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JERSEY CITY UNITED AGAINST THE NEW	: SUPERIOR COURT OF NEW JERSEY
WARD MAP, DOWNTOWN COALITION OF	: LAW DIVISION, HUDSON COUNTY
NEIGHBORHOOD ASSOCIATIONS, GREEN-	:
VILLE NEIGHBORHOOD ALLIANCE, FRIENDS:	: DOCKET NO. HUD-L-            -22
OF BERRY LANE PARK, RIVERVIEW	:
NEIGHBORHOOD ASSOCIATION, PERSHING	: <u>Civil Action</u>
FIELD NEIGHBORHOOD ASSOCIATION,	:
SGT. ANTHONY NEIGHBORHOOD ASSOC.,	: VERIFIED COMPLAINT
GARDNER AVENUE BLOCK ASSOCIATION,	: IN LIEU OF PREROGATIVE WRIT
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,	:
-vs.-	:
	:
JERSEY CITY WARD COMMISSION and	:

JOHN MINELLA, in his official capacity as :  
Chair of the Commission, :  
 :  
 :  
Defendants. :  
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X

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The Plaintiffs, JERSEY CITY UNITED AGAINST THE NEW WARD MAP, DOWNTOWN COALITION OF NEIGHBORHOOD ASSOCIATIONS, GREENVILLE NEIGHBORHOOD ALLIANCE, FRIENDS OF BERRY LANE, PARK, RIVERVIEW NEIGHBORHOOD ASSOCIATION, PERSHING FIELD NEIGHBORHOOD ASSOCIATION, SGT. ANTHONY NEIGHBORHOOD ASSOCIATION, GARDNER AVENUE BLOCK ASSOCIATION, LINCOLN PARK NEIGHBORHOOD WATCH, MORRIS CANAL REDEVELOPMENT CDC, HARMON STREET BLOCK ASSOCIATION, CRESCENT AVENUE BLOCK ASSOCIATION, DEMOCRATIC POLITICAL ALLIANCE, and FRANK E. GILMORE, and by way of their Verified Complaint, state as follows:

**PRELIMINARY STATEMENT**

1. This is a case of government abuse that adversely affects all voters and residents of Jersey City. Behind closed doors, the Jersey City Ward Commission (the “Commission”) disrupted and carved up long-standing neighborhoods, ignored natural geographic dividers, and even split buildings in half in order to create a map that may have satisfied N.J.S.A. 40:44-14’s standard regarding population deviation, but violated basic principles of fair representation and communities of interest that are embedded in that statute’s “compactness” requirement.

2. It appears that the Commission used voting precinct/election district boundaries based on 2010 Census data to delineate the redrawn boundaries of Jersey City’s 6 wards, which was an arbitrary, atypical metric that has resulted in jagged, awkward-shaped wards that do not fairly represent the constituents living therein. In particular, Ward F is now shaped like the

salamander that historically gave rise to the phrase “gerrymandering,” losing many of its working class Black and Hispanic constituents to Ward A, who have been replaced by higher income White and Asian residents, who were formerly living in Ward E – two wards with very different development patterns, different concerns, and different demands on their locally elected officials. The historical neighborhoods of Lafayette and Paulus Hook have been divided apart, and development projects that Ward F residents and their newly-elected councilman, Frank Gilmore (then a candidate) protested – primarily due to their lack of affordable housing – are no longer in Ward F, constituting an act of political sabotage that violates both Councilman Gilmore’s and his supporters’ free speech and associational rights.

3. This action thus seeks review (in lieu of the writ of *certiorari*) of the Commission’s 2022 Jersey City Ward Redistricting Map (“Commission’s Map”) and (a) a declaration that the 2022 Map is invalid in its entirety; (b) an order (in lieu of the writ of *mandamus*) directing the Commission to redraw its map to consider “compactness” and achieve a significantly better level of compactness without sacrificing the map’s score on population deviation that is equal or better than it previously achieved (such as Plaintiffs’ proposed map which achieved a population deviation of 0.78% and average scores on two of the most commonly used tests for compactness of 0.5124 for the Polsby-Popper Measure and 0.4279 for the Reock Score); (c) an order (in lieu of writ *prohibition*) enjoining the use of voting election districts as delineating the contours of the ward boundaries; (d) a declaration that the Open Public Meetings Act was violated when the Commission held meetings prior to January 22, 2022 from which the public were excluded; (e) an order (in lieu of writ of *mandamus*) requiring the Commission to make sure that the process is transparent and all meetings of the Commission are open to the public; and (f) an order awarding legal fees to the Plaintiffs pursuant to N.J.S.A. 10:6-2(c).

## **PARTIES**

4. Plaintiff JERSEY CITY UNITED AGAINST THE NEW WARD MAP is an unincorporated, membership organization that is interested in ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. Its members were upset about the Ward Redistricting Commission's lack of transparency and unwillingness to engage in meaningful dialogue with the public. CHRIS GADSDEN is the Chair and he resides at 417 A Union Street, Jersey City, New Jersey, 07304 (Ward B). Members include: KATHRYN MOORE (Ward E), Former Ward F Councilman DANIEL WILEY, AMY WILSON (Ward B), MICHAEL GRIFFIN (Ward F), SABRINA HARROLD (Ward F), ERICA WALKER (Ward F), LESLIE LONE (Ward F), MORIAH KINBERG (Ward D), DEBORAH McWILLIAMS (Ward C), MARY DeVINE (Ward D), LYNN MULLINS (Ward D), and ANDY LUCK (Ward D).

5. Plaintiff DOWNTOWN COALITION OF NEIGHBORHOOD ASSOCIATIONS is comprised of six downtown neighborhood associations: HISTORIC PAULUS HOOK ASSOCIATION, HAMILTON PARK ASSOCIATION, THE VILLAGE NEIGHBORHOOD ASSOCIATION, HARSIMUS COVE ASSOCIATION, VAN VORST PARK ASSOCIATION, and the POWERHOUSE ARTS DISTRICT NEIGHBORHOOD ASSOCIATION. These neighborhood associations are geographically based with four of the six listed on the National Register as historic districts, each within its own geographically defined boundary. The Coalition is unified in its concerns regarding the redistricting process: the Commission's disrespect for neighborhoods, natural dividers and communities that share similar municipal concerns as well as the lack of transparency and open engagement with Jersey City residents and voters during the

redistricting process. DIANE KAESE, representing the Paulus Hook Association is the current Chair of the Coalition. She formerly resided in Ward E in an area that is now in Ward F.

6. Plaintiff GREENVILLE NEIGHBORHOOD ALLIANCE is a collection of block associations that are active in Wards A and F. The Alliance is interested in ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. Their members share concerns about the lack of transparency in the process, and in particular, many members believe that the gross reconfiguration of Ward F, resulting in their relocation into Ward A, was done in retaliation for their support of Councilman Gilmore, his platform, and in particular, his support for more affordable housing in their neighborhoods. MONICA HARWELL is the Vice Chair of the Greenville Alliance and she resides at 13 Bayview Avenue, Jersey City, New Jersey, 07305. She formerly resided in Ward F in an area that is now in Ward A.

7. Plaintiff FRIENDS OF BERRY LANE PARK INC., is a 501(c)(3) organization focused on maintaining and improving Berry Lane Park which consists of a host of athletic fields and walkways that are located on a former industrial site formerly entirely in Ward F. The Friends of Berry Lane Park are interested in ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. Their members share concerns about the lack of transparency in the process, and in particular, many members believe that the gross reconfiguration of Ward F, resulting in the split of Berry Lane Park, was done in retaliation for their support of Councilman Gilmore, his platform, and in particular, his support for more affordable housing in their neighborhoods and opposition to a proposed 17 story building adjacent to the Park. JEROME CHOICE is the Chair

of Friends of Berry Lane Park and his mailing address is P.O. Box 15006, Jersey City, New Jersey, 07305. He formerly resided in Ward F in an area that is now in Ward A.

8. Plaintiff RIVERVIEW NEIGHBORHOOD ASSOCIATION is an incorporated neighborhood group that is located in the Heights. Its members have concerns regarding the redistricting process: the Commission's disrespect for neighborhoods, natural dividers and communities that share similar municipal concerns as well as the lack of transparency and open engagement with Jersey City residents and voters during the redistricting process. In particular, the crazy-shaped extension of Ward D into downtown, diminishing the compactness of the Ward, is upsetting to its members and they have a strong interest in seeing the map invalidated. JOCELYN PATRICK is the Chair of the Riverview Neighborhood Association and she resides at 60 Bowers Street, Jersey City, New Jersey, 07307 (Ward D).

9. Plaintiff PERSHING FIELD NEIGHBORHOOD ASSOCIATION, INC., is a 501(c)(3) corporation, that is active in Ward D. Its members have concerns regarding the redistricting process: the Commission's disrespect for neighborhoods, natural dividers and communities that share similar municipal concerns as well as the lack of transparency and open engagement with Jersey City residents and voters during the redistricting process. In particular, the crazy-shaped extension of Ward D into downtown, diminishing the compactness of the Ward, is upsetting to its members and they have a strong interest in seeing the map invalidated. PAUL AMATUZZO is the Chair of the Pershing Field Neighborhood Association and he resides at 83 Sherman Place, Jersey City, New Jersey, 07307 (Ward D).

10. Plaintiff SGT. ANTHONY PARK NEIGHBORHOOD ASSOCIATION, is 501(c)(3) corporation, that is active in the northern part of Ward C, within the "Heights." Its members have concerns regarding the redistricting process: the Commission's disrespect for

neighborhoods, natural dividers and communities that share similar municipal concerns as well as the lack of transparency and open engagement with Jersey City residents and voters during the redistricting process. BART WARSHAW is the Chair of the Sgt. Anthony Park Neighborhood Association and he resides at 97 Palisades Avenue, Jersey City, New Jersey, 07304 (Ward C).

11. Plaintiff GARDNER AVENUE BLOCK ASSOCIATION is an unincorporated membership organization that is active in Ward F. Its members are interested in ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. Its members also share concerns about the lack of transparency in the process, and in particular, many members believe that the gross reconfiguration of Ward F, resulting in some residents being relocated into Ward A, was done in retaliation for their support of Councilman Gilmore, his platform, and in particular, his support for more affordable housing in their neighborhoods. MICHAEL GRIFFIN is the Vice President of the Gardner Avenue Block Association, and he resides at 44 Gardner Avenue, Jersey City, New Jersey, 07304 (Ward F).

12. Plaintiff LINCOLN PARK NEIGHBORHOOD WATCH is an unincorporated membership organization that is located in Ward B. Its members are unified in their concerns regarding the redistricting process: the Commission's disrespect for neighborhoods, natural dividers and communities that share similar municipal concerns as well as the lack of transparency and open engagement with Jersey City residents and voters during the redistricting process. COLIN DEVRIES is the current Chair of the group and he resides at 150 Belmont Avenue, Apt 201, Jersey City, New Jersey, 07304 (Ward B).

13. Plaintiff MORRIS CANAL REDEVELOPMENT CDC is incorporated as a 501(c)(3) that is an active residential developer in Ward F. Morris Canal CDC is interested in

ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. Its members share concerns about the lack of transparency in the process, and in particular, many members believe that the gross reconfiguration of Ward F, resulting in their relocation into Ward A, was done in retaliation for their support of Councilman Gilmore, his platform, and in particular, his support for more affordable housing in their neighborhoods. JUNE JONES is the Executive Director of the Morris Canal Redevelopment CDC and she resides at 317 Pacific Avenue, Jersey City, New Jersey, 07304 (Ward F).

14. Plaintiff HARMON STREET BLOCK ASSOCIATION, is an unincorporated membership organization that is active in Ward F. The Association is interested in ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. The group's members share concerns about the lack of transparency in the process, and in particular, many members believe that the gross reconfiguration of Ward F, resulting in the relocation of Ward F residents into Ward A, was done in retaliation for their support of Councilman Gilmore, his platform, and in particular, his support for more affordable housing in their neighborhoods. COLEEN COLBERT is the President of Harmon Street Block Association and she resides at 84 Harmon Street, Jersey City, New Jersey, 07304 (Ward F).

15. Plaintiff CRESCENT AVENUE BLOCK ASSOCIATION is an unincorporated membership organization that is active in Ward F. The Association is interested in ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. The group's members share concerns about the lack of transparency in the process, and in particular, many members



believe that the gross reconfiguration of Ward F, resulting in the relocation of Ward F residents into Ward A, was done in retaliation for their support of Councilman Gilmore, his platform, and in particular, his support for more affordable housing in their neighborhoods. CAROL McNICHOL is the President of the Crescent Avenue Block Association and she resides at 26 Crescent Avenue, Jersey City, New Jersey, 07304 (Ward F).

16. Plaintiff DEMOCRATIC POLITICAL ALLIANCE is an unincorporated organization whose membership is city-wide, and which focuses on the affairs and concerns of the Hispanic community in the City. The Alliance is interested in ensuring that Jersey City is organized in six compact, equally populated wards that respect neighborhoods, natural dividers and communities that share similar municipal concerns. The group's members share concerns about the lack of transparency in the process, and in particular, many members believe that the gross reconfiguration of Ward F, resulting in the relocation of Ward F residents into Ward A, was done in retaliation for their support of Councilman Gilmore, his platform, and in particular, his support for more affordable housing in their neighborhoods. ERICK ESTRELLA is the Chair of the Alliance and he resides at 11 Pamrapo Avenue, Jersey City, 07305 (Ward A).

17. Plaintiff FRANK E. GILMORE is the Councilman of Ward F and resides at 100 Ege Avenue, Jersey City, New Jersey 07304. He was elected in the November 2021 municipal election garnering significant support from the voters of Ward F. Prior to his election, he was active in community affairs, and spoke out about the many concerns facing the older, former industrial neighborhoods in the Ward. In particular, he took public positions in support of affordable housing and was critical of certain developments proposed in the Ward primarily because they lacked a sufficient number of affordable units or did not fit into the surrounding neighborhood. He has a special interest in this litigation. He has concerns about the lack of

transparency in the process; the failure of the Commission to respond to his complaints about the ward map (a copy of which he received two days before the January 14, 2022 meeting that was aborted due to technical difficulties); the gross reconfiguration of Ward F resulting in a significant divide of the Lafayette neighborhood between Ward F and A, and Paulus Hook between Ward F and E; and, the removal of several proposed projects from Ward F in order to significantly reduce his ability to influence their development. The gerrymandering of Ward F in retaliation for Mr. Gilmore's speech and association with a slate that was opposing the incumbent of Ward F deprives him and those he represents of a constitutionally protected civil right.

18. Defendant JERSEY CITY WARD COMMISSION consists, pursuant to N.J.S.A. 40:44-11 of the members of the Hudson County Board of Elections and the Jersey City Municipal Clerk. The members of the Hudson County Board of Elections include (1) John Minella, who served as Chair of the Commission; (2) Daniel E. Beckelman; (3) Paul Castelli; (4) Peter E. Horton; (5) Janet Larwa; and (6) Daniel Miqueli. The Jersey City Municipal Clerk is Sean J. Gallagher, who served as Secretary of the Commission. The role of Commission is to divide Jersey City into wards after the decennial census, N.J.S.A. 40:44-13(c), and it is required to file a report and map, certified by three commissioners, with the County Clerk with copies to be filed with the Secretary of State and the Municipal Clerk. The filing of the report and officially adopted map was done per letter dated February 3, 2022.

19. Defendant JOHN MINELLA was at all relevant times to this Complaint the Chair of the Jersey City Ward Commission and the Chief of Staff of Mayor Steven Fulop. He is being sued in his official capacity as Chair of the Jersey City Ward Commission.

## **JURISDICTION AND VENUE**

20. The Superior Court has jurisdiction over this matter regarding the redistricting of ward boundaries in Jersey City.

21. Venue is proper in Hudson County under R. 4:3-2(a)(2) and (3) because the redrawing of the wards and meetings at issue pertain to Hudson County and the cause of action arose in Hudson County.

## **BACKGROUND LAW AND FACTS COMMON TO ALL COUNTS**

### **A. Municipal Ward Law**

22. The Municipal Ward Law, N.J.S.A. 40:44-9 to 18, provides the exclusive method by which wards are “fixed and determined.” See N.J.S.A. 40:44-10.

23. The task of redrawing the wards and complying with the provisions of the Municipal Ward Law are committed by statute to a ward commission, comprised of the members of the county board of elections in the county where the municipality is located, along with the municipal clerk. See N.J.S.A. 40:44-11.

24. Within 3 months of the promulgation of the Federal decennial census by the Governor, the ward commissioners are directed to meet to make adjustments to the ward boundaries in conformity with the requirements of the Municipal Ward Law. See N.J.S.A. 40:44-13(c).

25. In fixing and determining the boundaries, each ward must be “formed of compact and contiguous territory.” See N.J.S.A. 40:44-14.

26. In addition, N.J.S.A. 40:44-14 provides limitations on the difference in population between the wards that are permissible: “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% of the

mean population of the wards derived by dividing the total population of the municipality by the number of wards created. The most recent Federal decennial census shall be used as the population determinant.”

27. Within 30 days of the initial meeting of the ward commissions, three<sup>1</sup> of the ward commissioners must sign a certified report that describes the new ward boundaries, along with an accompanying map that clearly demarcates the new ward boundaries, and file the report and map with the county clerk, with copies to be filed with the Secretary of State’s office and the municipal clerk. See N.J.S.A. 40:44-15(a).

28. The ward commissioners are also required to file the ward boundaries in Shapefile format with the Secretary of State. See N.J.S.A. 40:44-15(b).

29. Within two weeks of filing the certified report, the municipal clerk is required to cause a notice of the ward boundaries to be published in at least one newspaper that is generally circulated in the municipality. See N.J.S.A. 40:44-16.

30. Once published, the prior wards are deemed superseded, and officers who are elected or appointed for wards thereafter must be elected by or appointed to represent the new wards. See N.J.S.A. 40:44-16.

#### **B. Equal Protection under the New Jersey State Constitution**

31. Article I, Paragraph 1 of the New Jersey Constitution provides as follows: “All persons are by nature free and independent, and have certain natural and unalienable rights, among

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<sup>1</sup> While the statute requires the signatures of *three* ward commissioners, and most boards of election have four members, the clear implication of the statute is that a *majority* of the ward commissioners sign the certified report. Thus, for ward commission in counties like Hudson which have six members of the board of elections (plus one municipal clerk), a fair reading of the statute would require the signature of four ward commissioners, which would constitute a majority.

which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”

32. While Article I, Paragraph 1 of the New Jersey Constitution does not expressly use the phrase “equal protection,” courts have found that this state constitutional provision should be construed to guarantee the fundamental right of equal protection.

33. The fundamental right of equal protection applies in the context of redistricting, including with respect to principles such as one-person, one vote, vote dilution, equal treatment, and consideration of various traditional redistricting principles.

### **C. Jersey City Ward Commission**

34. The ward commission in Jersey City (“Jersey City Ward Commission” or “Commission”) consists of the 6 members of the Hudson County Board of Elections<sup>2</sup> and the Jersey City Municipal Clerk, Sean J. Gallagher, who also served as Secretary of the Commission.<sup>3</sup>

35. After the Governor promulgated the decennial census data on September 16, 2021, the Commission held an initial meeting on December 15, 2021.

36. Using the new decennial census numbers, the Commission found certain of Jersey City’s six wards to be out of compliance with the population deviation requirement set forth in N.J.S.A. 40:44-15, finding a 59% population deviation between Ward E and Ward D, which were the most and least populated wards, respectively.

37. While a new map was supposed to be finalized within 30 days of the initial meeting of the Ward Commission, a one-week extension was granted by the Governor.

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<sup>2</sup> The members of the Hudson County Board of Elections include the following: (1) John Minella, who also served as Chair of the Commission; (2) Daniel E. Beckelman; (3) Paul Castelli; (4) Peter E. Horton; (5) Janet Larwa; and (6) Daniel Miqueli.

<sup>3</sup> Michael H. Harper served as Clerk of the Commission, but was not a member of the Commission.

38. A meeting was noticed to be held on Friday, January 14, 2022, via zoom.

39. Approximately a week before the 14<sup>th</sup>, a proposed new ward map had been shared with various councilmembers, but not with Councilman Frank Gilmore. Mr. Gilmore was only given the map two days before the meeting. His staff shared the map with several community activists, who in turn distributed the proposed map through social media. Outrage throughout the City ensued and, as a result, large numbers of people sought to participate in the meeting on the 14<sup>th</sup>.

40. The outrage was spread throughout the City, because the proposed map impacted several wards. The historic district of Hamilton Park was divided between two wards, a portion of the West Side community was handed over to Ward F, while the historic black neighborhood of Lafayette was split in two. Several development projects in Ward F (including the federal development opportunity zone) were handed over to Ward A, at the same time that Ward A lost a major development project (*i.e.*, Bayview) to Ward B. Ward D, known as the Heights, was snaked down into the downtown area near the Holland Tunnel entrance, and adjacent neighborhoods, also in the Heights, remained in Ward C rather than being integrated into Ward D.

41. The meeting on January 14, 2022 was conducted in a hybrid fashion, with some attendees arriving in person and others on video conference via Zoom; however numerous residents tried to call in (*i.e.*, attend) but were unable to do so. When the Commission could not fix the “technological” problem limiting the number of people who could participate, the meeting was aborted and was postponed until January 22, 2022.

42. The Ward Commission held a second meeting on January 22, 2022, a frigid Saturday morning, where it adopted the current ward map (“Commission’s Map”), which was

different from the proposed map that had been circulated in anticipation of a meeting on January 14, 2022. See Exhibit A, Commission’s Map.

43. On information and belief, between the two meetings, the Ward Commission communicated with various connected stake holders and changed the map that was first presented to the community. That the Commission changed a map it was prepared to adopt at a meeting that was only canceled due to a technical problem and that it made those changes based upon lobbying from a select assortment of connected stakeholders demonstrates the arbitrary, capricious, impermissible and illegal nature of the Commission’s work.

44. On February 3, 2022, the Commission filed the Report of the Jersey City Ward Commission (“Commission Report”) which contained information about the process conducted, provided a word description of the ward boundaries, and attached the new ward map. See Exhibit B, Commission Report; Exhibit C, Cover Letter Accompanying Commission Report.

45. On February 5, 2022, the municipal clerk, Sean J. Gallagher, published a notice of the ward boundaries in the Jersey Journal.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

(Violation of Municipal Ward Law, N.J.S.A. 40:44-9 to -18)  
(Violation of New Jersey Constitution, Equal Protection, N.J. CONST., art. I, Para. 1)

#### **A. Failure to Draw Wards of Compact Territory**

46. The Municipal Ward Law expressly requires that “*each* ward” be compact. See N.J.S.A. 40:44-14 (emphasis added).

47. The creation of the Municipal Ward Law was based on a recommendation of the Musto Commission, which analyzed and made recommendations on numerous matters pertaining to the various forms of government in New Jersey. See generally Exhibit D, Legislative History

of Municipal Ward Law. The Musto Commission Report compared and contrasted the then-existing General Ward Law (“GWL”) and Optional Municipal Charter Law (“OMCL”), and found the GWL did not have a standard which expressly required compact wards, while the OMCL did. The Legislature sought to implement the recommendation of the Musto Commission to consolidate the existing ward laws into one uniform statute; and when faced with the dichotomy of the standards set forth in the GWL and the OMCL, chose to largely base the Municipal Ward Law off of the OMCL, including an express and affirmative requirement “that each ward [be] formed of compact and contiguous territory.”

48. The importance of compactness particularly with respect to ward redistricting (as compared to legislative and/or congressional redistricting) is reflective of the very reason for the creation of wards in the first instance, taking into consideration the nature of local government authority and concerns. The need for wards is strongest and most justified in larger municipalities which include distinct groups of residents with diverse backgrounds and interests often due to physical location within the City, whereas the need for wards is weakest in smaller municipalities where the use of “wards would fragment the community unnecessarily.” See id. (enclosing relevant portions of Musto Commission Report).

49. In larger municipalities that have various groups with diverse interests, an entire council of at-large candidates could not represent the interests of many of the different areas and neighborhoods in the municipality. Without wards, various distinct communities with unique interests would not have adequate representation and would not have an effective way to address such concerns. For example, many neighborhoods have different issues that are unique to their residents, whether that is based on geography, income, residential/industrial, housing, pollution, etc.



50. The need for wards in such municipalities is tied to the need to allow communities of interest that live in unique neighborhoods with unique local concerns to have representation to address their unique and common issues. The role and powers of municipal government obviate the increased importance of compactness to ensure adequate representation of neighborhoods and other communities of interests to address issues that are local and that pertain uniquely to the residents of a particular area who share common characteristics and concerns. For example, municipal governments deal with issues that are hyper-local in nature, related to traffic lights, stop signs, roads, parks, pollution, housing, development, etc. Therefore, compactness of ward boundaries is essential to achieving the representational goals that justify the very need for wards in the first place, namely, to provide for greater representation of communities of interest bound together by common local interests and characteristics tied to their distinct neighborhoods. Thus, a commission's drawing of wards that are not compact, which split neighborhoods and disregard communities of interest, inherently violates the spirit and intent of the Municipal Ward Law.

51. Here, the Commission's map includes wards that are not comprised of compact territory. The two wards that are the least compact of the six are Ward F and Ward D.

52. For example, Ward F appears in a crooked, snake or salamander-like shape,<sup>4</sup> with jagged and squiggly lines demarcating the boundaries.

53. The Commission Report required 37 bullet points to describe Ward F's boundaries, the most of any of the 6 wards in Jersey City.

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<sup>4</sup> Ironically, the shape of Ward F looks eerily similar to the shape of the infamous gerrymandered district drawn under Governor Elbridge Gerry in Massachusetts in the early 1800s, which was also said to resemble a salamander, and from which the name of the term "gerrymander" is derived. See Exhibit E, Image and Explanation of Original Gerrymander.

54. Ward F lacks a central core and has portions branching out in various directions, with the Southeast boundary and Northwest boundary forming an “L” shape.

55. Among others, Ward F, as drawn by the Commission, achieves an abysmal score on two of the most commonly used measures of compactness, the Polsby-Popper Measure and the Reock Score.

56. The Polsby-Popper Measure looks at the ratio of the area of a district and compares it to the area of a circle whose circumference equals the perimeter of the district. Scores fall between 0 and 1, with scores closer to 1 indicating a more compact district. See Exhibit F, Image and Explanation of Polsby-Popper Measure.

57. Under the Polsby-Popper Measure, as drawn by the Commission, the average score for Jersey City’s six wards was 0.4006, and the minimum score for any ward was Ward F, which received a score of 0.2089. (The score for Ward D was 0.2576.) Both the average and the minimum Polsby-Popper Measure score under the Commission’s map are extremely low, and thus demonstrates poor compactness.<sup>5</sup> See Exhibit G, Chart of Population and Compactness Statistics.

58. The Reock Score looks at the ratio of the area of the district and compares it to the area of the smallest (minimum bounding) circle that encloses the entire district’s shape. Scores fall between 0 and 1, with scores closer to 1 indicating a more compact district. See Exhibit H, Image and Explanation of Reock Score.

59. Under the Reock Score, as drawn by the Commission, the average score for Jersey City’s six wards was 0.3447, and the minimum score for any ward was Ward F, which received a

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<sup>5</sup> Dave’s Redistricting App provides a rating (between 0 and 100) for the Polsby-Popper Measure for each of the wards draw by the Commission. The average rating for the six wards was 72.83, and the minimum rating for any ward was Ward F, which was rated 27. Ward D received a rating of 39.

score of 0.1604. (The score for Ward D was 0.2753.) Both the average and the minimum Reock Score under the Commission's map are extremely low, and thus demonstrate poor compactness.<sup>6</sup> See Exhibit G, Chart of Population and Compactness Statistics.

60. The failure to draw each ward so as to be comprised of compact territory directly violates Plaintiffs' explicit rights under the Municipal Ward Law, as well as the principles of Equal Protection protected by Article, 1, Paragraph 1 of the New Jersey Constitution.

61. The failure to draw each ward so as to be comprised of compact territory led to the unnecessary splitting of neighborhoods and other communities of interest, as set forth below, in violation of the spirit and intent of the Municipal Ward Law and the principles of Equal Protection protected by Article 1, Paragraph 1 of the New Jersey Constitution.

62. The failure to draw each ward so as to be comprised of compact territory also violates Plaintiffs' rights under the Municipal Ward Law and the principles of Equal Protection protected by Article, 1, Paragraph 1 of the New Jersey Constitution, by enabling Defendant to compromise various other factors reviewed by courts in the redistricting process, as set forth below.

#### **B. Failure to Adhere to Traditional Principles of Redistricting**

63. The Commission's Map also fails to adhere to numerous other traditional principles of redistricting that courts regularly take into consideration in determining the legality of the redistricting process.

64. The Commission's map splits apart historic neighborhoods and districts, splits buildings in half, fails to respect natural boundaries and topography, and otherwise breaks apart

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<sup>6</sup> Dave's Redistricting App provides a rating (between 0 and 100) for the Reock Scores for each of the wards draw by the Commission. The average rating for the six wards was 43.83, and the minimum rating for any ward was Ward F, which was rated 0. Ward D received a rating of 10.

communities of interest in Jersey City. See generally Exhibit I, Commission Map with Neighborhood Boundaries.

i. Splitting of Historical Districts and Established Neighborhoods

65. For example, Jersey City's historic Lafayette neighborhood had been located in Ward F.<sup>7</sup> This area comprises one the oldest African-American communities in the State of New Jersey, and includes the Pullman's Porters' House (which was the first place in the City to house black workers who were employed by the central railroad), an African slave burial ground, and St. John's African Methodist Episcopal Church that was a stop on the Underground Railroad. Currently, the Lafayette neighborhood is a community of interest with common economic, housing, cultural, and environmental interests. As a former industrial community comprised of working class individuals and families, the concerns of the Lafayette neighborhood center around affordable housing, gentrification, environmental clean-up and development.

66. Indeed, Lafayette was declared toxic in need of remediation. The local community worked hard for its brownfield redevelopment program for over two dozen years, and its persistence through the tortuous process of designing, funding, and winning approvals for projects led to its success. Having completed the foundational work to be eligible for such clean-up and remediation funds and projects, the Commission's Map now dismantles the community via a gerrymander which clears the path for luxury development projects without sufficient affordable housing, over the objections of the community and its elected local representative.

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<sup>7</sup> The extent to which preserving historic neighborhoods as communities of interest in the same ward is apparent even on the very map which was produced in the Commission's Report. Therein, the mayor and councilpersons are all listed on the left side of the map. Next to each ward councilperson's name, the ward is listed with a parenthetical to describe the neighborhood it represents. The wards are identified as follows: (1) "Ward A (Greenville)"; (2) "Ward B (West Side)"; (3) "Ward C (Journal Square)"; (4) "Ward D (The Heights)"; (5) "Ward E (Downtown)"; and (6) "Ward F (Bergen/Lafayette)". See Exhibit B, Commission Report.

67. In the most recent city council election in November of 2021, the Lafayette neighborhood banded together to support Frank E. Gilmore as Ward F Councilman, whose campaign centered around affordable housing concerns with respect to specific development projects in Ward F and a general opposition to luxury high rise apartments without affordable housing options.

68. Gilmore was elected with large support from the Lafayette neighborhood, and was the only council candidate in the Jersey City Council race to beat an incumbent.

69. The Commission's Map needlessly imposes ward boundaries – using existing election district lines based on 2010 Census data to shape the borders – which strike right through the heart of the historic Lafayette neighborhood, splitting the community so as to carve out and remove 5,832 residents from Ward F to Ward A, and leaving the fractured remainder within the newly drawn Ward F, which now engulfs more affluent, more white and Asian residents from the Downtown section of Jersey City who do not share the same interests and priorities with the Lafayette neighborhood. In doing so, it also uses existing election district boundaries as the border between Ward F and Ward A, thereby splitting Berry Lane Park, a natural boundary, into two different wards. See Exhibit J, Commission Map: Lafayette, McGinley Square, Greenville Splits.

70. As another example, the Commission's Map split Paulus Hook, one of the oldest neighborhoods in Jersey City. The historic district was split in half horizontally, removing 5,714 residents of the historic district from Ward E to Ward F. In doing so, it placed into Ward F an area of predominantly new high rise apartments and commercial buildings such as the Goldman Sachs building, with half of the historic Paulus Hook district, an area which consists primarily and overwhelmingly of brownstones and small townhouses, as well as quiet residential streets and one of the oldest neighborhood associations. The map even splits the four-cornered Paulus Hook Park

such that two corners fall with Ward E, while the other two corners fall within Ward F. See Exhibit K, Commission Map: Paulus Hook and Van Vorst Park Splits.

71. As another example, the Commission's Map injected into Ward F an additional 940 people from the Van Vorst Park Neighborhood from Ward E. While this neighborhood had been previously split in prior redistricting, the Commission now took additional portions of the Downtown area, including parts of the historic district and a significant amount of high rise residential housing which is characteristic of the Downtown area and put it into Ward F, which does not have any of this kind of high rise housing. See id.

72. As another example, the Commission's Map further split historic neighborhoods in Ward F, including McGinley Square whereby 5,917 residents were removed from Ward F and put into ward B along existing election district boundaries. In doing so, it also uses existing election district boundaries as the border between Ward F and Ward B. See Exhibit J, Commission Map: Lafayette, McGinley Square, and Greenville Splits.

73. As another example, the Commission's Map further splits the Greenville neighborhood, removing an additional 3,627 residents from Ward F into Ward A.<sup>8</sup> See id.

ii. Ignoring Natural Boundaries, and Building Integrity

74. As another example, the Commission's Map splits Newport, where 3,435 residents were removed from Ward E to Ward D. Thus, Ward D, which has been associated with the Heights

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<sup>8</sup> It should be noted that under the Commission's Map, Ward F – which was very close to the ideal number for residents for purposes of population – was (1) stripped of a core component of its residents via a split of Lafayette to the South and East into Ward A; (2) stripped of a core component of its residents via a split of McGinley Square to the West into Ward B; (3) injected from the North and East with residents who shared a different racial makeup, different housing priorities, and different interests from Ward E; and (4) stripped of additional residents from Greenville into Ward A to the South and the West. What remains is a Ward F consisting of fractured neighborhoods which lacks a cohesive identity and unity of interests, rendering effective representation of the ward's residents difficult if not impossible to achieve.

– an older neighborhood with very limited new construction and without high rise apartments that sits almost 150 feet higher than Hoboken and Downtown Jersey City separated by the natural boundary of the Palisades which essentially serves as a cliff – now engulfs the northern part of Newport – a former industrial community converted through virtually all new construction into high rise apartments. In order to connect Ward D to Ward E, the Commission Map had to awkwardly remove a chunk of Ward C down the Palisades to reach Newport. See Exhibit L, Commission Map: Newport and Building Splits.

75. By using existing election districts in Newport to create the boundaries between Ward D and Ward E, the Commission’s Map also split 3 buildings in half, such that residents who live literally in the same building as one another find themselves in different wards to be represented by different councilpersons. These split buildings include AquaBlu, The Shore, and Parkside West. See Exhibit L, Commission Map: Newport and Building Splits.

76. AquaBlu and The Shore each have two towers, and now under the Commission’s Map, the North Towers are located in Ward D, while the South Towers remain in Ward E.

77. Parkside West is now also split between Ward D and Ward E, and is also separated from its sister building, Parkside East, even though they are both in the same Census block, both have entrances on Newport Parkway, and both share a parking garage.

78. As another example, the Commission’s Map further removed 3,959 residents of the Greenville Area from Ward A and put them in Ward B (while restoring a portion of the West Side Neighborhood that had been taken out of B and put in Ward F in the first proposed map). See Exhibit M, Commission Map: Greenville and West Side Splits.

79. The failure to adhere to various traditional principles of redistricting violates Plaintiffs' rights under the Municipal Ward Law and the principles of Equal Protection protected by Article, 1, Paragraph 1 of the New Jersey Constitution.

**C. Not Justified by a Permissible, Rational, and Consistently-Applied Policy**

80. The failure to ensure all districts were compact, the splitting of neighborhoods/historical districts and buildings, the failure to respect natural boundaries and topography, and the failure to adhere to other traditional principles of redistricting were not justified by a need to sacrifice any one or all of the same in furtherance of a permissible, rational, and consistently-applied policy.

81. The Commission's map broke with prior precedent respecting these principles.

i. Preserving Election Districts

82. The Commission's map appears to have focused on the impermissible and highly-irrational goal of preserving existing election districts in determining the ward boundaries.

83. With only a handful of rare exceptions, almost all of the existing election districts were preserved and used to create ward boundaries. See Exhibit N, Commission Map with Election Districts (handful of instances where census blocks were used for boundary instead of election districts indicated in yellow).

84. Election districts are much larger than census blocks. Of the 181 election districts in Jersey City, they contained, on average, approximately 1,620 residents. By contrast, of the 1,503 census blocks in Jersey City, they contained, on average, only 195<sup>9</sup> residents. The existing

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<sup>9</sup> 308 census blocks had 0 population. Even if those census blocks were removed from consideration, the average census block based on the remaining census blocks would contain 261 residents.



election district with the highest population contained 9,634 residents. The census block with the highest population contained 2,541 residents.

85. Given the substantially larger size, both in terms of population and size/geography, using election districts to determine the ward boundaries makes it more difficult to draw compact districts, to preserve neighborhoods and communities of interest, to respect natural boundaries and topography, to otherwise adhere to traditional principles of redistricting, and to minimize population deviation, without having to sacrifice some or all of these items to a greater extent than would otherwise be necessary.

86. The Commission preserved election districts in establishing the ward boundaries such that various established neighborhoods/historic districts and natural boundaries were split between two wards along election district boundaries.

87. Even buildings were split along election district lines such that residents who live in the same building could find themselves in different wards, depending on what side of the building they live in.

88. The apparent emphasis on preserving election districts manifested in the creation of non-compact districts, with jagged edges and odd shapes.

89. Unlike in legislative redistricting where the preservation of municipalities (when possible in light of equal population requirements) might serve the goal of protecting communities of interest, and where the boundaries of such political subdivisions are fixed and permanent, the same cannot be said of preserving existing elections districts.

90. Election districts are a meaningless political boundary for purposes of ward redistricting.

91. The only elected position from an election district is county committee, which is a party position, not a public office. Voters do not elect public officeholders from election districts.

92. There is no meaningful relationship between an election district and a community of interest.

93. Election districts are a transitory political boundary, which are not fixed and permanent, but are subject to change.

94. Using the preservation of existing election districts to redraw ward boundaries is akin to the tail wagging the dog: in essence, in order to redraw ward boundaries, the Commission drew the ward boundaries around an existing political boundary (election districts) which will in turn have to itself be redrawn following the redrawing of the ward boundaries. The Commission map thus appears to be centered around preserving election district boundaries which will not continue to exist, because those very same election districts will themselves have to be redrawn to comply with population deviation requirements. See N.J.S.A. 19:14-10 to -18; see also N.J.S.A. 19:4-15 (deadline for creating, abolishing, dividing, or consolidating an election district by the Board of Elections is 75 days before the primary election, which is March 24, 2022).

95. The use of election district boundaries to create the ward boundaries was entirely irrational, and an impermissible basis upon which to have sacrificed statutory requirements for compact territories and a whole host of traditional redistricting principles which were not respected and adhered to.

96. The use of election district boundaries to create the ward boundaries was arbitrary and capricious, and violates law and public policy.

97. The use of preserving election districts at the expense of compactness, preserving historic neighborhoods/communities of interest, respecting natural boundaries and topography,

and other traditional principles of redistricting violates Plaintiffs' rights under the Municipal Ward Law, as well as the principles of Equal Protection protected by Article, 1, Paragraph 1 of the New Jersey Constitution.

ii. Imposing the Least Amount of Demographic Change

98. Additionally, the Commission's Report explicitly states that one of the Commission's goals in drawing the ward boundaries was to "impose the least amount of demographic change to each ward." See Exhibit A, Commission Report.

99. The Commission's Report further explicitly states that "the Commission concluded that the proposed new ward boundaries . . . represented the least amount of change demographically." See id.

100. Creating the least amount of demographic change is not a rational and consistently applied policy,<sup>10</sup> and not a legitimate basis for drawing wards.

101. Race cannot be a substantial factor used in redistricting unless it is for a permissible purpose, such as to ensure compliance with the Voting Rights Act.

102. Even if the motivating factor in creating boundaries is for other purposes, and not for race-based reasons, race cannot be used as the means through which to achieve such other purposes.

103. If anything, the goal of creating the least amount of demographic change represents a failure to take into consideration demographic shifts in population, which could arguably violate the Voting Rights Act by preventing minority populations from achieving a majority-minority

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<sup>10</sup> While imposing the minimum amount of demographic change is not a legitimate basis upon which to redraw ward boundaries, it is unclear that the Commission's Map even achieves this goal. For example, in Ward F alone, the Hispanic and Black population decreased by 8% and 4% respectively, while the White and Asian population increased by 11% and 6% respectively. See Exhibit A, Commission Report.

district. While a Voting Rights Act claim is beyond the scope of this Complaint, the Commission's reliance on preserving prior racial demographics at a fixed point in the past nevertheless speaks to the arbitrary, capricious, impermissible, and illegal nature of the Commission's work.

104. The use of race in such an impermissible manner is arbitrary, capricious, and irrational, fails to serve any legitimate redistricting goal, and violates law and public policy.

105. The use of race in such an impermissible manner was carried out at the expense of numerous permissible considerations, and inevitably led to sacrifices in population deviation, compactness, preserving neighborhoods and other communities of interests, and various other traditional principles of redistricting.

106. The use of race at the expense of compactness, preserving historic neighborhoods/communities of interest, respecting natural boundaries and topography, and other traditional principles of redistricting violates Plaintiffs' rights under the Municipal Ward Law, as well as the principles of Equal Protection protected by Article, 1, Paragraph 1 of the New Jersey Constitution.

#### **D. Plaintiffs' Map**

107. Plaintiffs have created their own map ("Plaintiffs' Map"), using Dave's Redistricting App, which can be accessed at <https://davesredistricting.org/join/a9390fa0-c16f-468a-bd50-04435ecd2d60>. See Exhibit O, Plaintiffs' Map.

108. Plaintiffs' Map can be used for comparative purposes vis-à-vis the Commission's Map. See Exhibit P, Map of Ward Boundaries Over Three Redistricting Cycles.

109. Plaintiffs' Map achieves much better population deviation, is significantly more compact, splits many less neighborhoods and historic districts, does not split buildings, preserves communities of interest, respects natural boundaries and topography, relocates approximately

15,000 less residents from their prior ward boundaries, and otherwise better adheres to traditional principles of redistricting.

110. The population deviation in Plaintiffs' Map is 0.78%, which is over two times lower than the population deviation of 1.84% in the Commission's Map. See Exhibit G, Chart of Population and Compactness Statistics. See id.

111. Plaintiffs' Map achieves an average Polsby-Popper Measure score of 0.5124 for its wards, which is significantly higher (and thus more compact) than the Commission Map's average score of 0.4006. Similarly, the minimum Polsby-Popper Measure score for any ward in Plaintiffs' Map is 0.3979 (for Ward C), which is significantly higher (and thus more compact) than the Commission's Map's minimum score of 0.2089 (for Ward F).<sup>11</sup> See id.

112. Plaintiffs' Map achieves an average Reock Score of 0.4279 for its wards, which is significantly higher (and thus more compact) than the Commission Map's average score of 0.3447. Similarly, the minimum Reock Score for any ward in Plaintiffs' Map is 0.3551 (for Ward C), which is significantly higher (and thus more compact) than the Commission's Map's minimum score of 0.1604 (for Ward F).<sup>12</sup> See id.

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<sup>11</sup> The average Polsby-Popper rating on Dave's Redistricting App for the Plaintiffs' Map for the six wards was 93, and the minimum rating for any ward was Ward C, which was rated 74. This can be compared with the Commission's Map where the average for the six wards was 72.83, and the minimum rating for any ward was Ward F, which was rated 27.

<sup>12</sup> The average Reock Score rating on Dave's Redistricting App for the Plaintiffs' Map for the six wards was 70.67, and the minimum rating for any ward was Ward C, which was rated 42. This can be compared with the Commission's Map where the average for the six wards was 43.83, and the minimum rating for any ward was Ward F, which was rated 0.

113. Under both the Polsby-Popper Measure and the Reock Score, Plaintiffs' Map is *significantly* more compact on average than the Commission's Map, and Plaintiffs' Map's least compact ward scores *significantly* higher than the least compact ward in the Commission's Map.<sup>13</sup>

114. For further comparative purposes, the Commission's Map's compactness scores are also significantly lower than the scores calculated based on the existing map drawn after the 2010 census ("2010 Map"). The 2010 Map achieves an average Polsby-Popper Measure score of 0.5368 and minimum Polsby-Popper Measure score of 0.4248, which is significantly higher (and thus more compact) than the Commission's Map's average Polsby-Popper Measure score of 0.4006 and minimum Polsby-Popper Measure score of 0.2089. Similarly, the 2010 Map achieves an average Reock Score of 0.5019 and a minimum Reock Score of 0.3097, which is significantly higher (and thus more compact) than the Commission's Map's average Reock Score of 0.3447 and minimum Reock Score of 0.1604. See Exhibit G, Chart of Population and Compactness Statistics.

115. Unlike the Commission's Map, which split numerous neighborhoods, which had not previously been split in the 2010 Map, and which did so in a manner that compromised the cohesiveness and shared interests of the community, here the only neighborhood split<sup>14</sup> in Plaintiffs' Map which had not previously been split is in the Harsimus Cove area. See Exhibit Q, Plaintiffs' Map with Neighborhood Boundaries. Plaintiffs' Map leaves 1,308 residents from the Harsimus Cove Neighborhood in Ward E, and removes the rest of the residents of the Harsimus Cove Neighborhood into Ward C, including the entirety of the Harsimus Cove Historic District. The historic district portion of Harsimus Cove remains intact and near other historic districts such

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<sup>13</sup> Dave's Redistricting App assigns a combined compactness rating of only 57 to the Commission's Map, whereas it assigns Plaintiffs' Map a combined compactness rating of 86.

<sup>14</sup> No other neighborhood in Plaintiffs' Map is split such that more than 1,000 residents were moved to another ward.

as neighboring Hamilton Park, which is also moved in its entirety to Ward C. The areas of Harsimus Cove which remain in Ward E are areas with new high rise apartments that are compatible with the other communities within Ward E. See Exhibit R, Plaintiffs' Map: Historic Harsimus Cove and Hamilton Park Districts.

116. Plaintiffs' Map does not split any historic districts, which previously had not been split (such as Van Vorst Park Historical District) as compared to the Commission's Map, which split Paulus Hook. See id.

117. Plaintiffs' Map does not split buildings, as compared to the Commission's Map which split at least 3 buildings.

118. Unlike the Commission's Map, Plaintiffs' Map respects natural boundaries and topography, as compared to the Commission's Map which split Berry Lane Park and did not consider the natural boundaries that separate communities by topography, such as the Palisades with respect to the boundary between the Heights in Ward D and Downtown.

119. In general, unlike the Commission's Map which gave minimal consideration to communities of interest, Plaintiffs' Map is designed so as to maximize the preservation of communities of interest and with due regard to the types of neighborhoods and types of housing and development concerns which make them share common interests.

120. Unlike the Commission's Map, Plaintiffs' Map uses Census Blocks in the creation of the ward boundaries, rather than allowing the preservation of transitory election district boundaries to serve as a basis for compromising the statutory requirement for compact districts and as a basis for splitting neighborhoods/historic districts and buildings and otherwise failing to adhere to traditional principles of redistricting. See Exhibit S, Plaintiffs' Map with Census Blocks and Election Districts.

121. Unlike the Commission's Map which relocated 54,051 residents from their prior ward boundaries, Plaintiffs' Map only relocates 39,081. Thus, Plaintiffs' Map relocates approximately 15,000 less residents. See Exhibit T, Relocation Numbers by Ward.

122. Plaintiffs' Map demonstrates that the Commission could have redrawn the wards so as to comply with the express statutory requirement that each ward consist of compact territory, and simultaneously achieved better population deviation, had it not arbitrarily and irrationally prioritized the preservation of election districts, tried to impose the least amount of demographic change as the means through which to draw the ward boundaries, and/or employed some other metric that is not expressly stated in the Commission Report. See infra. Count II.

123. Specifically, Plaintiffs' Map demonstrates that the Commission could have redrawn the wards so as to not significantly split as many neighborhoods, historic districts, communities of interest, and buildings (factors that give sociological meaning to the physical concept of "compactness"), and simultaneously achieved better population deviation, had it not arbitrarily and irrationally prioritized the preservation of election districts, tried to impose the least amount of demographic change as the means through which to draw the ward boundaries, and/or employed some other metric that is not explicitly stated in the Commission Report.

124. Plaintiffs' Map demonstrates that the Commission also could have redrawn the wards so as to be more respectful of natural boundaries and topography, and simultaneously achieved better population deviation, had it not arbitrarily and irrationally prioritized the preservation of election districts and/or imposing the least amount of demographic change as the means through which to draw the ward boundaries, and/or employed some other metric that is not explicitly stated in the Commission Report.



125. Plaintiffs' Map demonstrates that the Commission's use of election districts and/or imposing the least amount of demographic change as the means through which to draw the ward boundaries, and/or employed some other metric that is not explicitly stated in the Commission Report was arbitrary and capricious, and violates law and public policy.

126. Plaintiffs' Map demonstrates that the Commission's use of election districts, imposing the least amount of demographic change, and/or employing some other metric that is not explicitly stated in the Commission Report in this manner was not needed to effectuate a rational state policy, was simply unacceptable, and violates Plaintiffs' rights under the Municipal Ward Law and the principles of Equal Protection protected by Article, 1, Paragraph 1 of the New Jersey Constitution ensuring all residents of Jersey City, in the context of ward redistricting, fair representation.

## **COUNT TWO**

(Violation of New Jersey Constitution, Freedom of Speech and Association, N.J. CONST., art. I, Para. 6 and Para. 18)

127. Plaintiffs reallege and incorporate by reference the above paragraphs as though fully set forth herein.

128. The New Jersey Constitution provides for broad affirmative rights of free speech and association.

129. Article I, Paragraph 6 of the New Jersey Constitution provides in relevant part as follows: "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty or speech or of the press."

130. This provision of the New Jersey Constitution is an affirmative right and represents one of, if not the most, broad in the nation, and provides even greater protection than its federal

First Amendment equivalent insofar as it covers private persons. See *Mazdabrook Commons Homeowners' Ass'n v. Khan*, 210 N.J. 482, 492 (2012).

131. Article I, Paragraph 18 of the New Jersey Constitution provides as follows: “The People have the right to freely assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.”

132. This provision of the New Jersey Constitution is also an affirmative right and similarly represents one of, if not the most, broad in the nation, and provides even greater protection than its federal First Amendment equivalent. See *Green Party v. Hartz Mt. Indus.*, 164 N.J. 127 (2000).

133. In November 2021, elections were held for Jersey City’s various ward council seats.

134. These elections featured incumbents in all six of Jersey City’s wards, and challengers in all six of those races.

135. In all of those races, the incumbent won the election, with the exception of Ward F.

136. Among others, the Ward F council race featured incumbent, Jermaine Robinson, and challenger Frank E. Gilmore.

137. A critical issue in the Ward F council election revolved around affordable housing and development; and there were several controversial developments including, but not limited to, “Sci-Tech” and “Steel Tech.”

138. Frank E. Gilmore centered his campaign around the issue of affordable housing, controversial development projects occurring within Ward F, and a general opposition to luxury high rise apartments which were becoming prevalent in other neighborhoods in Jersey City,

especially in Ward E, and which were driving out existing residents, and particularly low-income individuals and families.

139. Many of the neighborhood and block associations as well as individual residents in Ward F banded together in support of Frank E. Gilmore and his stance on affordable housing and development.

140. The voters of Ward F successfully elected Gilmore, who was the only challenger to defeat an incumbent in any of Jersey City's ward council races.

141. Once elected, Gilmore has held several town halls to discuss these issues, including a 200 or so in person meeting held on December 6, 2021, in which the developers for Sci-Tech and Steel Tech were invited to talk with the community. See Exhibit U, Ward F Town Hall Meeting Flyer.

142. It is accepted policy and practice in Jersey City, that the Mayor and Council defer to the expressed interests and recommendations of the councilmember in which a development or redevelopment project occurs.

143. Through the election of Gilmore, voters in Ward F, individually and as members of neighborhood and block associations, were able to effectively associate with one another and use the democratic process to advocate for a new representative who would push for an agenda around their common interests around housing, gentrification, displacement and redevelopment more generally.

144. Less than three months after electing the candidate of their choice, and less than one month after Gilmore took office, the Commission tore apart large blocks of voters, split neighborhoods that were instrumental in electing him, and removed almost the entire federal opportunity zone that ran between Garfield Avenue and the New Jersey Turnpike from Ward F.

(The Investing Opportunity Act is the legislation that defines IRC §1400Z, otherwise known as the Opportunities Zones tax incentive, 2017). See Exhibit V, Commission Map with Opportunity Zones.

145. After the January 14<sup>th</sup> aborted Ward Commission meeting, significant changes were made to the proposed Ward Map. Some neighborhoods were restored to their original status and Ward A regained the Bayview development project, while the changes made to Ward F were not made in response to the specific complaints of Ward F voters and Councilman Frank E. Gilmore. In fact, Ward F, became even less “compact” and a significant portion of the Historic Paulus Hook District was placed in the Ward resulting in a split in that district adding to disruption of the Lafayette neighborhood, and parts of the Greenville community that were formerly in Ward F.

146. A significant percentage of the residents gerrymandered into Ward F were White or Asian, and on average had much higher incomes than the existing Ward F residents.

147. A significant percentage of the residents gerrymandered out of Ward F were Black or Latino, and on average had much lower incomes than the incoming residents from Ward E.

148. In total, 8,964 residents were sliced out of Ward F and removed to Ward A and Ward B. In total, 14,712 residents were removed from Ward E and forced into Ward F. See Exhibit T, Relocation Numbers by Ward.

149. Specific development projects for which Gilmore had been a strong and vocal advocate opposing the lack of affordable housing options, and which were of significant importance to various neighborhoods in Ward F, were also carved out of Ward F, including the Sci-Tech and Steel Tech projects, which are located within the federal opportunity zone. In addition, there are two proposed luxury residential projects located in the election district removed from Ward F and given to Ward B in the northwest corner of Ward F.

150. The implications of the ward boundaries in the Commission's Map, particularly on Ward F, are not the result of any permissible, rational, and consistently applied policy.

151. The Commission's Map amounts to an attempt to nullify the end-product of the democratic election process.

152. By drawing Ward F so as to not be comprised of compact territory, by splitting neighborhoods (including the historical Lafayette neighborhood and Paulus Hook District), by removing large portions of residents who, as a "community of interest," banded together to vote out an incumbent candidate and replace him with a candidate who sought to more closely represent their views on issues of critical importance to them, and by replacing such residents with the residents from entirely different neighborhoods, with different interests, different racial makeups, and different levels of income, the Commission's Map deprived Plaintiffs Greenville Neighborhood Alliance, Friends of Berry Lane Park, Gardner Avenue Block Association, Morris Canal Redevelopment CDC, Harmon Street Block Association, Crescent Avenue Block, and the Ward F members of the Democratic Political Alliance and Jersey City United Against the New Ward Map of their constitutionally protected associational and speech rights to elect a candidate of their choice, thus stripping them of their effectiveness in holding their representatives accountable through the ballot box.

153. By removing from Ward F federal opportunity zones and specific development projects for which Frank Gilmore advocated for more affordable housing and for which the community rallied around Gilmore in support of same, and removing a significant number of residents who voted for him, the Commission retaliated against Plaintiff Frank E. Gilmore, as an individual and in his official capacity as Councilman of Ward F, for his advocacy and association

with certain neighborhood groups in violation of his free speech and associational rights under the New Jersey Constitution.

154. Plaintiffs representing the voters of Ward F, and those formerly of Ward F, and Plaintiff Frank E. Gilmore have suffered a significant deprivation of their constitutionally protected rights inherent in the electoral process.

### **COUNT THREE**

(Violation of Open Public Meeting Act, N.J.S.A. 10:4-6 to -21)

155. Plaintiffs reallege and incorporate by reference the above paragraphs as though fully set forth herein.

156. The Open Public Meetings Act (“OPMA”), N.J.S.A. 10:4-6 to -21, provides various procedures and rules governing the conduct of the meetings of public bodies which are subject to OPMA’s requirements.

157. The Commission is a public body which is organized pursuant to the Municipal Ward Law, consists of multiple members who are empowered to fix and determine the ward boundaries, and is covered under the OPMA, and not otherwise exempted thereby. See N.J.S.A. 10:4-7.

158. OPMA applies to “meetings” which are defined as “any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all of the members of three or more similar public bodies at a convention or similar gathering.” See N.J.S.A. 10:4-8(b).

159. Except in rare and specifically enumerated circumstances, public bodies like the Commission are prohibited from holding a meeting unless it provides adequate notice to the public. See N.J.S.A. 10:4-9.

160. “Adequate notice” under OPMA is defined to require that the public body provide at least 48 hours-notice of the meeting, including the “time date, location and, to the extent known, the agenda of any regular special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken.” See N.J.S.A. 10:4-8(d). The notice must be “prominently posted in at least one public place reserved for such or similar announcements,” in at least two newspapers, and filed with the appropriate public official (municipal clerk, county clerk, or Secretary of State). See id.

161. In addition to these notice requirements, a public body may also provide electronic notice of a meeting via the Internet. See N.J.S.A. 10:4-9.1.

162. The person presiding over the meeting must place on the record certain information declaring that adequate notice of the meeting was provided or provide statutorily-required information in the event that adequate notice could not be provided. See N.J.S.A. 10:4-10.

163. Unless a specific express exception applies, “all meetings of public bodies shall be open to the public at all times.” See N.J.S.A. 10:4-12.

164. Even in instances where an express exception applies, the public may not be excluded from the portions of those meetings where the exception applies, unless the public body first adopts a resolution stating the general subject matter to be discussed and the time and circumstances when the closed session discussion can be disclosed to the public. See N.J.S.A. 10:4-13.

165. The public body must keep minutes of its meetings. See N.J.S.A. 10:4-14.

166. OPMA authorizes the ability of any person to file an action in lieu of prerogative writ if an action taken by the public body at a meeting does not conform with its applicable provisions, which can be brought “within 45 days after the action sought to be voided has been made public.” See N.J.S.A. 10:4-15. If the action taken does not comply with the provisions of OPMA, the Court must declare it to be void. See id.

167. On December 15, 2021, the Commission held an initial meeting pursuant to OPMA.

168. Upon information and belief, after holding an initial meeting on December 15, 2021, the Commission held one or more working session meetings with staff from the Board of Elections. See Exhibit B, Commission Report.

169. Plaintiffs were not aware of these working session meetings until they received a copy of the Commission Report.

170. Upon information and belief, at these working session meetings, which were upon information and belief attended by at least four of the Commissioners, they (1) drafted proposals for various maps in consideration of the need to fix and determine new ward boundaries; (2) discussed considerations pertaining to various proposed maps on mandatory statutory criteria such as compactness, contiguity, and population deviation; (3) used mapping software to match up existing ward boundaries with census block data; (4) discussed and considered the extent to which each map would (a) “impose the least amount of demographic change to each ward,” while also (b) “lowering the deviation between the most populous ward and the least populous to the lowest possible percentage”; (4) tested a variety of options with the mapping software where they could track the population and demographic changes; and (5) decided upon a map to present to the public, and in doing so, to exclude the presentation of other maps under its consideration from the public. See Exhibit B, Commission Report.



171. Upon information and belief, these working session meetings were open to all members of the Commission, were attended by an effective majority of Commissioners, and were intended to discuss or to act collectively on the Commission's public business of redrawing the ward boundaries.

172. Upon information and belief, the Commission did not provide adequate notice of these working session meetings, nor was any statement made in the record as to whether adequate notice was or was not provided.

173. Upon information and belief, the Commission excluded the public from these working session meetings.

174. Upon information and belief, no minutes of the working session meetings were recorded.

175. After the January 14<sup>th</sup> meeting that was aborted, many concerns were voiced about the Commission's initial map. See supra at ¶¶ 39-40. A petition was drafted by the Hamilton Park Association, the Filipino community and others located in West Side lobbied their County Commissioner to get themselves back into Ward B, while the councilwomen from Ward A complained about losing the Bayview Project to Ward B. These were some of the complaints that were publicly voiced, while others were discussed behind closed doors. Between January 14 and January 22, the Commission appears to have met and discussed various maps; however, the public was left in the dark about the Commission's deliberations and maps considered during that period of time.

176. Unlike the apportionment commission, ward commissions are not exempt from OPMA, and must allow for the attendance and participation of the public in conducting their business.

177. The exclusion of the public from the working session meetings violated the spirit, intent, and letter of the OPMA to allow “the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies,” which “is vital to the enhancement and proper functioning of the democratic process.” See N.J.S.A. 10:4-7.

178. The public was excluded from critical phases of the deliberations and decision making, and was not able to view the other maps considered, weigh in on the merits, or learn any of the concerns, bases for comparison, and reasons for rejection of same.

179. The violations are especially egregious in light of the importance of transparency in the redistricting process as well as the role of the public in providing critical input including with respect to the need for preservation of communities of interest.

180. The act of adopting the Commission Map at a meeting that was subject to OPMA on January 22, 2022, does not constitute remedial or corrective action because the public was excluded from the deliberations and decisions to reject the various other maps presented at the working sessions meetings, which were closed and unknown to the public.

181. To enable the Commission to blatantly disregard OPMA by excluding the public from its working sessions meetings where the “real” deliberations and decision making took place, and then proceed to call a subsequent meeting under the OPMA where it presented a single, already-decided-upon map as a manner of correcting its blatant OPMA violations would work a grave injustice upon Plaintiffs and the public more generally, and do serious damage to the spirit and intent of the OPMA, including its directive that “[t]his act shall be liberally construed in order to accomplish its purpose and the public policy of this State as set forth in [N.J.S.A. 10:4-7].” See N.J.S.A. 10:4-21.

182. The OPMA violation and lack of transparency are also further indicia of a process of unfair redistricting in violation of the Municipal Ward Law and state constitutional rights.

#### **COUNT FOUR**

(New Jersey Civil Rights Act, N.J.S.A. 10:6-2)

183. Plaintiffs reallege and incorporate by reference the above paragraphs as though fully set forth herein.

184. The New Jersey Civil Rights Act authorizes “[a]ny person who has been deprived of any substantive due process or equal protection rights . . . secured by the Constitution or laws of this State . . . by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.” See N.J.S.A. 10:6-2(c).

185. At all times relevant herein, Defendants were acting under color of law as the commissioners of the Jersey City Ward Commission.

186. The Commission deprived Plaintiffs of their substantive rights of equal treatment guaranteeing them fair representation in the process of redrawing the ward boundaries pursuant to the Municipal Ward Law, N.J.S.A. 40:44-9 to -18, and the New Jersey Constitution, art. I, Para. 1.

187. The Commission deprived Plaintiffs of their substantive rights to reside in a ward that consists of compact territory that preserves their communities of interest pursuant to the Municipal Ward Law, N.J.S.A. 40:44-9 to -18, and the New Jersey Constitution, art. I, Para. 1.

188. The Commission deprived Organizational Plaintiffs representing residents of Ward F and those formerly in Ward F and now in A of their substantive rights of freedom of speech and association, their ability to elect the candidate of their choice, and their ability to hold their

representatives accountable through the democratic process, pursuant to the New Jersey Constitution, art. I, Paras. 1, 6, and 18.

189. The Commission deprived Plaintiff Councilman Frank E. Gilmore of his substantive rights of freedom of speech and association, pursuant to the New Jersey Constitution, art. I, Paras. 1, 6, and 18, by retaliating against him for his campaign advocacy around affordable housing, gentrification and displacement by removing a significant number of his supporters, removing federal opportunity zones from Ward F, and removing several proposed and/or approved development projects from the ward he was elected to represent.

190. The Commission deprived Plaintiffs of their substantive rights of equal protection to reside in a ward whose boundaries are drawn free from arbitrary, irrational, inconsistently-applied, and/or impermissible considerations.

191. Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant to N.J.S.A. 10:6-2(f).

**WHEREFORE**, Plaintiffs demand judgment as follows:

- A. Invalidating the Commission's Map;
- B. Declaring that the Commission's Map violates the Municipal Ward Law and the New Jersey Constitution;
- C. Declaring that the Commission's Map violates the free speech and associational rights protected by the New Jersey Constitution with respect to the residents of Ward F, including those now residing in Ward A, and Councilman Gilmore;
- D. Declaring that the Commission's Map violates Plaintiff Frank E. Gilmore's free speech and associational rights by impermissibly retaliating against him and those he represents by removing a significant number of his supporters, removing the federal opportunity zone from

Ward F, and removing several proposed and/or approved development projects from the ward he was elected to represent;

E. Setting a reasonable deadline for the Commission to redraw the wards in a manner that complies with the Municipal Ward Law and the New Jersey Constitution, including the requirement that each ward be comprised of compact territory and which does not unnecessarily split neighborhoods or otherwise break apart communities of interest, in a manner that does not prioritize the preservation of election districts or maintaining prior demographics of the wards at the expense of permissible and traditional principles of redistricting, and in a manner that is not retaliatory against Plaintiffs for exercising their free speech and associational rights;

F. Ordering the Commission when redrawing its map to specifically consider “compactness” and achieve a significantly better level of compactness without sacrificing the map’s score on population deviation that is equal or better than it previously achieved (such as Plaintiffs’ proposed map which achieved a population deviation of 0.78% and average scores on two of the most commonly used tests for compactness of 0.5124 for the Polsby-Popper Measure and 0.4279 for the Reock score.

G. If the Commission fails to enact a valid redistricting plan before the Court’s deadline, ordering a new redistricting plan which complies with the Municipal Ward Law and the New Jersey Constitution, such as Plaintiffs’ Map submitted herein;

H. Declaring that the Commission illegally excluded the public from attending and participating in public meetings which led to the approval of the Commission’s Map, voiding the Commission’s approval of the Commission’s Map at its meeting held on January 22, 2022, declaring the Commission’s approval of the Commission Map to be null and void and in violation

the Open Public Meetings Act, and ordering the Commission to comply with its requirements when redrawing its map;

I. Awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(f); and

J. Granting such other and further legal and equitable relief as this Court may find just and proper.

Respectfully submitted,

NEW JERSEY APPLESEED PUBLIC INTEREST  
LAW CENTER, INC.

Dated: March 21, 2022

By: /s/Renée Steinhagen  
Renée Steinhagen, Esq.

BROMBERG LAW LLC

Dated: March 21, 2022

By: /s/Brett M. Pugach  
Brett M. Pugach, Esq.

Dated: March 21, 2022

By: /s/Yael Bromberg  
Yael Bromberg, Esq.

MATSIKLOUDIS & FANCIULLO, LLC

Dated: March 21, 2022

By: /s/William Matsikoudis  
William Matsikoudis, Esq.

**DESIGNATION OF TRIAL COUNSEL**

Renée Steinhagen, Esq., Brett M. Pugach, Esq., Yael Bromberg, Esq., and William Matsikoudis, Esq. are hereby designated as trial counsel for Plaintiffs.

Dated: March 21, 2022

By: /s/Renée Steinhagen  
Renée Steinhagen, Esq.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

I, RENÉE STEINHAGEN, hereby certify that:

1. The matter in controversy is the subject of any other pending Court or arbitration proceeding, James Calderon v. Jersey City Ward Commission, HUD-L-000821-22;
2. I am not aware of any other contemplated Court or arbitration proceeding; and
3. I am not aware at the present time of any other party that should be joined to this litigation.

Dated: March 21, 2022

By: /s/Renée Steinhagen  
Renée Steinhagen, Esq.

**CERTIFICATION PURSUANT TO RULE 4:69-4**

I hereby certify that there were no local agency proceedings relevant to the subject of this Complaint that were or could have been transcribed and that the relevant governmental records consist entirely of the Ward Commission's Report and Map. Accordingly, no transcripts have been ordered.

Dated: March 21, 2022

By: /s/Renée Steinhagen  
Renée Steinhagen, Esq.

## CERTIFICATION OF KATHRYN MOORE

I, KATHRYN MOORE, being of full age to hereby swear and certify as follows:

1. I am a member of Plaintiff Jersey City United Against the New Ward Map and a member of the Powerhouse Arts District Neighborhood Association which is one of the members of Plaintiff Downtown Coalition of Neighborhood Associations in the above-referenced action, I assisted in preparing the maps and other statistical charts and images used as exhibits to this Complaint, and I have personal knowledge of the facts and circumstances giving rise to this action.
2. I have read the annexed Complaint including all the facts alleged therein.
3. All of the facts alleged in the Complaint are true and accurate to the best of my personal knowledge and belief.
4. Pursuant to R. 1:4-7, I intend this certification to constitute verification of the Complaint in this matter.
5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: March 21, 2022

  
\_\_\_\_\_  
KATHRYN MOORE