FILED, Clerk of the Supreme Court, 05 Dec 2024, **089292**

IN THE 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, 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.

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
Docket No. A-0356-22

Sat Below:

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

CIVIL ACTION

FILED, Clerk of the Supreme Court, 05 Dec 2024, **089292**

DEFENDANTS-RESPONDENTS' OPPOSITION TO BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

MURPHY ORLANDO LLC
Jason F. Orlando, Esq. (Atty# 016482000)
494 Broad Street, 5th Floor
Newark, New Jersey 07102
(201) 451-5000
jorlando@murphyorlando.com

Attorneys for Defendants-Respondents

On the Brief:
Jason F. Orlando, Esq. (Atty# 016482000)
John W. Bartlett, Esq. (Atty# 023042001)
Tyler Newman, Esq. (Atty# 335762021)
Mallory B. Olwig, Esq. (Atty# 467232024)

FILED, Clerk of the Supreme Court, 05 Dec 2024, **089292**

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

ARGUMENT 2

I. THIS COURT HAS A LONG HISTORY OF INTERPRETING COMPACTNESS; ONE-PERSON, ONE-VOTE; AND COMMUNITY INTEREST IN THE APPORTIONMENT PROCESS. 2

II. THE ACLU MISSTATES THE APPELLATE COURT'S ANALYSIS....16

III. THIS COURT SHOULD AFFIRM THE DISMISSAL OF PLAINTIFFS' COMPLAINTS 21

CONCLUSION 25

FILED, Clerk of the Supreme Court, 05 Dec 2024, **089292**

TABLE OF AUTHORITIES

Federal Cases

Abrams v. Johnson, 521 U.S. 74 (1997) 21

Allen v. Milligan, 599 U.S. 1 (2023) 21

Asgrow Seed Co. v. Winterboer, 513 U.S. 179 (1995) 17

Avery v. Midland Cnty., Tex., 390 U.S. 474 (1968) 5, 15, 19, 21

F.D.I.C. v. Meyer, 510 U.S. 471 (1994) 17

Reynolds v. Sims, 377 U.S. 533 (1964) .... *passim*

Rucho v. Common Cause, 588 U.S. 684 (2019) 23

Wright v. Rockefeller, 376 U.S. 52 (1964) 22

State Cases

Ariz. Minority Coal. For Fair Redistricting v. Ariz. Indep. Redistricting Comm’n, 121 P.3d 843 (Ariz. Ct. App. 2005) 21, 22

Atlantic City Racing Ass’n v. Att’y Gen., 98 N.J. 535 (1985) 7

Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So.3d 335 (Fla. Dist. Ct. App. 2023) 21

C.R. v. M.T., 257 N.J. 126 (2024) 17

Davenport v. Apportionment Comm’n, 63 N.J. 125 (1973) 15, 19, 20

Davenport v. Apportionment Comm’n, 65 N.J. 125 (1974) .... *passim*

Farmers Mut. Fire Ins. Co. of Salem v. N.J. Property-Liability Ins. Guar. Ass'n, 215 N.J. 522 (2013) 14

Goyco v. Progressive Insurance Co., 257 N.J. 313 (2024) 17

Jackman v. Bodine, 43 N.J. 453 (1964) .... *passim*

Jackman v. Bodine, 49 N.J. 406 (1967) .... *passim*

Jersey City United Against the New Ward Map v. Jersey City Ward Comm'n, 478 N.J. Super. 132 (App. Div. 2024) 11, 13, 18, 25

In Re Cong. Dists. by N.J. Redistricting Comm'n, 249 N.J. 561 (2022) 24

McNeil v. Leg. Apportionment Comm'n, 177 N.J. 364 (2003) .... *passim*

Scrimminger v. Sherwin, 60 N.J. 483 (1972) .... *passim*

Stephenson v. Bartlett, 582 S.E.2d 247 (N.C. 2003) 21, 22

Statutes

N.J.S.A. 40:44-9 .... 3, 14, 16

N.J.S.A. 40:44-14 .... 7, 14, 19, 20

N.J.S.A. 40:44-15 24

Constitutional Provisions

N.J. Const. art. IV, § II, ¶ 3 .... 6, 7, 14, 19

Other Authorities

Alan J. Karcher, New Jersey's Multiple Municipal Madness (Rutgers Univ. Press 1998) 4

FILED, Clerk of the Supreme Court, 05 Dec 2024, **089292**

Inventory of Municipal Forms of Gov't in New Jersey, RUTGERS (Sept. 2011), https://njdatabook.rutgers.edu/sites/njdatabook.rutgers.edu/files/documents/inventory_of_municipal_forms_of_government_in_new_jersey.pdf 23

Larry M. Eig, Congressional Research Service, Statutory Interpretation: General Principles and Recent Trends (2014) 17

List of Neighborhoods in Jersey City, New Jersey, WIKIPEDIA (last visited Dec. 2, 2024), https://w.wiki/CGtJ. 11

PRELIMINARY STATEMENT

To accept the ACLU's position—that communities of interest must not only be considered but preserved during municipal redistricting—would represent an undemocratic and potentially unconstitutional step backwards. Indeed, in 1964, the United States Supreme Court and the New Jersey Supreme Court both held (Reynolds v. Sims and Jackman v. Bodine, respectively) that legislative schemes based on communities of interests (i.e., a county-based system here in New Jersey) violated the Fourteenth Amendment of the United States Constitution because they failed to advance the "one-person, one-vote" principle. Here, Plaintiffs and the ACLU seek to turn back more than sixty years of precedent from this Court that establishes—unequivocally—that one-person, one-vote is the guiding star for all redistricting questions. Notably, not once does the ACLU discuss the one-person, one-vote principle or population deviation in its brief. Instead, the ACLU advocates for a return to a redistricting system and principles that were used to disenfranchise urban areas throughout this State by prioritizing "communities of interest" (i.e., counties) over the one-person, one-vote principle.

Not only is the prioritization of "communities of interest" undemocratic, but it is also unworkable in the context of a municipal districting. A community of interest is, historically, defined by political boundaries. Municipal

corporations and counties, for example, are often said to be "communities of interest." Jackman v. Bodine, 43 N.J. 453, 462-63 (1964) ("The citizens of each county have a community of interest by virtue of their common responsibility to provide for public needs and their investment in the plants and facilities established to that end."); Davenport v. Apportionment Comm'n, 65 N.J. 125, 129 (1974) ("[I]n this State the county had always been a traditional political subdivision and that its citizens had a community of interest in government matters . . . ."). Here, however, there is no such objective political boundary within the City of Jersey City to objectively define a "community of interest." Tellingly, the ACLU does not offer a definition of a community of interest, how the boundaries, if any, of such community would be identified, or who would even do the defining. But this is not surprising because, absent objective political boundaries, there are infinite ways in which a community of interest could be defined and setting forth such a subjective standard is an impractical, if not impossible, task.

ARGUMENT

I. THIS COURT HAS A LONG HISTORY OF INTERPRETING COMPACTNESS; ONE-PERSON, ONE-VOTE; AND COMMUNITY INTEREST IN THE APPORTIONMENT PROCESS.

As this Court has instructed, any analysis of a re-districting plan "must begin with a historical review . . . because, as Justice Oliver Wendell Holmes

said, 'a page of history is worth a volume of logic.'" McNeil v. Legis. Apportionment Comm'n, 177 N.J. 364, 372 (2003) (citation omitted). In its brief, the ACLU fails to appreciate, understand, or address the six-decades-long history of this Court's consistently applied precedent concerning the meaning of compact in the redistricting context and relevance—or lack thereof—of other redistricting concepts such as so-called "communities of interest."

To succeed where the ACLU fails, it is important to understand the history and context that informed the Legislature's understanding of apportionment principles when it passed the Municipal Ward Law ("MWL") in 1981. N.J.S.A. 40:44-9 to -18. Prior to 1964, New Jersey had a county-based legislative scheme. Jackman, 43 N.J. 453 at 458-59 [hereinafter Jackman I]. This meant that each county—regardless of population—had one senator and at least one assemblyperson, with there being no more than sixty assembly people for the entire State. Thus, New Jersey's legislative apportionment scheme was similar to the federal government's: each county, like each state, had a fixed number of senators regardless of population, while membership in the Assembly, similar to membership in the House of Representatives, was apportioned based upon population subject to the requirement that each county have at least one Assemblyperson (as each State in the union has at least one Member of the House of Representatives). Id. at 459.

This system disenfranchised residents and voters in more populous counties. For example, it gave Salem County as much say in the Senate as the far more populous Essex County. As former Assembly Speaker Alan J. Karcher noted in his classic text, New Jersey's Multiple Municipal Madness, this representative inequity led to the plundering of, and discrimination against, New Jersey's cities. Alan J. Karcher, New Jersey's Multiple Municipal Madness, 133-44 (Rutgers Univ. Press 1998). As Karcher explained, "[t]he cities were grossly under- represented and the rural counties unfairly overrepresented in the legislature until 1966, by which time it was too late." Id. at 138. Indeed, problems that ravage the State to this day, such as affordable housing and school funding, can be traced to the Legislature being districted based, not on population equality, but on the community of interest of counties. See id. ("New Jersey's blind adherence to the proposition that cows and pine trees deserved the same political power as people not only tainted the legislative policy . . . but also doomed any chance that New Jersey might have had to foster a city of national stature.").

In 1964, in Reynolds v. Sims, 377 U.S. 533 (1964), the United States Supreme Court struck down state legislative apportionment schemes that were not based on population equality:

> We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both

> houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.
>
> [377 U.S. at 531.]

Notable for purposes of this matter, in Avery v. Midland Cnty., Tex., 390 U.S. 474 (1968), the United States Supreme Court applied Reynolds and the one-person, one-vote principle to county and municipal governments:

> When the State apportions its legislature, it must have due regard for the Equal Protection Clause. Similarly, when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, school board, or county governing board are elected from districts of substantially unequal population.
>
> . . . We therefore see little difference, in terms of the application of the Equal Protection Clause and of the principles of Reynolds v. Sims, between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties.
>
> [390 U.S. at 480-81.]

Accordingly, in Jackman I, this Court rejected arguments that New Jersey's legislative scheme should survive Reynolds. 43 N.J. at 477-78. The State Constitution was then amended to comply with the Reynolds decision and the guidance offered by this Court in Jackman I. Relevant for this action, the Constitution, as amended, required, *inter alia*, that

> Assembly districts shall be composed of **contiguous** territory, **as nearly compact** and equal in the number of their inhabitants as possible, and in no event shall each such district contain less than eighty per cent nor more than one hundred twenty per cent of one-fortieth of the total number of inhabitants of the State . . . .
>
> [N.J. Const. art. IV, § II, ¶ 3.]

Following the amendment of the State Constitution, this Court heard a challenge to both the constitutional amendment and to the first legislative map created pursuant to the amendment. Jackman v. Bodine, 49 N.J. 406, 409 (1967) [hereinafter Jackman V]. Most relevant for this matter, the Jackman V Court specifically addressed our Constitution's meaning of "compact":

> **We do not think it possible to state the precise impact of compactness, but we believe it helpful for future guidance to suggest that population equality must be distinctly paramount.** Compactness no doubt would be a material factor if the choice were between a configuration of existing political entities which would yield such bizarre designs as a "shoe lace" or "horse shoe." Absent such extremes, compactness may not be relied upon to justify an appreciable [population] deviation.

[Id. at 419 (emphasis added).]

Thus, contrary to the ACLU's contentions, this Court has opined upon the meaning of the requirement of "compactness" in the districting process. And it did so fourteen years before the Legislature used the same requirements for the MWL as those set forth in the Constitution: limited population deviation, contiguity, and compactness. Compare, N.J. Const. art. IV, § II, ¶ 3 with N.J.S.A. 40:44-14. In other words, the requirements of the MWL are the same as those for legislative redistricting, and, therefore, the interpretation by this Court of the requirement of compactness should also be the same. Atlantic City Racing Ass'n v. Att'y Gen., 98 N.J. 535, 549 (1985) (citation omitted) ("When a later instrument adopts a provision of an earlier one that has received a certain construction, the provision is deemed to be adopted as thus construed.").

In addition to addressing the meaning of the requirement of "compact" for the purposes of legislative redistricting, this Court also addressed the concept of "so-called community interests" and found them "wholly irrelevant." Jackman V, 49 N.J. at 418. "In some situations it is suggested that other matters may have been in mind, such as **so-called community interests**, partisan history, and residence of incumbents. **We have no doubt that the last mentioned considerations are wholly irrelevant to the subject** and cannot support deviations of any kind." Id. (emphasis added). This is notable. First, and most

obvious, this Court has considered the importance of "communities of interest" in districting and found it "wholly irrelevant." Id. Second, the fact that Jackman considered "community interests" separate from "compactness" indicates that these are distinct concepts. This is important because the ACLU argues that "community interests" is part of the definition of "compact." ACLU Br. at 10. It is not. At least not according to this Court. And any attempt to make it so ignores well and long-established precedent.

This Court further reduced the importance of consideration of "communities of interest" in redistricting when it found that New Jersey's constitutional requirement that Senate districts be composed of whole counties (i.e., communities of interest)[1] was violative of the one-person, one-vote principle. Scrimminger v. Sherwin, 60 N.J. 483 (1972). In Scrimminger, this Court concluded that State legislative Senate districts should be created without regard to the whole county requirement of the State Constitution, holding that substantial equality of population among legislative districts was the primary object of the one-person, one-vote principle, even if it meant splitting counties and communities of interest. Id. at 497-98 ("[T]he mandate in the State Constitution for recognition of county lines will not justify any [population]

---

[1] Article IV, Section II, Paragraph 1 reads in relevant part as follows: "Each Senate district shall be composed, wherever practicable, of one single county, and, if not so practicable, of two or more contiguous whole counties."

deviation."). Thus, over fifty years ago, **this Court found a provision of the New Jersey Constitution** prohibiting the splitting of communities of interest (i.e., counties) to be unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment and the one-person, one-vote principle.

Following Scrimminger, this Court again entertained an attack from the community of interest crowd in Davenport v. Apportionment Comm'n, 65 N.J. 125 (1974). That case involved a challenge to a redistricting plan created following the 1970 census that, according to the plaintiffs, unconstitutionally split communities of interests—counties—into different legislative districts. This Court emphatically found the one-person, one-vote principle paramount to the preservation of communities of interest:

> **It is argued that since the county unit has always been considered a political entity in this State, with its citizens sharing a community of interest in governmental matters, as many Senate districts as possible should be placed within whole counties so as to preserve to the voters in the Senate districts so placed this community of interest.** It is urged that such is mandated by our present constitutional language.
>
> We find no such meaning in Article IV, nor do we think valid apportionment policy requires such result. **On the contrary, we think it clear that attempting to preserve some semblance of county voting strength would create a plethora of constitutional problems. Were dilution of county voting strength a required consideration in applying one-man, one-vote, the degree of dilution would have to be considered and**

> **equalized along with population, a difficult if not impossible task to perform.**
>
> [Id. at 132-33 (emphasis added).]

In the above passage, this Court explicitly rejected the argument that communities of interest must be preserved when possible. And it did so by again finding our own state's Constitution unconstitutional. See also McNeil, 177 N.J. at 381 ("All of our state laws regarding apportionment for election to our State Legislature are subject to federal laws."). In so finding, this Court correctly noted that considering county voting strength when applying one-person, one-vote would be a near impossible task and that such determinations are unworkable, even though counties have distinct, objective boundaries.

Here, the alleged "communities of interest" within Jersey City have no objective political boundaries. Still, the ACLU asks this Court to abandon its rationale in Davenport II and adopt the position that "neighborhoods"—which, by their nature, have boundaries that are both ill-defined and constantly shifting as populations change and development occurs—could not be split because of common interests. Even if we could determine where one neighborhood begins and another ends (an almost impossible task—we do live in a State in which there is no consensus over whether there is even a "Central Jersey" let alone where the boundary for such an area begins and ends), a Ward Commission would then have to draw wards around these neighborhoods. This would be a

nearly impossible task in a city like Jersey City, which, according to Wikipedia, has approximately fifty distinct "neighborhoods."[2]

In addition to rejecting the idea of considering "communities of interest" in districting decisions, the Davenport II Court also addressed the issue of compactness. 65 N.J. at 133. It reiterated that "compactness is an elusive concept" and "that it may be of limited utility in creating legislative districts in light of the odd configurations of our State and its municipalities," noting that "[t]his Court has suggested that population equality is distinctly paramount to [compactness]." Id.[3]

After reaffirming Jackman V's definition and analysis of the constitutional requirement of "compactness," the Davenport II Court then addressed its role in reviewing a reapportionment plan where there were allegations of non-compactness but no allegations of racial discrimination, and concluded that its role was minimal to non-existent:

> No issue of racial or minority representation is presented. It is conceded that population-wise the rate of deviation is extremely low. Aside from the alleged

[2] List of Neighborhoods in Jersey City, New Jersey, WIKIPEDIA (last visited Dec. 2, 2024), https://w.wiki/CGtJ.

[3] As the Appellate Division noted, Jersey City, like our State as a whole, has irregularly shaped boundaries and odd configurations. Jersey City United Against the New Ward Map v. Jersey City Ward Comm'n, 478 N.J. Super. 132, 141 (App. Div. 2024) ("As these maps reflect, the City is irregularly shaped because its boundaries are based on rivers, harbors, bays, cliffs, and adjoining municipalities.").

> dilution of county voting strength, the only other attack made on it is the alleged lack of compactness of a fe [sic] of the districts alleged to result from efforts to protect incumbents. It would appear that a plan with more compact districts could be prepared. However, that is not the only test to be applied here. Providing protection of incumbents serves a valid purpose and is a relevant factor to be taken into account in creating a legislative districting plan.
>
> **<u>The judicial role in reviewing the validity of such a plan is limited. 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.</u>** The judiciary is not justified in striking down a plan, otherwise valid, because a 'better' one, in its opinion, could be drawn.
>
> [<u>Davenport</u>, 65 N.J. at 723 (emphasis added) (internal citations omitted)]

The <u>Davenport II</u> Court concluded by upholding the Commission's plan that split communities of interest, holding that the ultimate objective of the one-person, one-vote principle "is that there be substantial equality of population among the legislative districts so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State. The Commission plan with a range of deviation of 4.24% amply satisfies that standard." <u>Id.</u> at 135.

Notably, the description of the challenged districts in <u>Davenport II</u> could be easily applied to the facts at bar: an "extremely low" population deviation rate held up against an "alleged lack of compactness of a few districts" and no

allegations of racial discrimination. Here, the Jesey City Ward Commission's plan reduced the population deviation between the wards to a miniscule 1.8%. This is a much lower deviation than that approved in Davenport II, and thus achieves the one-person, one-vote aspiration even more effectively than did the map challenged in Davenport II—a map the Court praised for having a "deviation of 4.24% [which] [**a]mply satisfies** that standard." 65 N.J. at 150 (emphasis added). Thus, the Jersey City Ward Commission should be commended and praised for its defense of the Fourteenth Amendment and Equal Protection and for advancing the one-person, one-vote principle.

Also, here, as in Davenport II, there are no allegations of racial discrimination or any other form of invidious discrimination. Jersey City United, 478 N.J. Super. at 147 ("There is no claim of invidious discrimination."). Absent a claim of invidious discrimination, this Court made clear that **no** judicial review is warranted. Davenport II, 65 N.J. at 723.

In 1981, seven years after Davenport II and more than a decade after the Jackman decisions, the Legislature enacted the MWL, N.J.S.A. 40:44-9 to -18. In so doing, the Legislature adopted for municipal wards the exact same requirements that the Constitution requires for legislative districts: contiguity, compactness, and a not to exceed range for population deviation. Compare N.J. Const. art. IV, § II, ¶ 2 ("The Assembly districts shall be composed of contiguous

territory, as nearly compact and equal in the number of their inhabitants as possible, and in no event shall each such district contain less than eighty per cent nor more than one hundred twenty per cent of one-fortieth of the total number of inhabitants of the State.") with N.J.S.A. 40:44-14 ("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 10% . . . . ").

In enacting the MWL, the Legislature not only knew the legislative districting requirements of the New Jersey Constitution, but it also knew how this Court interpreted those requirements—including the requirement of compactness. Farmers Mut. Fire Ins. Co. of Salem v. N.J. Property-Liability Ins. Guar. Ass'n, 215 N.J. 522, 543 (2013) ("The Legislature is presumed to be aware of the decisional law of this state."); DiProspero v. Penn, 183 N.J. 477, 494-95 (2005) ("We hardly need to state that the Legislature knows how to incorporate into a new statute a standard articulated in a prior opinion of this Court."). Indeed, the issues of compactness, community of interest, and the supremacy of the one-person, one-vote principle were constantly before this Court between 1964 (Jackman I) and 1974 (Davenport II) as the Court oversaw the dismantling of New Jersey's county-based legislative scheme. See McNeil, 177 N.J. at 374-

82 (detailing the extensive history and evolution of this Court's districting jurisprudence in Jackman I-VII, Scrimminger, and Davenport I and II).

Accordingly, the Legislature knew how this Court had defined compactness in the Jackman and Davenport cases. It also knew that this Court consistently held that minimal population deviation is the most important consideration. Davenport, 65 N.J. at 133-35. It also knew that this Court indicated that judicial review occurs only when there is a showing of invidious discrimination. Id. at 135. It would have known that this Court rejected communities of interests as irrelevant in districting. Id. at 132-33; Jackman, 43 N.J. at 419. And it also would have known that the United States Supreme Court had held that the one-person, one-vote principle applied to municipalities. Avery, 390 U.S. 474 (holding that governments of cities, counties, towns, and districts must adhere to the one-person, one-vote principle).

Knowing the above, if the Legislature had meant to change or challenge this Court's districting jurisprudence it would have done so directly. It would have expressly required that communities of interest be considered. It did not. It would have offered a competing definition of "compact." It did not.

Because the Legislature adopted the same standards for municipal ward districting as those used in the Constitution for legislative districting, and because the meaning of compact and community of interest were vigorously

litigated in this Court over the course of a decade, this Court's interpretation of those principles applies to the MWL. And when those principles are applied to the Jersey City Ward Commission's 2022 map, it is clear that the map fully complies with the MWL: all wards are contiguous; the miniscule 1.8% population deviation achieves the one-person, one-vote principle; and the wards, which are not irregularly shaped like a horseshoe or shoelace, are compact. See Pa53 (Ward Map).[4] Moreover, there is no allegation of invidious discrimination triggering judicial scrutiny. As such, this Court should affirm the Law Division's dismissal of Plaintiffs' Complaints.

II. THE ACLU MISSTATES THE APPELLATE COURT'S ANALYSIS.

As the ACLU notes, the MWL does not define "compact." ACLU Br. at 4; N.J.S.A. 40:44-9 to -18. When a word is not defined in a statute, it is customary to rely on that word's dictionary definition: "Words that are not terms of art and that are not statutorily defined are customarily given their ordinary meanings, frequently derived from the dictionary." Larry M. Eig, Congressional Research Service, Statutory Interpretation: General Principles and Recent Trends 8 (2014); F.D.I.C. v. Meyer, 510 U.S. 471, 476 (1994) ("In the absence of a statutory definition, we construe a statutory term in accordance with its ordinary or natural meaning."); see, e.g., Asgrow Seed Co. v. Winterboer, 513 U.S. 179,

[4] Citations to "Pa" refer to Plaintiffs' Appendix in Support of Their Appeal.

187 (1995) (relying on dictionary definitions to interpret the word "marketing"). This Court has also similarly relied on dictionary definitions to interpret undefined words. Goyco v. Progressive Insurance Co., 257 N.J. 313, 324-25 (2024) (citing the dictionary definitions of "vehicle" and "highway"); C.R. v. M.T., 257 N.J. 126, 145 (2024) ("Because SASPA does not define the words 'possibility,' 'risk,' or 'well-being,' we afford the terms their 'generally accepted meaning, according to the approved usage of the language,'" and "we turn to dictionary definitions for guidance."). Thus, the Appellate Division was not "wrong"—as the ACLU asserts—in turning to the dictionary definition of "compact." ACLU Br. at 8. Rather, the Appellate Division was applying a common, well-established principle of statutory interpretation.

Moreover, the Appellate Division did not rely on the dictionary definition of "compact" in a vacuum—**it looked to over six decades of precedent from this Court to provide context**:

> 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**.
>
> [Jersey City United, 478 N.J. Super. at 148 (emphasis added).]

Despite the above, the ACLU inexplicably asserts that "[i]t is far from clear how the Appellate Division gleaned the intent of the legislature in passing the MWL simply from a vague and nonspecific dictionary definition." ACLU Br. at 8. It should be quite clear. And, indeed, it is clear. As set forth above, this Court has a long history of interpreting the meaning of "compact" in the context of redistricting, a history the Appellate Division recognized. For example, the Court has held that, absent "bizarre designs as a 'shoe lace' or 'horse shoe,'" compactness is "a much reduced factor" in comparison to population deviation. 49 N.J. at 419. And in Davenport II, the Court found that compactness is "of limited utility in the light of the odd configurations of our State and its municipalities." 65 N.J. at 133. In making these determinations, this Court found our own Constitution's requirement of compactness and protecting communities of interests to be subservient to the one-person, one-vote principle. The Court reaffirmed these interpretations and principles in McNeil. In so doing, it explained that, between 1964 and 1974, this Court was in almost constant review of the requirements of the New Jersey Constitution and of United States Supreme Court precedent involving districting. McNeil, 177 N.J. at 374-82 (summarizing the seven Jackman cases, Scrimminger, and Davenport I and II).

Notably, the requirements of the MWL mirror those for legislative redistricting: contiguity, compactness, and a cap on population deviation.

Compare N.J. Const. art. IV, § II, ¶ 3 with N.J.S.A. 40:44-14. Also notable is that, in 1968, the Supreme Court of the United States held that the one-person, one-vote principle applies to municipal election districts. Avery, 390 U.S. at 481. Thus, when the Legislature adopted the MWL in 1981, it can be presumed to have known the following:

- In Jackman V, this Court held that "population equality must be distinctly paramount" to compactness and found a material factor only when a district consisted of bizarre designs such as a "shoe lace" or "horse shoe." "Absent such extremes, compactness may not be relied upon to justify an appreciable [population] deviation." 49 N.J. at 419.
- The Davenport II Court confirmed that, while compactness remains a requirement, it is "of limited utility in the light of the odd configurations of our State and its municipalities." 65 N.J. at 133.
- The United States Supreme Court had applied the one-person, one-vote principle to municipalities, thus elevating population deviation over any other districting factor. Avery, 390 U.S. at 481.
- This Court found that communities of interest must be split to adhere to the one-person, one-vote principle. Scrimminger, 60 N.J. at 497. In so doing, it confirmed that splitting a community of interest to advance the one-person, one-vote principle does not mean that a community's interests will go unrepresented. Id.
- Communities of interest is a distinct concept from compactness. See, e.g., Jackman V, 177 N.J. at 376 (discussing communities of interest and compactness as separate concepts).
- Judicial review of a districting decision is warranted only if there is a positive showing of invidious discrimination. Davenport, 65 N.J. at 150.

Knowing the above, the Legislature chose to set forth the following requirements for the MWL: No greater than 10% population deviation, contiguity, and compactness. N.J.S.A. 40:44-14. The Legislature omitted "communities of interest," consistent with Scrimminger and Davenport, and

adopted requirements that are substantially the same as the State Constitution's standards for legislative districts—standards that had been extensively interpreted in more than a half-dozen cases by this Court in the decade and a half preceding the enactment of the MWL. See McNeil, 177 N.J. at 374-81.

Accordingly, there is no legitimate reason for the term "compact" in the MWL to be interpreted any differently from how this Court interpreted it in the context of legislative redistricting. Compactness is not a foreign concept that has never been considered by this Court. We do not need to look to other states to discern what our Legislature meant when it used "compact" in the MWL. We need only look to this Court's jurisprudence in the districting cases where it interpreted our State Constitution and the United States Supreme Court's decision in Reynolds. These cases—Jackman I-VII, Scrimminger, and Davenport I and II—were some of the most important, hotly contested, and monumental cases in our State's history. To think that in 1981, seven years after Davenport II, the Legislature, whose composition was determined by those cases, was not aware of what this Court said about districting is nonsensical.

Thus, the ACLU is wrong to call the Appellate Division's definition of "compact" "unsupported." ACLU Br. at 10. There is simply no need to adopt a definition of compact that includes keeping communities of interest together, as the ACLU urges. Id. Doing so would ignore six decades of jurisprudence

interpreting compact **and** would violate the United States Supreme Court's holdings in Reynolds concerning the preeminence of the one-person, one-vote principle, which it later applied to municipalities in Avery. Reynolds, 377 U.S. at 568; Avery, 390 U.S. at 485-86. Finally, the ACLU offers no definition of "community of interest" in the municipal context, a context in which there are no objective political boundaries to define a community of interest. Instructing a Ward Commission to consider "communities of interest" is unworkable and will open a proverbial can of worms as to how such a community is defined.[5]

III. THIS COURT SHOULD AFFIRM THE DISMISSAL OF PLAINTIFFS' COMPLAINTS

[5] To support its argument, the ACLU cites federal opinions and opinions from other states. ACLU Br. at 6. These cases, however, are inapplicable to the present matter because every case they reference involved the Voting Rights Act ("VRA"), which Plaintiffs specifically pleaded does not apply here (Pa29-Pa30 ¶ 103), and/or the interpretation of a state's own constitutional provision, statute, or administrative redistricting guidelines that call for consideration of "communities of interest." Moreover, they did not involve redistricting at a **municipal** level where there is no way to objectively define a community of interest. See, e.g., Allen v. Milligan, 599 U.S. 1 (2023) (interpreting § 2 of the VRA); Abrams v. Johnson, 521 U.S. 74 (1997) (interpreting § 2 of the VRA); Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So.3d 335 (Fla. Dist. Ct. App. 2023) (interpreting the Florida Constitution); Stephenson v. Bartlett, 582 S.E.2d 247 (N.C. 2003) (interpreting the North Carolina Constitution); Ariz. Minority Coal. For Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 121 P.3d 843 (Ariz. Ct. App. 2005) (interpreting the Arizona Constitution). Respondents do not deny that communities of interest are one of a myriad of considerations a state may require in its redistricting laws. But it is not, and never has been, a consideration set forth in the MWL. There is nothing unconstitutional about this. And the ACLU cannot induce this Court to rewrite the MWL to incorporate such a requirement.

The ACLU urges this Court to expand the scope of the remand proceeding ordered by the Appellate Division. ACLU Br. at 10-11. According to the ACLU, "this matter requires a proper evidentiary hearing on the merits of Plaintiffs' allegations." ACLU Br. at 11. For support, the ACLU cites several cases, none of which involve municipal districting,[6] and specifically quotes in a parenthetical how one case involved "live testimony from 17 witnesses, reviewed more than 1000 pages of briefing and upwards of 350 exhibits, and considered arguments from the 43 different lawyers who had appeared in the litigation." ACLU Br. at 11 (quoting Allen, 599 U.S. at 16-17, 21).

In New Jersey, there are sixty-four municipalities that are divided into wards.[7] Indeed, the Ward Commission at issue in this case redrew the municipal ward boundaries, not just for Jersey City, but for multiple municipalities in Hudson County within the thirty days prescribed by statute. Pa176-203. To think that each ward map would be subjected to a proceeding that could involve seventeen witnesses, 1000 pages of briefing, 350 exhibits, and forty-three

[6] The ACLU cites: Wright v. Rockefeller, 376 U.S. 52 (1964) (congressional districts); Allen, 599 U.S. at 1 (congressional redistricting); Stephenson, 357 N.C. at 301 (legislative districts); and Ariz. Minority Coal. for Fair Redistricting, 121 P.3d at 843 (legislative and congressional).

[7] Inventory of Municipal Forms of Gov't in New Jersey, RUTGERS (Sept. 2011), https://njdatabook.rutgers.edu/sites/njdatabook.rutgers.edu/files/documents/inventory_of_municipal_forms_of_government_in_new_jersey.pdf.

different lawyers, as the ACLU suggests, is unthinkable. This is especially true where, as here, there are no allegations of invidious discrimination.

Allowing the type of hearing the ACLU requests based on the record and allegations in this matter would not only invite endless, inefficient litigation, but it is also not required by the MWL or by the precedent of this Court. Just as the Legislature that enacted the MWL was aware of this Court's jurisprudence concerning compactness, population deviation, and communities of interest, it was also aware of the deferential standard set forth in Davenport II.[8] Pursuant to this standard, the MWL requires only that a Ward Commission file a report "certified by at least three of their signatures, setting forth and properly describing the ward boundaries fixed and determined. There shall be annexed to the report a map of the municipality with the ward boundaries clearly marked thereon." N.J.S.A. 40:44-15. Thus, the MWL demands nothing more than a description and a map of the new wards.

Moreover, this Court has consistently held that, absent an allegation of invidious discrimination, the judiciary has only a limited role in reviewing districting decisions: "The plan must be accorded a presumption of legality with

[8] Notably, the United States Supreme Court has adopted a similar deferential standard when reviewing districting decisions: "Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions." Rucho v. Common Cause, 588 U.S. 684, 718 (2019).

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." Davenport, 65 N.J. at 135. This deferential standard of review was reaffirmed by this Court just two years ago in In re Cong. Dists. by N.J. Redistricting Comm'n, 249 N.J. 561 (2022). Indeed, this Court held that Davenport's "stringent standard still applies" and that "[i]t is not the Court's task to decide whether one map is fairer or better than another." Id. at 568-69. Here, when the Ward Commission reapportioned Jersey City, it applied standards similar to those described for legislative redistricting. And the Ward Map, as a reapportionment plan, deserves the same deference and preferences of validity as that afforded to congressional and legislative plans.

Thus, to the extent the Appellate Division erred, it erred only by not affirming in whole the Law Division's dismissal of Plaintiffs' complaints. Plaintiffs made no allegations of invidious discrimination, let alone a showing of invidious discrimination. Jersey City United, 478 N.J. Super. at 149. Accordingly, the Appellate Division was wrong to read into the MWL a requirement that does not exist: articulate a rational basis for the map. Id. at 155.

Accordingly, because there are no allegations, let alone a showing, of invidious discrimination by Plaintiffs, the Ward Map deserves deference and should be upheld without any further proceedings.

CONCLUSION

For all the foregoing reasons, the Court should not read "community of interest" into the MWL or the definition of "compact," and should affirm the Law Division's dismissal of Plaintiffs' Complaint.

Respectfully submitted,
MURPHY ORLANDO LLC
Attorneys for Defendants-Respondents

By:________________________
Jason F. Orlando, Esq.

Dated: December 4, 2024