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

DEFENDANTS-RESPONDENTS' OPPOSITION TO BRIEF OF *AMICUS CURIAE* ELECTORAL INNOVATION LAB

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PRELIMINARY STATEMENT

Amicus curiae the Electoral Innovation Lab ("EIL") urges this Court to rule that the standards applicable to municipal ward commissions do "not vary from" those that govern Congressional and Legislative apportionment because there is "no legitimate basis" for the former to differ from the latter. Yet EIL then goes on to ask this Court to adopt and enforce new standards not applicable to Congressional and Legislative redistricting, including two theoretical methods developed by scholars, the Reock and "Polsby-Popper" scoring mechanisms, that were neither included in the Municipal Ward Law when the Legislature adopted it nor required by any Court in this state over decades of redistricting appeals.

EIL does all this while also assuming, rather than verifying, Plaintiffs' assertion that their proposed map achieves a higher "Reock score" while also satisfying the population deviation requirements of the law. All that springs from this assumption is EIL's argument that a map with a "better" Reock score could be created. This assertion (a) fails as an allegation that the adopted Ward Map is non-compact or unlawful, and (b) ignores this Court's decades of case law that a duly adopted map may not be struck down merely because someone, even the Court, believes that a "better" map could have been drawn.

EIL is thus asking this Court **not** to reaffirm the uniform standards applicable to re-drawing political lines in New Jersey, but rather to turn its back on sixty years of precedent, upend the current system, and create a new, inconsistent, and virtually impossible-to-apply standard for municipal redistricting. It does this all while admitting that, applying the mathematical standards it endorses, the map adopted by the Jersey City Ward Commission in 2022 is already compact.

ARGUMENT

I. DEFENDANTS AGREE THAT THIS COURT HAS PREVIOUSLY DEFINED COMPACTNESS.

EIL argues that the compactness requirement of New Jersey's Municipal Ward Law, N.J.S.A. 40:44-9 to -18 ("MWL"), should be "treated" the same as the compactness requirement for Congressional and legislative districting in the New Jersey Constitution. EIL Br. at 5. Defendants do not disagree.

As the EIL notes, our State Constitution requires legislative districts to be compact, contiguous, and to meet certain specified levels of population deviation. N.J. Const. Art. IV, § II, ¶ 3 ("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 as reported in the last preceding

decennial census of the United States."). So does the MWL. 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 . . . shall not differ from the population of the least populous ward . . . 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 New Jersey Constitution was amended in 1966 to include the contiguity, compactness, and maximum population deviation requirements while the MWL was enacted in 1981. N.J. Const. Art. IV, § II; N.J.S.A. 40:44-9. Thus, the Legislature modeled the MWL after our Constitution and, in so doing, can be presumed to have known how this Court interpreted and applied the requirements of compactness and minimal population deviation in the seminal Jackman cases (I-VII),[1] Scrimminger v. Sherwin, 60 N.J. 483 (1974),

[1] Jackman v. Bodine, 43 N.J. 453 (1964) [Jackman I] is the first of seven cases regarding the apportionment of Legislative districts. Together, this Court's ruling in the Jackman cases wrought a substantial re-working of New Jersey's Legislative apportionment system from County-based to population-based. This resulted in, among other things, the 1966 amendment to the State Constitution to establish a forty member Senate with districts apportioned "as nearly as may be according to the number of their inhabitants as reported in the last preceding decennial census of the United States and according to the method of equal proportions." N.J. Const. Art. IV, § II, ¶ 1.

Davenport v. Apportionment Comm'n, 63 N.J. 433 (1973) [Davenport I], and Davenport v. Apportionment Comm'n, 65 N.J. 125 (1974) [Davenport II]. See Farmers Mut. Fire Ins. Co. of Salem v. N.J. Property-Liability Ins. Guar. Ass'n, 215 N.J. 522, 543 (N.J. 2013) ("The Legislature is presumed to be aware of the decisional law of this State."); Yanow v. Seven Oaks Park, Inc., 11 N.J. 341, 350 (1953) ("A legislative body in this State is presumed to be familiar not only with the statutory law of the State, but also with the common law."); DiProspero v. Penn, 183 N.J. 477, 494-95 (2005) ("We hardly need state that the Legislature knows how to incorporate into a new statute a standard articulated in a prior opinion of this Court.").

In its precedents on redistricting and reapportionment, this Court set forth the definition of compactness:

> **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 deviation.
>
> [Jackman v. Bodine, 49 N.J. 406, 419 (1967) (emphasis added) [Jackman V].]

In Davenport II, this Court reaffirmed Jackman V's definition of compactness and further held that compactness is "of limited utility in the light of the odd configurations of our State and its municipalities." 63 N.J. at 443.

Given that both Jackman V and Davenport II were decided prior to the Legislature's enactment of the MWL, this Court can and should presume that the Legislature knew how this Court interpreted compactness when it adopted the law in 1981. See Farmers Mutual Fire Ins. Co. of Salem, 215 N.J. at 543 (2022); Yanow, 11 N.J. at 350 (1953); DiProspero, 183 N.J. at 494-95 (2005). With that knowledge, the Legislature saw fit to include the same requirements for municipal wards as those found in the New Jersey Constitution for legislative districts: contiguity, compactness, and a maximum population deviation.

In addition to its knowledge of this Court's precedents when it wrote the MWL, the Legislature would also have known that the United States Supreme Court had consistently found the reducing population deviation between legislative districts, or units of local governments such as districts and wards, was required by the Fourteenth Amendment to the United States Constitution. See, e.g, Reynolds v. Sims, 377 U.S. 533 (1964) (striking down state legislative apportionment schemes that were not based on population equality); Avery v. Midland County, Tex., 390 U.S. 474 (1968) (applying Reynolds and the one-person, one-vote principle to county and municipal governing bodies).

Applying all this jurisprudence interpreting compactness and the one-person, one-vote principle, it is abundantly clear that the Ward Map at issue here satisfies the requirements of the MWL. The map reduces population deviation among Jersey City's wards from an unconstitutional 59% to **a minuscule 1.8%**. Pa54-64 (Report of the Ward Commission). Additionally, the wards are contiguous, and they are compact in that none of them have "bizarre designs as a 'shoe lace' or 'horse shoe,'" without which a compactness violation cannot justifiably be found where population deviation requirements have been satisfied. Jackman V, 49 N.J. at 419; see Pa24 (Plaintiffs' Complaint).

Accordingly, this Court should affirm the Law Division's dismissal of Plaintiffs' complaints and affirm that the 2022 Ward Map complies with the law.

II. THE APPELLATE DIVISION WAS CORRECT TO REJECT CONSIDERATION OF THE SO-CALLED REOCK AND POLSBY-POPPER MEASURES.

The EIL asks this Court to require the Law Division to consider the so-called Reock and Polsby-Popper measures on remand. EIL Br. at 6-7. Granting this request would be unprecedented in this State and would undermine six decades of consistently applied jurisprudence establishing judicial deference to the bodies tasked with the decennial re-drawing political boundaries:

> 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. **The judiciary is not justified in striking down a plan, otherwise valid, because a "better" one, in its opinion, could be drawn**.
>
> [Davenport II, 65 N.J. at 135 (emphasis added).]

This Court reaffirmed this principle of deference just two years ago in In Re Cong. Dists. by N.J. Redistricting Commission, 249 N.J. 561 (2022):

> That stringent standard still applies. It is not the Court's task to decide whether one map is fairer or better than another. We review redistricting plans only to determine if the map selected is "unlawful." N.J. Const. art. II, § 2, ¶ 9. **So long as the final map is constitutional, the Court cannot grant any relief.**
>
> [249 N.J. at 569 (emphasis added).]

According to the EIL, the Reock and Polsby-Popper "are highly effective indicators of compactness with respect to physical measure of a district" that rely on the circle as an ideal reference shape. EIL Br. at 7-9. Also according to EIL, the Reock measure has been around since 1961 and the Polsby-Popper measure since 1991. EIL Br. at 9-10.

And yet, despite the Reock and Polsby-Popper measures existing for sixty-plus and thirty-plus years respectively, no New Jersey court has ever endorsed—let alone required—their consideration. EIL also cites no legal authority in New Jersey, or elsewhere, to indicate that either of these "measures" are generally accepted and scientifically reliable, especially in the municipal context. Cf.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 594 (1993) (quoting United States v. Downing, 753 F.2d 1224, 1238 (3d Cir. 1985) (emphasis added) ("Widespread acceptance can be an important factor in ruling particular evidence admissible, and '**a known technique which has been able to attract only minimal support within the community' may properly be viewed with skepticism**.")); N.J.R.E. 703. Even Reock himself, in the article presenting his theory, admitted that "[t]he third requirement—compactness— . . . remains subjective in that no method of measurement has gained general acceptance." Ernest C. Reock, Jr., A Note: Measuring Compactness as a Requirement of Legislative Apportionment, Midwest J. of Pol. Sci., Vol. 5 No. 1, 70 (Feb. 1961).

In fact, rather than being generally accepted, the Reock Score has been criticized for being inaccurate or unhelpful by none other than the creators of the Polsby-Popper test. See Daniel D. Polsby and Robert D. Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 Yale Law and Pol'y Rev. 301, 346 (1991) ("As a practical matter . . . the Reock standard would permit a great deal of gerrymandering."). Polsby and Popper observe that the Reock test fails to detect even "perverse" gerrymandering. Id. at 344-45. In fact, the EIL concedes this fact as to **both** scholarly tests when, after spending pages and pages asking this Court to apply

Reock and Polsby-Popper, it admits that "a savvy mapmaker can achieve political advantage even while drawing districts that score well on compactness measures." EIL Br. at 13 ("Simple, aesthetically pleasing shapes can mask sophisticated electoral engineering" and "[s]eemingly 'clean' boundaries can still result in significant partisan skew or minority vote dilution."). In other words, even EIL's proposed solution does not solve the problem it believes it has identified.

Notably, this Court already implicitly rejected the utility of the Reock test's circle concept when it held that "compactness is an elusive concept" and is "of limited utility in creating legislative districts in light of the odd configurations of our State and its municipalities." Davenport II, 65 N.J. at 133. Indeed, this Court recognized that, by the necessity of its geography and population dispersion, New Jersey legislative districts could not look like perfect, or even imperfect, circles while also satisfying the "one-person, one-vote" requirement. And because that Constitutional mandate was paramount, this Court has also correctly concluded that compactness is potentially relevant only in an extreme situation where a district was drawn with "bizarre designs" like "a 'shoe lace' or 'horse shoe.'" Jackman V, 49 N.J. at 419.

This Court's conclusions in this regard are borne out by the current legislative map, which contains numerous oddly shaped districts. See Da007

(New Jersey Legislative Districts Map).[2] One could hardly describe any of the smaller districts in our State's populous northeast or along the Garden State Parkway corridor as "regularly shaped" as they wrap around one another to connect, for example, the City of Passaic all the way to the Hudson River (District 36). Da007. Further south, a single district stretches all the way from the Raritan Marina to the farms and wineries of Plumsted and Jacobstown near the geographic center of our state (District 12). Da007. Yet all these Districts comply with our Constitution because, as Davenport II confirmed, population deviation is "paramount" and as "long as the final map is constitutional, the Court cannot grant any relief." In re Cong. Dists., 249 N.J. at 569.

The more densely populated an area is, the more irregular its election districts' shapes will be. This, of course, makes sense. It is easy to draw circles and squares over land that is minimally populated. It is much more difficult to draw lines in areas where moving a single building could mean changing the district for hundreds of people. That is what happened in Jersey City.

Like our State as a whole, Jersey City is—in the words of the Appellate Division—"irregularly shaped because its boundaries are based on rivers, harbors, bays, cliffs, and adjoining municipalities." Jersey City United Against

[2] Citations to "Da" refer to Appendix of Respondents Jersey City Ward Commission and John Minella.

the New Ward Map v. Jersey City Ward Comm'n, 478 N.J. Super. 132, 141 (App. Div. 2024); see Pa63 (2022 Ward Map)[3]. Population density in any given block can vary from zero, as in Liberty State Park, to over a thousand in a single high-rise building like 99 Hudson Street, whose seventy-nine floors house 781 condominium.[4] N.J.R.E. 201(b). As the Appellate Division noted, between 2010 and 2020, the population in Ward E swelled to 69,524 residents as new high-rises sprung up along the waterfront. Jersey City United, 478 N.J. Super. at 140. Meanwhile, Ward D's population hardly grew at all, and by the time of the decennial Census, it had only 40,733 residents. Id. Thus, the ward map was no longer constitutional or legal and a new one had to be created. Pa54-64 (Commission Report). To comply with the MWL and both the New Jersey and United States Constitutions, Ward E had to be reduced and thousands of its residents had to be moved into surrounding wards such as Ward F. Id. In making these changes, the Ward Commission reduced the population deviation among the wards—the very factor this Court has identified as "distinctly paramount"—to just 1.8%. Id.

[3] Citations to "Pa" refer to Jersey City United Plaintiffs' Appendix in Support of Their Appeal.

[4] In fact, Jersey City has nine of the top ten largest high-rise buildings in the State, many of them only recently built. See Pa131-133.

With its natural boundaries and varying population density, it was inevitable that the City's wards would also be irregularly shaped and thus not suitable for measurement based on the perfect circle of mathematicians' "ideal" election district. Indeed, the mathematical abstractions that EIL asks this Court to endorse are ill-suited for municipalities like Jersey City whose population is unevenly distributed. EIL's mathematical approach to redistricting could be applied only to a polity that is evenly distributed by square foot or square mile. This is not Jersey City.

EIL also offers no indication that the measures it would foist upon New Jersey are widely accepted in courts of law. Nor is there any showing by EIL that these measures are effective in the districting of municipalities,[5] let alone municipalities with the unusual borders and wild population deviations like Jersey City. The Appellate Division was correct to instruct that these measures not be considered in evaluating the validity of a municipal ward map.

Even if the serious questions about the utility and reliability of Reock and Polsby-Popper scores were put aside—which they should not be—and these measures were considered, they demonstrate that the Ward Map is compact. For

[5] Reock's proposal focused on partisan gerrymandering in Congressional and Legislative redistricting, and even conceded that "adherence to county or municipal boundaries" within such a district, or adherence to "other apportionment standards . . . [such as] population equality," would be a reason to allow a "non-compact district." Reock, supra, at 74.

example, EIL asserts that a map "with a [Reock] score of 0.30 or less warrants skeptical examination for gerrymandering." EIL Br. at 9-10. Relying on Plaintiffs' calculations of the 2022 Ward Map, EIL then admits that the 2022 Ward Map has a Reock score of **0.34**. Thus, based on Plaintiffs' own calculations, the 2022 Ward Map is not suspect and is compact. This bears repeating: **Plaintiffs' own calculations, using their own preferred measurement scheme, show the 2022 Ward Map to be compact**.

Recognizing the absurdity of Plaintiffs' position—criticizing the 2022 Ward Map as not compact when their own preferred measurement indicates that the Map **is** compact—EIL writes that the Ward Map's score both overall and for Ward F "show that the Commission's plan was less compact than both the previous plan and a possible alternative (Plaintiffs' map)." EIL Br. at 11. Comparing a duly adopted map to a hypothetical "better" map is exactly what this Court has instructed cannot be done: "[i]t is not the Court's task to decide whether one map is fairer or better than another." In re Cong. Dists., 249 N.J. at 568-9; Davenport II, 65 NJ at 135 (even if "a plan with more compact districts could be prepared . . . that is not the only test to be applied here").

This Court has never recognized, much less required, the consideration of Reock or Polsby-Popper scores during redistricting and neither measure is cited in the MWL—even though the Reock test was created twenty years before the

law was enacted. Reock himself, when he proposed using his circle-based notion of compactness to judge the shape of districts, conceded that "other requirements—population equality, contiguity, even adherence to county or municipal boundaries—may dictate the formation of a particular non-compact district." Reock, supra, at 74. That is the conclusion that the Legislature, in light of all the precedents already known to it in 1981, reached as well. This is not the case to break with all those precedents, or to assume the Legislature did not know what is was doing.

III. EIL'S REQUEST FOR "HOLISTIC ANALYSIS" ASKS NOTHING LESS THAN FOR THIS COURT TO REWRITE THE MUNICIPAL WARD LAW.

After setting up and undermining their own theory that the Reock and Polsby-Popper tests are valuable tools or somehow indicate that there is a "better" map this Court should imagine, the *amicus* goes on to advocate a "holistic analysis of not only shape, but political geography, demographic patterns, voting behavior, and community boundaries." EIL Br. at 13. It is not clear whether the EIL is asking this Court to undertake a holistic analysis, or to order the trial court to do so, or to order that future Ward Commissions undertake a holistic deep dive into the sixty-four New Jersey municipalities.[6] At the same

[6] See Brief of *Amicus Curiae* New Jersey Association of Election Officials for an explanation how such an exercise, to be undertaken for multiple municipalities in thirty days, is not feasible.

time, EIL offers no definition for a "community of interest," nor any suggestion of how the boundaries of a community of interest could or should be delineated in a municipality.[7]

In support of its contention that the MWL should be expanded beyond its three requirements—contiguity, compactness, and less than 10% population deviation—the EIL cites Gonzalez v. State Apportionment Comm'n, 428 N.J. Super. 333, 342-43 (App. Div. 2012); Brady v. N.J. Redistricting Comm'n, 131 N.J. 594, 620-21 (1992); and Jackman I, 43 N.J. at 462-63, for the proposition that communities are important in redistricting. EIL Br. at 12. But these cases offer no support for including communities of interest within the requirements of the MWL. For instance, in Jackman I, the Court found that New Jersey's county-based, community-of-interest based legislative apportionment scheme was incompatible with Reynolds v. Sims's requirement of one-person, one-vote. 43 N.J. at 477-78. It is puzzling, then, how EIL thinks that Jackman I supports its position that communities of interest need to be considered in municipal districting. In fact, it stands for the exact opposite: the primacy of one-person,

[7] Anyone with a sense of American social history can imagine the inaccuracy and impermanence of any such an exercise. For example, New York's "Little Italy" used to sprawl across "a large 30 block section of the Lower East Side" but "has now shrunk to only a couple of blocks sequestered around Mulberry Street" while adjacent "SoHo and Chinatown have continued to expand." Austin Bradley, The History of Little Italy NYC, The Agency J. (Mar. 22, 2017), https://blog2.theagencyre.com/the-history-of-little-italy-nyc/.

one-vote **over** communities of interest. And if there were any doubt on this point, it was erased in Jackman V when this Court stated that "so-called community interests" "are wholly irrelevant to the subject [of apportionment] and cannot support deviations of any kind." 49 N.J. at 418.

Again, the Legislature was well aware of the Jackman rulings of the 1960s and Davenport cases in the 1970s when it adopted the MWL in 1981. The fact that the Legislature chose not to incorporate "communities of interest" or anything of the like among the standards applicable to Municipal Ward Commissions demonstrates an intent to follow, rather than overturn, those precedents. See Farmers Mutual Fire Ins. Co. of Salem, 215 N.J. at 543 (2022); Yanow, 11 N.J. at 350 (1953); DiProspero, 183 N.J. at 494-95 (2005).

In Gonzalez, the Appellate Division affirmed the Law Division's dismissal of a complaint that alleged equal protection violations because of alleged political gerrymandering in a legislative redistricting plan. In so doing, the Appellate Division adopted the trial court's finding that partisan gerrymandering is not a constitutional violation:

> Just as plaintiffs' *bipartisan* gerrymandering claim is without merit, plaintiffs fail to allege sufficient facts to sustain a cognizable legal cause of action for *partisan* gerrymandering. As explained above, there is nothing unconstitutional about apportioning legislative districts with an eye toward political considerations, because redistricting is at its core, a political process."

> The [trial] court found that no constitutional infirmity arose from "the mere fact that a particular apportionment scheme makes it more difficult for a particular group . . . to elect the representatives of its choice . . . ."
>
> [Gonzalez, 428 N.J. Super. at 368 (emphasis in original) (quoting the trial court's opinion and finding it persuasive).]

Gonzalez, thus, stands for the proposition that, absent a showing of invidious discrimination, judicial review is limited and, further, that districting is inherently political. Here, there are no allegations of invidious discrimination. Jersey City United, 478 N.J. Super. at 147. ("There is no claim of invidious discrimination.").

Finally, in Brady this Court rejected a challenge to a congressional redistricting plan because, among other things, it divided counties into multiple congressional districts: "Plaintiff Brady has offered no evidence that the division of Middlesex County will deprive her of responsive representation or 'disrupt' any significant expectation attached to membership in her former district." Brady, 131 N.J. at 621. Thus, Brady too affirms that the principle of one-person, one-vote—that is, minimizing population deviation between wards—is more important than community of interests.

Because the adopted Ward Map advances the one-person, one-vote principle by reducing population deviation to a minuscule 1.8%, and because

there are no allegations of invidious discrimination, notwithstanding EIL's fulminations, there is no need for further judicial review. Plaintiffs have failed to state a claim upon which relief can be granted, have failed to give this Court any reason to depart from sixty years of well-established case law, and the relief sought in this appeal should therefore be denied.

IV. MUNICIPAL WARD COMMISSIONS SHOULD RECEIVE AT LEAST THE SAME JUDICIAL DEFERENCE AS LEGISLATIVE AND CONGRESSIONAL REDISTRICTING COMMISSIONS.

EIL repeatedly envisions a municipal ward boundary-drawing system that applies the same standards as Congressional redistricting and Legislative reapportionment. See, e.g., EIL Br. at 1, 15. Defendants agree in the following respect: The work of municipal ward commissions should enjoy the same judicial deference as the Congressional and Legislative processes.

In Davenport II, this Court wrote with respect to reapportionment:

> 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. The judiciary is not justified in striking down a plan, otherwise valid, because a 'better' one, in its opinion, could be drawn.
>
> [65 N.J. at 723 (emphasis added).]

Just two years ago, this Court reaffirmed this principle. Faced with plaintiffs who claimed that the redistricting process had been "'arbitrary, capricious, and unreasonable,' presented violations of 'federal and state constitutional equal protection and due process protections,' and posed a 'common law conflict of interest,'" this Court rejected all these analytical frames, writing:

> It is not the Court's task to decide whether one map is fairer or better than another. **We review redistricting plans only to determine if the map selected is "unlawful." So long as the final map is constitutional, the Court cannot grant any relief.**
>
> [In re Cong. Dists., 249 N.J. 561 at 569 (emphasis added) (quoting N.J. Const. art. II, § 2, ¶ 9).]

"The Court's narrow role . . . avoids political questions that could be raised by a review of the Commission's decisions." Id. at 571. Where plaintiffs did not assert either that the redistricting plan was unlawful or that it was the result of invidious discrimination, the issue was ruled to be "outside the Court's limited scope of review in redistricting matters and therefore cannot prevail" and was dismissed with prejudice. Id. at 578.

There is no reason that the Ward Commission should not be afforded the same deference as other apportionment commissions. In fact, there are even more rationales favoring such an outcome in the MWL context. First, Ward Commissions are required to redistrict multiple municipalities in their respective counties within thirty days. Second, ward commissions in New Jersey—unlike

redistricting and reapportionment commissions—are not appointed for the purpose of undertaking this particular exercise. A municipal ward commission is a temporary body which comes into existence for thirty days every ten years and is comprised primarily of the members of the County Board of Elections for the county in which the municipality is located. These individuals are commissioned by the Governor for a two-year term during which they serve upon a bipartisan body responsible for canvassing the votes in all elections held in the County. See generally N.J.S.A. 19:6-17 to -25. The additional member of each ward commission is the municipal clerk, an individual appointed by the municipal governing body for a three-year term during which they perform myriad public functions. See generally N.J.S.A. 40A:9-123. These individuals serve as ward commissioners, not by choice or by appointment, but by virtue of offices they otherwise hold. See N.J.S.A. 40:44-11. Thus, there is no rationale to hold them to a standard more stringent than redistricting and reapportionment commissioners, or—as Plaintiffs demand—to place them in the position, not just of having their work reversed or rewritten, but of being potentially liable for damages under the New Jersey Civil Rights Act.

Thus, the Appellate Division's error was not the dismissal of most of Plaintiffs' claims, but its ruling that remand for limited fact-finding was warranted: given the deferential standard that should be applicable here, the

Appellate Division's decision incorrectly shifted the burden of proof from the plaintiffs to the Ward Commissioners.

Particularly here, where Plaintiffs have made no allegation, let alone a "positive showing," of invidious discrimination, the Ward Commission's map should be entitled to a presumption of validity and be affirmed. Accordingly, Plaintiffs' Complaints should be dismissed with prejudice.

CONCLUSION

Amicus curiae has offered no basis to grant Plaintiff's appeal in any respect. The Court should decline EIL's invitation to overturn sixty years of precedent in favor of academic theories that clearly ill-fit the real world of political line-drawing and that neither our Legislature nor the Courts have ever seen fit to adopt. Plaintiffs' Complaints should be dismissed with prejudice.

Respectfully submitted,
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By:_____
Jason F. Orlando, Esq.

Dated: December 4, 2024