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 PETITION FOR CERTIFICATION FROM THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO.: A-0356-22 CIVIL ACTION Sat Below: Hon. Robert Gilson P.J.A.D. Hon. Patrick DeAlmeida, J.A.D. Hon. Avis Bishop-Thompson, J.A.D.

DEFENDANTS-RESPONDENTS' OPPOSITION TO PETITION FOR CERTIFICATION OF PETITIONERS JERSEY CITY UNITED AGAINST THE NEW WARD MAP, ET AL.

MURPHY ORLANDO LLC
Jason F. Orlando, Esq. (Atty# 016482000)
John W. Bartlett, Esq. (Atty# 023042001)
Tyler Newman, Esq. (Atty# 335762021)
494 Broad Street, 5th Floor
Newark, New Jersey 07102
(201) 451-5000
jbartlett@murphyorlando.com
jorlando@murphyorlando.com

Attorneys for Defendants-Respondents

On the Brief:
John W. Bartlett, Esq.
Jason F. Orlando, Esq.
Tyler Newman, Esq.

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PRELIMINARY STATEMENT

This matter is one of two related applications for certification, seeking this Court's review of a ruling of the Appellate Division that affirmed the dismissal of claims filed by a group of plaintiffs led by the special-purpose organization "Jersey City United Against The New Ward Map" and including Ward F Councilman Frank E. Gilmore (collectively, "Petitioners"), and of a separate petition brought by a *pro se* Plaintiff-Petitioner, James Calderon. Respondents' opposition to Mr. Calderon's petition was filed on April 30, 2024 (Docket No. 089292), this opposition is submitted in response only to the claims espoused by Petitioners: that the adoption of a new map ("Map") in 2022 by the Jersey City Municipal Ward Commission ("Commission" or "MWC") violated the Municipal Ward Law, N.J.S.A. 40:44-9 et seq. ("MW Law"); the N.J. Constitution's equal protection, speech, and association clauses, N.J. CONST., Art. I. ¶¶ 1, 6, 18; and voters' rights of speech and association and their "substantive rights of equal protection" under the N.J. Civil Rights Act, N.J.S.A. 10:6-2 ("CRA"); and was an act of retaliation against Councilman Gilmore for his political positions, also in violation of the CRA; and, finally, that the Commission's proceedings violated the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. ("OPMA" or the "Act").

The Appellate Division affirmed the trial Court's dismissal of Petitioners'

Constitutional, CRA, and OPMA claims and remanded the parties' claims under the MW Law, with limiting instructions, for the trial Court to make a factual determination of whether there was a "rational basis" supporting the Map. Those remand proceedings have been scheduled by the Court.

Plaintiffs' application for certification should be denied because the Appellate Division's ruling did not dispose of all matters with finality, and because the proceedings below are not yet complete. Thus, whether Petitioners or Mr. Calderon—or, for that matter, the Commission—may ultimately have grounds for appeal and certification remains to be seen. Petitioners' application also fails on its merits for the reasons set forth by the Appellate Division in its Opinion and below.

Rather than grant certification for a premature application, risking piecemeal treatment of issues, some of which remain under the trial Court's review on remand, the Supreme Court should deny this meritless application for certification and allow the proceedings below to reach a conclusion that provides certainty and finality to the residents and prospective political candidates of Jersey City.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Our State's Municipal Ward Law, N.J.S.A. 40:44-9 et seq., requires that, when a municipality is divided into wards for purposes of electing some or all

of the members of its municipal governing body, the populations of those wards must not vary by more than ten percent in order to protect the American democratic principle of "one person, one vote." See N.J.S.A. 40:44-14. The 2020 decennial Census revealed that in the City of Jersey City, the population of the most and least populous wards **deviated by a whopping 59 percent**—the result of strong population growth in particular parts of the City during the 2010s. As a result, the City's existing ward map, which was based on the 2010 federal census, was unlawful and a new one needed to be created. As required by the MW Law, a Municipal Ward Commission was convened, comprised of the six members of the Hudson County Board of Elections and the City's Municipal Clerk. See N.J.S.A. 40:44-11. The Commission held three public meetings, beginning on December 15, 2021, and concluding on January 22, 2022. At the last of these meetings, the Commission received public comment before reviewing and adopting a new ward Map.

The Map adopted more than satisfies the statutory requirements: the wards established are contiguous, compact, and achieve an impressive balancing of the City's population—reducing the population deviation among the wards to a miniscule 1.8% deviation. This is well below the statutory threshold of 10%, and further the one-person, one-vote principle for all Jersey City residents. See N.J.S.A. 40:44-14.

Unhappy with the Map, Petitioners filed a Verified Complaint In Lieu of Prerogative Writs ("Complaint"), asserting violations of the MW Law, our state's Constitution, the CRA, and the OPMA. Respondents moved to dismiss, a motion which was granted against both Petitioners and Mr. Calderon by the Honorable Joseph A. Turula, P.J.Cv. All Plaintiffs appealed, the matter was briefed, and on March 12, 2024, the Appellate Division issued an Opinion and Order affirming the dismissal in substantial part—including as to Counts Two through Four of Petitioners' pleading—but reversing and remanding for limited fact-finding on their Count One claim under the MW Law. The appeals Court instructed the trial Court to conduct "a focused and limited proceeding," in which "plaintiffs are not entitled to discovery," solely to determine "whether the Commission had a rational basis for the ward boundaries and map it adopted." [Aa, Exhibit A at 29].[1] This remand proceeding is currently moving forward. The trial Court held a post-remand scheduling conference on April 4, 2024, and instructed the parties to make written submission on May 10 and 24, 2024, respectively, with further proceedings to be scheduled soon thereafter.

[1] "Pa" refers to Petitioners' appendix below; "Da" refers to the Respondent's appendix below; "Aa" refers to the appendix accompanying Petitioners' Petition for Certification; and "Pb" refers to Petitioners' Petition for Certification.

LEGAL ARGUMENT

I. THE PETITION FAILS THE TEST FOR CERTIFICATION.

A petition for certification to this Court from a ruling of the Appellate Division may be granted only for special reasons. R. 2:12-4. Certification will not be granted where the Appellate Division's decision is essentially an application of settled principles to the facts of a case, does not present a conflict among judicial decisions requiring clarification or calling for supervision by the Supreme Court, and does not raise issues of general importance. See Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 515-16 (1985) (O'Hern, J. concurring); In re Route 280 Contract, 89 N.J. 1, 2 (1982).

Petitioners' application satisfies none of these standards. Most important, it is not even from a final decision: The Appellate Division remanded Petitioners' MW Law claim for the trial Court for further proceedings, and the Appellate Division did not retain jurisdiction. [See Aa, Exhibit A at 29]. The parties have already made submissions to the trial Court, and Judge Turula, P.J.Cv. has already convened a post-remand status conference (held April 4, 2024) and set a briefing schedule which is to conclude by the end of May. Granting certification at this point would be inappropriate, because only further proceedings will bring the case to finality—at which time any party still aggrieved, possibly including the Ward Commission itself, would have the opportunity to seek this Court's review.

Further, on the merits, Petitioners dispute nothing more than the Appellate Division's application of well-established case law, consistent with prior rulings and the statutory requirements applicable to a municipal ward commission. Contrary to Petitioners' allegations, the Commission's work was entirely in keeping with its legal requirements, and wreaked no Constitutional violations on any Petitioner. It simply returned Jersey City to a state of compliance with the most basic principle of American democracy: one person, one vote.

For these reasons, Petitioners' request for certification should be denied.

A. THIS APPEAL IS NOT "AS OF RIGHT."

In their notice to this Court, Petitioners assert that this appeal is "as of right" under Rule 2:2-1(a). That subpart provides:

> Appeals may be taken to the Supreme Court from final judgments as of right: (1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State; (2) in cases where, and with regard to those issues as to which, there is a dissent in the Appellate Division; and (3) in such cases as are provided by law.

First, Petitioners are prohibited from proceeding under this subpart because there has been no "final judgment" in this matter: The Appellate Division reversed the trial Court's dismissal in part, remanded for further proceedings, and did not retain jurisdiction. [Slip Op. at 29]. Thus, as discussed at greater length infra at § I.B., finality is lacking and ***no*** appeal may be had at this time.

But even if there were finality, Petitioners have no "right" of appeal. In the absence of a dissent in the Appellate Division or a right to this Court's attention otherwise "provided by law," Petitioners seem to be asserting that this matter "involv[es] a substantial question arising under the Constitution of the United States or this State." R. 2:2-1(a). Importantly, "[t]he mere allegation that a cause involves a constitutional question gives no right to an appeal under the rule. There must be a showing that a Substantial constitutional question is involved and this must be set out with particularity. . . . Furthermore, the question must be more than merely colorable." Deerfield Ests., Inc. v. E. Brunswick Twp., 60 N.J. 115, 119 (1972) (citations omitted; quoting Starego v. Soboliski, 11 N.J. 29, 32 (1952), cert. denied, 345 U.S. 925 (1953)); see State v. De Meo, 20 N.J. 1, 5 (1955) ("an appeal under the cited rule is maintainable only where the record reveals a substantial rather than merely a colorable constitutional question").

The Appellate Division correctly concluded that Petitioners have not asserted colorable Constitutional claims: Their equal protection claim failed because "plaintiffs' complaint has not identified how any class of people was treated differently by the Commission as compared to another class of people." [22a].

> [T]he CO plaintiffs' claims of violations of their free speech and association rights also fail . . .The wards created by the

> Commission . . . did not impact the CO plaintiffs' rights of free speech and association. The CO plaintiffs have the same free speech and association rights they had before the wards were adjusted in 2022. They are all residents of the City, and ward boundaries do not infringe on their rights of free speech and association. . . .[A]ll resident of the City, including the CO plaintiffs, will continue to have the same free speech and association rights to support or oppose the re-election of Gilmore.

[Id., 23a-24a]. See also infra, § III. Thus, Petitioners' claims are not even colorable, much less "substantial" enough to warrant an appeal as of right from the remand ruling below. This Court's previous denial of a petition asserting partisan gerrymandering of Legislative districts supports this conclusion. See infra, __. Thus, Plaintiffs may not appeal "as of right." R. 2:2-1.

B. THE RULING BELOW LACKS FINALITY.

This petition should be denied because the proceedings below are on-going. As this Court is well aware, there are several paths to the Supreme Court for a litigant: Appeal as of right when the ruling below meets the requirements of Rule 2:2-1(a), petition for certification to this Court under Rules 2:2-1(b) and 2:12-3, and petition pursuant to Rule 2:12-2 of matters "pending unheard in the Appellate Division." The common thread: Any petition must originate from a **final** order or judgment below. In this case, Petitioners' application should be denied because it is not from a final ruling of any Court.

An Order is considered final only if it disposes of all issues as to all parties. See, e.g., Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017)

(citing Silviera–Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016)). Conversely, "[b]y definition, an order that 'does not finally determine a cause of action but only decides some intervening matter pertaining to the cause[,] and which requires further steps ... to enable the court to adjudicate the cause on the merits[,]' is interlocutory." Moon v. Warren Haven Nursing Home, 182 N.J. 507, 512 (2005) (alterations in original) (quoting Black's Law Dictionary 815 (6th ed. 1990)). The aforementioned principles, "commonly referred to as the final judgment rule, reflects the view that 'piecemeal [appellate] reviews, ordinarily, are anathema to our practice.'" S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 87 (App. Div. 1998) (quoting Frantzen v. Howard, 132 N.J. Super. 226, 227–28 (App. Div. 1975)).

The finality requirement is essential to avoiding piecemeal litigation. As this Court has stated unequivocally: "[W]e do not approve of piecemeal adjudication of controversies. Our rules ... prohibit direct appeal unless final judgment has been entered disposing of **all issues as to all parties**." Hudson v. Hudson, 36 N.J. 549, 552–53 (1962) (emphasis added). Appellate Courts also avoid premature review of matters because "[t]he interruption of litigation at the trial level by the taking of an unsanctioned appeal disrupts the entire process and is wasteful of judicial resources." CPC Int'l, Inc. v. Hartford Accident & Indem. Ins. Co., 316 N.J. Super. 351, 365 (App.Div.1998), certif. denied, 158

N.J. 73 (1999). Because granting this petition would result in exactly the sort of piecemeal litigation that is "anathema" to orderly appellate practice, S.N. Golden Estates, supra, Petitioners' request for Supreme Court review of their claims under the MW Law should be denied as premature.

II. THE DISMISSAL OF PETITIONERS' OPMA CLAIM WAS PROPER.

This Court should deny certification as Petitioner's meritless claim under the OPMA. As Judge Turula found, and the Appellate Division observed, the Ward Commission held the two formal public meetings required by statute: its organizational meeting on December 15, 2021, when it determined that the disparate populations of Jersey City's then-existing Wards required them to be re-drawn, and its final meeting on January 22, 2022, when it took public comment and adopted a new Map. It is undisputed that both of these meetings were duly-noticed and otherwise conducted in conformity with the OPMA.

In Count Three of their Complaint, Petitioners nevertheless asserted that the Commission violated the Act by holding "working sessions," between its initial and final meetings, which "violated the spirit, intent, and letter of the OPMA." [Pa44, ¶ 177]. However, Petitioners do not allege—and **could not** allege—that any official act had occurred at any of the allegedly non-conforming meetings. On the contrary, as the Appellate Division correctly observed,

> [Because t]he Commissioners certified that all non-public working sessions involved less than a quorum of the

> Commissioners . . . , the Commission was . . . entitled to a dismissal of [Petitioners' OPMA] claims.
>
> The MW Law contemplates that ward commissioners will engage in working, non-public meetings. See N.J.S.A. 40:44-12 (allowing the commissioners to retain and consult with a surveyor, an engineer, or "other assistants as shall be necessary to aid them in the discharge of their duties"). . . . **The OPMA does not prohibit individual commissioners or a group of commissioners, constituting less than a quorum, from meeting with "assistants" and considering information, including alternative maps, in private meetings.**
>
> Additionally, plaintiffs cannot show that the Commission took any formal action in a non-public meeting. There is no dispute that the Commission voted to adopt new ward boundaries and a new map at the January 22, 2022 public meeting. Adopting new boundaries and a map are the only actions required of the Commissioners under the MW Law. In short, plaintiffs have not alleged, nor could they allege, viable OPMA claims.

[Aa, Exhibit A at 26-27 (emphasis added)].

The Appellate Division was correct, and relied upon long-standing New Jersey case law that the OPMA—by its plain terms—does not apply to meetings attended by less than a quorum of the public body's members or where no official action is taken. See N.J.S.A. 10:4-8(b); Gandolfi v. Town of Hammonton, 367 N.J. Super. 527, 539–40 (App. Div. 2004) (an effective majority or quorum of members must be present for (1) an action to be taken; and (2) the OPMA to apply); see also, McGovern v. Rutgers, 211 N.J. 94, 112 (2012) (N.J.S.A. 10:4-15 is inapplicable to meetings wherein no action is taken).

Finally, even if any of Petitioners' allegations regarding non-public meetings had been found actionable, Petitioners still would have had no entitlement to relief because the remedy for violation of the OPMA is recession of any official acts that occurred at the non-conforming meeting. See N.J.S.A. 10:4-8(b); see McGovern v. Rutgers, 211 N.J. 94, 112 (2012) (N.J.S.A. 10:4-15 is inapplicable to meetings where no action is taken). It is undisputed that the challenged Map was adopted at a meeting that complied with OPMA. Thus, even if any of the working sessions had violated OPMA (which they did not), any such violation was remedied when the Commission met and took action on January 22, 2022. See N.J.S.A. 10:4-15(a) (a public body may take "corrective or remedial action" to cure a past OPMA violation, by acting *de novo* at a conforming public meeting).

Accordingly, the Appellate Division correctly affirmed the trial Court's dismissal of Petitioner's OPMA claim, and certification should be denied.

III. PETITIONERS DO NOT STATE A CONSTITUTIONAL CLAIM.

At the core of Petitioners' Constitutional claims is that a new ward Map which (a) was required by law to be drawn, (b) was drawn by a Commission constituted as the law specifies, (c) complies in all respects with that law, and (d) was in no way the product of invidious discrimination, as Petitioners admit, somehow is unconstitutional. As grounds for striking down this valid

government act, Petitioners offer no more than rank speculation about how "Black or Latino [voters with] . . . lower incomes" would vote as compared to "affluent . . . white and Asian residents,"[2] [Pa23, ¶ 69; Pa38, ¶ 147], coupled with "broad allegations about the fragmentation of 'communities of interest' and neighborhoods" [Aa, Exhibit A at 16] of a type this Court has previously rejected as "wholly irrelevant," see Jackman v. Bodine, 49 N.J. 406, 418 (1967), and mathematical theories that are ill-equipped for application to an irregularly-shaped municipality with an unevenly-distributed population. With only these rationales, Petitioners ask this Court to find that any voter or candidate in New Jersey has a "substantive right[], privilege[] or immunity[y] secured by the Constitution," N.J.S.A. 10:6-2(c), not just to demand that the government act but to demand a specific outcome to a discretionary government process—here, the creation of a municipal election ward.

The Appellate Division correctly concluded that the "wards created by the Commission, however, did not impact the CO plaintiffs' rights of free speech

[2] Or even "supporters of Frank Gilmore." To be a class cognizable for civil rights claim purposes "a reasonable person must be able to 'readily determine by means of an objective criterion or set of criteria who is a member of the group and who is not.' For example, 'women,' or 'registered Republicans,' may constitute an identifiable 'class' as opposed to a more amorphous group . . . such as . . . 'persons who support political candidates.'" Farber v. City of Paterson, 440 F. 3d 131, 136 (2006) (quoting Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 269 (1993) & Aulson v. Blanchard, 83 F.3d 1 (1st Cir. 1996)) (citations omitted; emphasis added).

and association." [Aa, Exhibit A at 24]. "[A]ll residents of the City, including the . . . plaintiffs, will continue to have the same free speech and association rights," and, accordingly, Petitioners' "constitutional claims fail." [Id., 24, 27]. Petitioners' request to extend the ruling of Tumpson v. Farina, 218 N.J. 450 (2014), to encompass claims under the MW Law is not one this Court should entertain. Tumpson involved voters' rights under the Faulkner Act to place a referendum on the ballot, and the City's denial of that right. See id. at 349. This Court concluded that the law required plaintiffs' referendum petition to be processed, and directed that result. Id. at 352. Tumpson thus had two possible outcomes: the referendum would proceed, or it would not—and this Court ruled that it would, because "the Clerk was unambiguously required to accept and file the petition." Harz v. Boro. of Spring Lake, 234 N.J. 317, 334 (2018).

Here, by contrast, Petitioners are not challenging inaction, or a refusal to act, on the part of the Commission. Rather, the Commission has acted according to law and Petitioners do not like the result: a particular map, which is one of a nearly infinite number of other possibilities. Petitioners ask this Court to substitute its judgment for the Commission's and order the adoption of some new map, a request which is inappropriate for several reasons. First, the Courts have at all times limited the extent to which they are willing to intrude into the discretionary acts of local governments and agencies. See, e.g., In re Stallworth,

208 N.J. 182 (2011); Jacoby v. Zoning Bd. of Adj. of Boro. Of Englewood Cliffs, 442 N.J. Super. 450 (App. Div. 2015). Second, the specific governmental task challenged here—the redrawing of electoral lines—is one both this Court and the United States Supreme Court have identified as political in nature and not appropriate for judicial intervention. See IMO Cong. Districts by N.J. Redistricting Comm'n, 249 N.J. 561, 568-9 (2022) (Redistricting plans "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."); Rucho v. Common Cause, et al., 139 S.Ct. 2484, 2506-07 (2019) ("partisan gerrymandering claims present political questions beyond the reach of the federal courts"). Third, establishing what Petitioners ask—the right to a "different" map when a voter dislikes the one adopted—opens the door to innumerable challenges. "[C]reating and adjusting wards necessitates that residents of the City will be divided into different wards" and "some residents will have to be moved to different wards." [Aa, Exhibit A at 24-5]. For that process to proceed in accordance with the law, and still result in valid Constitutional claims by anyone unhappy with the result, would mean this Court recognizing not just a constitutional right to government action, as in Tumpson, but a constitutional right to demand a specific outcome of government action.

Because that result is so at odds with consistent and long-standing judicial precedent, and because inviting numerous challenges to the outcome of legal and bipartisan electoral processes will only increase voters' confusion and disaffection with our democratic system, this Court should deny certification on Petitioners' "constitutional" claims.

IV. CERTIFICATION SHOULD BE DENIED TO PETITIONERS' "PARTISAN GERRYMANDERING" ALLEGATIONS.

Next Petitioners ask this Court to grant certification to establish the "elements of a partisan gerrymandering claim." [Pb20]. However, **Petitioners did not plead any such count in their Complaint**. As the Appellate Division found, Petitioners' pleading does not "allege[] gerrymandering based on political party. Instead, they have made broad allegations about the fragmentation of 'communities of interest' and neighborhoods." [Aa, Exhibit A at 16]. Redistricting challenges premised upon such nebulous concepts have already been rejected by this Court. Jackman, 49 N.J. at 418 (listing "communities of interest" among "wholly irrelevant" considerations for a redistricting panel); Davenport v. Apportionment Comm'n, 65 N.J. 125, 132 (1974) (same). Consistent with this Court's past rulings, the appellate Court correctly concluded Petitioners' arguments cannot "support a claim that the wards were shaped for partisan advantage . . ." [Id.].

The instant Petition—a challenge to a municipal ward map in a **non-partisan** city—offers no basis for this Court even to entertain the existence of a "partisan gerrymandering" claim. There are no Democratic or Republican districts into which the City could be sub-divided. Certainly, then, this case is the wrong vehicle to—as Petitioners ask—establish precedent on the question of what constitutes "partisan gerrymandering." Even if Plaintiffs could provide some adequate rationale for the Court to treat "neighborhoods"—or even supporters Frank Gilmore—like political parties, the sort of partisan gerrymandering claim alleged by Petitioners was rejected in Gonzalez v. N.J. Apportionment Comm'n, 428 N.J. Super. 333 (App. Div. 2012), certif. denied, 213 N.J. 45 (2013). In that case, the Appellate Division affirmed the dismissal of the plaintiffs' complaint, including the plaintiffs' political gerrymandering claim, recognizing that "there is nothing unconstitutional about apportioning legislative districts with an eye toward political considerations, because ***redistricting is at its core, a political process***." 428 N.J. Super. at 368 (emphasis added); see also Farber v. City of Paterson, 440 F. 3d 131, 135 (2006) ("unlike discrimination against a class on the basis of race, sex, or mental retardation, discrimination on the basis of political affiliation is not, as a matter of law,

discrimination so invidious").[3] The Gonzalez 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, supra, at 368. This Court denied certification.

The U.S. Supreme Court offers both further justification for this conclusion and affirmation of this Court's more than 50-year approach toward redistricting map review:

> We have never struck down a partisan gerrymander as unconstitutional. . .The expansion of judicial authority would not be into just any area of controversy, but into one of the most intensely partisan aspects of American political life. **That intervention would be unlimited in scope and duration—it would recur over and over again around the country with each new round of districting**, for state as well as federal representatives. Considerations of the impact of today's ruling on democratic principles cannot ignore the effect of the unelected and politically unaccountable branch of the . . . Government assuming such an extraordinary and unprecedented role.

Rucho v. Common Cause, et al., 139 S.Ct. 2484, 2506-07 (2019) (holding that there is no First Amendment cause of action for partisan gerrymandering).

Accordingly, Petitioners have failed to present a colorable claim of partisan gerrymandering, and their Petition should be denied.

[3] Petitioners admit the absence of invidious discrimination here [Aa, Exhibit A at 16, 22]—a concession that is fatal to their claims. See IMO Cong. Districts, 249 N.J. at 568-9; Davenport, 65 N.J. at 134.

V. GILMORE'S POLITICAL RETALATION CLAIM FAILS.

Petitioners also ask this Court to second-guess the Appellate Division's ruling upholding the dismissal of Councilman Gilmore's claim that the adoption of the Map was somehow an act of retaliation against him for his policy positions. This baseless claim asks the Court to assume that seven individuals—all of them required by statute to comprise the Commission—shared a political opposition to Gilmore's viewpoint and retaliated against him by creating a Map that it was statutorily required to create to protect the one-person, one-vote principle because Jersey City's population amongst its wards deviated by 59%. And it advanced this foundational and paramount principle of democracy by reducing the population deviation to 1.8%. Jackman, 49 N.J. at 419 (". . .we believe it helpful for future guidance to suggest that **population equality must be distinctly paramount.**") (emphasis added).

The Commission—like all seven ward commissions convened in Hudson County in 2022— convenes once every ten years. Its composition is established by statute: the six members are the gubernatorially-appointed and statutorily bi-partisan County Board of Elections [N.J.S.A. 19:6-17], plus the Clerk of the redistricting municipality. See N.J.S.A. 40:44-11.

Accordingly, as recognized by the Appellate Division and per the plain language of the MW Law, the ward boundaries were not redrawn to punish Frank

Gilmore; they were redrawn because they were required by law to be redrawn. See supra, 3. The Appellate Division correctly concluded that Gilmore's allegation of "retaliation" was "speculative and does not rise to the level of a substantive right, privilege, or immunity secured by the Constitution or the laws of New Jersey. Accordingly, this claim was also properly dismissed." [Aa, Exhibit A at 28]. Indeed, Gilmore offered no facts to support a conclusion of bias on the Commissioners' part, much less that any such bias against Ward F's Councilman was a "substantial" or "motivating" factor behind the Commission's adoption of the entire Map. See Lapolla v. Cty. of Union, 449 N.J. Super. 288, 306-307 (App. Div. 2017). Instead, Petitioners rely on offensive race- and class-based assumptions about how "Black or Latino [voters with] . . . lower incomes" would vote, as compared to "affluent … white and Asian residents," [Pa23, ¶ 69; Pa38, ¶ 147], rendering their claims and their arguments purely speculative, see, e.g., Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007), and not worthy of this Court's blessing.

CONCLUSION

Petitioners' application fails to meet the standards for certification, and should be denied.

Respectfully submitted,
MURPHY ORLANDO LLC
By: */s/ Tyler Newman*
Tyler Newman, Esq.

Dated: May 3, 2024