLY DETERMINED THAT THE WARD COMMISSION CREATED COMPACT DISTRICTS THAT ARE NOT IN VIOLATION OF THE MUNICIPAL WARD LAW.**

*N.J.S.A. 40:44-10*, et seq., the Municipal Ward Law, governs the creation of wards in various municipalities and counties in New Jersey. It is the exclusive method of fixing the ward boundaries. *N.J.S.A. 40:44-10*.

The Municipal Ward Law, *N.J.S.A. 40:44-14* imposes 3 requirements. 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).

There is no question that the wards established by the defendant Ward Commission are contiguous and that they satisfy the requirement that the population of the most populous ward be within 10% of the population of the least populous ward. Therefore, the only issue as to compliance with the Municipal Ward Law is whether or not the wards are “compact.”



Since there is no explicit definition of the term “compact” in the statute, recourse must be made to the traditional methods of statutory interpretation.

The starting point for interpretation is the statutory language. Words in a statute should be given their ordinary meaning and significance, *Lane v. Holderman*, 23 N.J. 304, 313(1957).

“When the Legislature expresses its will -- and its policy preferences -- through the plain language of a statute, the role of [the] Court is not to paste in a judicial exception because the result in a particular case does not seem desirable.”

*Voss v. Tranquilino*, 206 N.J. 93, 96 (2011)(Albin, J., dissenting)(emphasis added).

The court should not “rewrite a clear and unambiguous statute under the assumption that the Legislature did not mean what it said.”*Id.* The trial court should not read into the statute additional qualifications based purely upon the court’s subjective policy considerations, which must necessarily be based on the “assumption that the Legislature did not mean” to limit the obligation. *Voss, supra*, at 96. The court's sole function is to enforce the statute in accordance with those terms.” *State v. Olivero*, 221 N.J. 632, 639 (2015) (internal citations omitted).

Where the statutory language is clear and unambiguous, and susceptible to only one interpretation ....” a court should not “resort to extrinsic interpretative aids.” *Lozano v. Frank DeLuca Const.*, 178 N.J. 513,

522 (2004) (internal quotations omitted). Where the statutory language could lead to more than one plausible interpretation, the court may consult extrinsic evidence, “including legislative history, committee reports, and contemporaneous construction.” *Cherry Hill Manor Assocs. v. Faugno*, 182 N.J. 64, 75 (2004) (internal quotations omitted).

The Appellate Division recognized that the Municipal Ward Law does not contain a definition of the term “compact.” The Appellate Division then correctly looked to the plain meaning of the word, finding:

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).

See 478 N.J. Super. at 148.

The Appellate Division went on to cite the Supreme Court’s decision in *Davenport* 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.” *Id.* at 148, citing *Davenport*, 65 N.J. at 133.

Plaintiffs have advocated the use of various statistical measurements to create a quantifiable measure of “compact.” The Municipal Ward Law does not require, or even mention, use of any of those statistical measures. The Court has already cautioned against reliance on computers, and necessarily the impact of computer-driven statistical measurements, writing:

Computer made plans, all mathematically perfect and doubtless numbering in the thousands, would still be keyed to instructions the computer cannot supply. *Jackman v Bodine*, 55 N.J. 371, 379 (1970).

There is no basis for the Court to find the Commission's determination to refrain from use of those statistical measures renders the wards other than compact.<sup>1</sup>

Plaintiffs further advocate that the Court read into the term "compact" a consideration of an amorphous concept called "communities of interest" and find that the division of a "community of interest" negatively impacts the status of award as "compact."

To the contrary, there is nothing in the plain language of the Municipal Ward Law which infuses a requirement that a Ward Commission follow undetermined lines of "communities of interest."

The Appellate Division applied a commonsense approach to compactness. It recognized that "...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

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<sup>1</sup> The Appellate Division expressly and correctly rejected the use of the statistical measurements, 478 N.J. Super. at 150.

whether there is a better or more compact configuration.”<sup>2</sup> *478 N.J. Super. at 149*. This is consistent with the Court’s comment in *Davenport* cautioning that the court’s role in an apportionment dispute is limited. *Infra. at pg. 8*.

While there may be policy arguments for and against consideration of “community of interest” in ward boundaries, those policy arguments are for the legislature. To mandate a controlling consideration of an undefined “community of interest” into the work of the Commission distorts the process of creating geographically compact, contiguous, population equivalent wards.

Where does the Ward Commission draw the “community of interest” line? Who determines whether a particular “community” is of sufficient importance to be considered? What weight does the Commission give to one “community” over another? What rights does a disaffected “community” have to challenge the process? How can the Commission even consider that concept? How will the court review compliance with the newly created “community of interest” mandate in view of the Supreme Court’s determination that redistricting or reapportionment plans are not subject to the common standard used in review of agency determinations, i.e., arbitrary,

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<sup>2</sup>The Appellate Division expressly and correctly rejected the consideration of vague standards such as “community of interest” *478 N.J. Super. at 150*.

capricious, and unreasonable. *In re Establishment of Cong. Dists.*, 249 N.J. 561, 576-567 (2022).

The Appellate Division recognized this difficulty, writing that courts have a “limited” role in determining challenges to districting, citing to *Davenport*, 65 N.J. at 135, and that “[p]olitics and political considerations are inseparable from districting and apportionment.” Again citing *Davenport*, 65 N.J. at 134 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 753, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973)):

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, 93 S.Ct. 2321).]

478 N.J.Super. at 149.

The foregoing amply supports the Appellate Division’s conclusion that a challenge to the Commission’s outcome:

“...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 Municipal Ward Law.” 478 N.J. Super. at 149.

The Appellate Division's limited remand<sup>3</sup> would allow for the Ward Commission to assert the rational basis for the boundaries.

## **POINT 2**

### **PLAINTIFFS HAVE NO COGNIZABLE EQUAL PROTECTION RIGHT WHICH HAS BEEN VIOLATED.**

Plaintiffs claim that the boundaries drawn by the defendant Ward Commission deprive them of their right to vote in violation of the New Jersey (but not Federal) constitution because the ward boundaries lead to “the unnecessary splitting of neighborhoods and other communities of interest” into different wards; although there is no allegation or evidence of any racial or other invidious discrimination.

While there is no explicit equal protection right in the New Jersey Constitution, that right is based upon Article I, Paragraph 1 of the New Jersey Constitution:

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.

*McKenney v. Byrne, 82 N.J. 304 (1980).* The equal protection right recognized by the New Jersey constitution is not co-terminus with the

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<sup>3</sup> See *infra*. at page 11, note 4.

corresponding Federal right under the 14th Amendment. *Planned Parenthood of NJ v. State*, 75 N.J. 49 (1977).

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 America.*, 178 N.J. 460, 472, (2004)

Like zones established under the Municipal Land Use Law, a ward must have boundaries. Moreover, it is obvious that person A in zone X, simply by being in zone X, is treated differently from person B in zone Y; if for no other reason than they are in different zones with different regulatory impositions. However, being different is not the determinative factor. There must be some invidious discrimination shown. None is here.

While New Jersey recognizes a right to vote, *Asbury Park Press, Inc v. Woolley*, 33 N.J. 1 (1960), the Court has recognized that legislation may provide for reasonable regulation of that right. *Gangemi v. Berry*, 25 N.J. 1 (1957). The allowance for reasonable regulation is consistent both the balancing test and the focus test used by the court in determining whether the equal protection rights have been violated.

The interest allegedly denied, the right to vote for a favored candidate, is a function of line drawing. It is conceivable, even likely, that someone will

always be on the side of the line that prevents that person from voting for his or her favorite candidate. In the absence of some prohibited, invidious reason for the line, the balance falls in favor of the reason of the line, and thus the reason of the ward boundary.

This analysis is supported by the widely accepted presumption that legislative enactments are presumed valid, and the burden is on the challenger to prove in validity. *Valmohos v. Maren Engineering Corp.*, 83 N.J. 282 (1980) *vacated on other grounds*, 455 U.S. 985, 112 S.Ct. 1605, 71 L.Ed. 2d 844 (1982).

Here, the actions of the ward commission are, on their face, presumed, reasonable, and valid. The limited remand ordered by the Appellate Division directly addresses that issue.<sup>4</sup>

There is no equal protection violation.

## **POINT 2**

**PLAINTIFFS' CLAIM THAT THE WARD BOUNDARIES ARE THE RESULT OF RETALITON AGAINST PLAINTIFF GILMORE ARE SPECULATION AND NOT ACTIONABLE.**

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<sup>4</sup>The Appellate Division remanded the matter for a “focused and limited proceeding on whether the Commission had a rational basis for the ward boundaries and map it adopted”, without discovery or depositions. 478 N.J. Super. at 156.



Plaintiffs assert that the Ward Commission retaliated against Gilmore by creating ward boundaries which moved Gilmore supporters, federal opportunity zones and proposed or approved development projects out of Gilmore's ward. They contend this so-called retaliation violates plaintiffs' rights to select their chosen representative guaranteed by the New Jersey Constitution's free speech and assembly clauses which provide:

"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.*

and

"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.*

As the Appellate Division recognized, the modification of ward boundaries does not remove the plaintiffs' rights to oppose and or support candidates for office and public issues. *478 N.J. Super. at 152.* Plaintiffs had the same rights before and after the ward boundaries were adjusted.<sup>5</sup>

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<sup>5</sup> There is no issue in this case that the Ward Commission deliberately diluted the voting power of any identifiable group, proof of which might give rise to a legitimate retaliation claim.

**POINT 4**

**THE ABSENCE OF ANY VIOLATION OF AN IDENTIFIABLE RIGHT BY THE WARD COMMISSION'S ACTIONS RESULTS IN NO BASIS FOR RELIEF UNDER THE NEW JERSEY CIVIL RIGHTS ACT.**

Plaintiffs that the Ward Commission's actions deprived them of the equal protection of the laws and their rights of free association under the New Jersey constitution.

The New Jersey Civil Rights Act, *N.J.S.A. 10:6-1 et seq.*, does not create any substantive right. Instead, it provides a mechanism to enforce rights that are otherwise created and that are not protected under the federal Civil Rights Act. *Winberry Realty Partnership v. Borough of Rutherford*, 247 N.J. 165, 183 (2021). To award relief under the New Jersey Civil Rights Act, the court must find:

- the legislature intended the statute to confirm a benefit on an individual, *Tumpson v. Farina*, 218 N.J. at 475–477.
- the right is not so vague and amorphous so as to strain judicial competence, *Tumpson, supra.* at 475,
- the statute unambiguously imposes a binding obligation on the government entity, *Harz v Borough of Spring Lake*, 235 N.J. 317, 330 (2018) and

- the alleged right must be substantive, not procedural, *Tumpson, supra., 218 N.J. at 478, Harz, 234 N.J. at 332.*

A substantive right is one in which the rights and duties may give rise to a cause of action. A procedural right is one in which the manner and means by which rights and duties are enforced. *Harz, supra. at 332.*

As described above, none of those “rights” which plaintiffs claim were violated are substantive rights. In the absence of that, there can be no New Jersey Civil Rights Act remedy. The Appellate Division was correct in dismissing Plaintiffs’ claims.

Moreover, care must be taken in expanding the concept of “substantive rights” in this context. The Ward Commission’s obligation to act is triggered by the federal census, establishing certain time frames for Commission action. See *N.J.S.A. 40:44-13.c* (the commission must meet and determine the ward boundaries within 3 months of receipt by the Governor of the latest census). Even if plaintiffs’ asserted “community of interest” requirement is read into the statute, the Ward Commission's duty to determine ward district boundaries is time sensitive, fact sensitive, highly discretionary and, as the Supreme Court has recognized already, essentially a political and legislative process. *Supra. at page 14.*

There is no evidence that the legislature intended to provide a private right of action in the Municipal Ward Law. Moreover, the actual ward boundaries are subject to discretion, not mandatory outcomes.

Under similar circumstances, the court has already determined that New Jersey Civil Rights Act based relief is inappropriate. In *Gannett Information Systems v. Township of Neptune*, 254 N.J. 242 (2023), the Court refused to create an exception to the so-called American Rule regarding counsel fee awards under the common law right of access to government records. The Court noted that the common law right of access commonly requires a balancing of various interests and a “nuanced determination.” *Id.* at 264. The court wrote: “[W]hen a public entity undertakes the balancing analysis required by our decisions ..., it should be permitted to formulate a good-faith legal position on the disputed information and to litigate that position, without the risk of an award of attorneys’ fees in the event that a court later rejects it. *Id.* at 265. The actions required of the Ward Commission call for no less of a nuanced determination and the Ward Commission is entitled to no less deference.<sup>6</sup>

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<sup>6</sup> The provision for attorney’s fee awards in the New Jersey Civil Rights Act raises a troubling question. The Ward Commission is not an agency of the local government or of the county. Instead, it is a hybrid composed of the members of the County Board of Elections and the municipal clerk. *N.J.S.A. 40:44-11*. The Board of Elections is a bipartisan office, *N.J.S.A. 19:6-17*. The

## CONCLUSION

For the foregoing reasons, the court should affirm the Appellate Division.

Respectfully submitted,

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state attorney general's office represents the Board of Elections in litigation. See, for example, *Trainor v. Burlington County Board of Elections*, 200 N. J. Super. 288 (Law Div 1984). The county is required to fund the budget for the Board of Elections, *N.J.S.A. 19:6-21*. At the same time, however, the Municipal Ward Law provides that the expenses of the Commission should be paid by the municipality. *N.J.S.A. 40:44-12*. In the end, if the Civil Rights Act is applicable to the Ward Commission's acts, and if an attorney fee award is made under the Civil Rights Act against the Ward Commission, who pays? Neither the municipality nor the county played any role in the actions or inactions of the Ward Commission. The policy behind the attorneys' fee awards, to deter violations, would not be advanced by either paying. Query: is the State obligated to pay?