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JERSEY CITY UNITED AGAINST THE NEW WARD MAP, DOWNTOWN COALITION OF NEIGHBORHOOD ASSOCIATIONS, GREENVILLE NEIGHBORHOOD ALLIANCE, FRIENDS OF BERRY LANE PARK, RIVERVIEW NEIGHBORHOOD ASSOCIATION, PERSHING FIELD NEIGHBORHOOD ASSOCIATION, SGT. ANTHONY NEIGHBORHOOD 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*, v. JERSEY CITY WARD COMMISSION and JOHN MINELLA, in his official capacity as Chair of the Commission, *Defendants-Respondents*.	SUPREME COURT OF NEW JERSEY Docket No. 089292 ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION Docket No. A-0356-22 SAT BELOW: Hon. Robert Gilson, P.J.A.D. Hon. Patrick DeAlmeida, J.A.D. Hon. Avis Bishop-Thompson, J.A.D. Civil Action Dated: November 12, 2024 **Participation in oral argument requested**.

BRIEF AND APPENDIX OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

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PRELIMINARY STATEMENT

The American Civil Liberties Union of New Jersey ("ACLU-NJ") respectfully asks the Court to reverse the Appellate Division's interpretation of "compact" and its corresponding instructions to the trial court on remand. The ACLU-NJ urges the Court instead to adopt the widely accepted federal definition of compactness, which incorporates consideration of keeping communities of interest together, and to instruct the trial court to conduct appropriate evidentiary proceedings on compactness. In accordance with the requirements of Rule 1:13-9, the ACLU-NJ's interest in this litigation is explained in the accompanying certification.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The ACLU-NJ accepts and incorporates the statement of facts and procedural history from the Appellate Division decision. As that decision explains, the Jersey City Ward Commission made adjustments to the city ward map that largely impacted Wards A, E, and F, particularly making Ward F a jagged, sideways L-shape. As the Plaintiffs noted in their complaint, Ward F is similar in shape to the "salamander" shape that gave rise to the original phrase "gerrymandering" in the 1800s. (Pa19.)[1] Ward F now snakes through high-rise

[1] "Pa" denotes Plaintiffs' Appellate Division Appendix. "Ppc" denotes Plaintiffs' Petition for Certification. "ACLUa" denotes ACLU-NJ's appendix included with this submission.

apartment buildings on Jersey City's waterfront and the historically Black community of Lafayette, cutting buildings in half, tearing apart long-standing historic neighborhoods, and ignoring the natural boundary created by the Palisades Cliffs. (Pa16, Pa22-Pa27.)

According to the software that the Jersey City Ward Commission used in making the ward map, the newly shaped Ward F scored very low on both the Polsby-Popper measure and the Reock test—two of the most commonly used statistical tests for compactness. (Pa20; Ppc6.) The Commission's report, however, did not discuss any consideration of compactness in creating the wards. (See Pa54-Pa65.) As Plaintiffs argue, the Commission drew the wards "at the expense of compactness, preserving historical neighborhoods/communities of interest, respecting natural boundaries and topography, and other traditional principles of redistricting," which "violates Plaintiffs' rights under the Municipal Ward Law, as well as the principles of Equal Protection protected by Article I, Paragraph 1 of the New Jersey Constitution." (Pa28-Pa29.)

The Commission's redrawing process came shortly after an upset election for Councilman in Ward F. With support from the historical Black neighborhood known as Lafayette, which is largely aligned in its support of affordable housing, Frank Gilmore—a candidate supporting affordable housing

and opposing luxury high rise apartment developments—defeated the incumbent candidate in Ward F in November 2021. (Pa22-Pa23.) The Commission began redrawing the wards the next month and issued the new ward map in its report in February 2022. (Pa15-Pa17.) The Commission split up the Lafayette neighborhood into two different wards and added more affluent neighborhoods with residents who "do not share in the same interests and priorities" as the Lafayette community to Ward F. (Pa23.) Plaintiffs allege that the new Ward F "dismantles" the Lafayette 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." (Pa22.) The Commission similarly split up the Paulus Hook community, the Van Vorst Park neighborhood, the McGinley Square neighborhood, and the Greenville neighborhood into separate wards. (Pa 23-Pa24.)

ARGUMENT

I. The Court Should Reject the Appellate Division's Definition of Compactness.

The ACLU-NJ urges the Court to reject the Appellate Division's interpretation of the Municipal Ward Law (the "MWL") and adopt an interpretation of "compact" that is in line with the interpretation used by courts throughout the country.

The MWL sets forth the requirements and methods for commissions that

divide municipalities into voting wards. See N.J.S.A. 40:44-10. Relevant here, it requires ward commissioners to "fix and determine the ward boundaries so that each ward is formed of compact and contiguous territory." N.J.S.A. 40:44-14. The MWL does not define "compact."

The "paramount goal in interpreting a statute" is "to give effect to the Legislature's intent." Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012). However, "not every statute is a model of clarity," and when the plain language of a statute is "susceptible to more than one plausible interpretation," courts turn to extrinsic "canons of statutory interpretation" such as legislative history and the overall objectives of the statute. Id. at 573-74.

The bill that would become the MWL was introduced on March 23, 1981. See S. 3157, 199th Leg., 1980-1981 Sess. (1981); (ACLUa03). The sponsor statement notes that its purpose was to "provide for a uniform method for fixing and determining municipal ward boundaries by ward commissioners." (ACLUa09).

The sponsor statement explains that the bill's impetus was the report of the County and Municipal Government Study Commission (known as the Musto Commission) entitled "Forms of Municipal Government in New Jersey." (ACLUa09). That report had concluded that wards serve "a legitimate public purpose, particularly when a municipality includes diverse groups of residents"

and referenced "recent court decisions from other jurisdictions [that] have indicated the desirability of wards or districts in assuring minority representation." (ACLUa14). The report also explained that wards are generally not authorized in small communities because they "would fragment the community unnecessarily." (ACLUa14). With those principles in mind, the report recommended (and the Legislature concurred) that "the general law for re-drawing wards . . . be updated and consolidated into a single, uniform ward statute prior to the 1980 census." (ACLUa13; see also ACLUa09).

Governor Brendan T. Byrne signed MWL revisions into law on January 12, 1982. (ACLUa02). In his signing statement Governor Byrne repeated that the legislation's goal was to adopt changes recommended in the above-referenced commission report. (ACLUa12). The Governor commented, "Ward boundaries will be narrowly drawn—with no more than a 10-percent population deviation between wards—by a commission consisting of members of the county board of elections." (ACLUa12).

While the word "compact" is not defined in the statute, the legislative history does nevertheless shed some light on the word's meaning. The wards chosen should be correlated to the communities within the municipality, since "assuring minority representation" among "diverse groups of residents" is one of the primary purposes of the ward-drawing process. (ACLUa14). Ward

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drawing should further avoid "fragment[ing] the community unnecessarily," with wards instead being "narrowly drawn." (ACLUa14, ACLUa12).

Such a commonsense interpretation is not only supported by the legislative history, it also comports with construction of the word "compact" by other courts in similar contexts. Federal courts, for instance, have concluded that compactness includes the consideration of keeping communities of interest together. See, e.g., Allen v. Milligan, 599 U.S. 1, 18, 34 (2023) (applying a "reasonably configured" test for compactness that "comports with traditional districting criteria, . . . such as keeping together communities of interest"); Abrams v. Johnson, 521 U.S. 74, 92 (1997) (quoting Bush v. Vera, 517 U.S. 952, 977 (1996)) (plurality opinion) (noting that the compactness inquiry should "tak[e] into account traditional districting principles such as maintaining communities of interest and traditional boundaries").

Several sister states have taken the same approach. See, e.g., Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So. 3d 335, 353 (Fla. Dist. Ct. App. 2023) ("[C]ompactness inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries"); Stephenson v. Bartlett, 582 S.E.2d 247, 250 (N.C. 2003) ("Communities of interest should be considered in the formation of compact and contiguous electoral districts"); Ariz. Minority Coal. for Fair Redistricting v.

Ariz. Indep. Redistricting Comm'n, 121 P.3d 843, 869 (Ariz. Ct. App. 2005) ("The goals of compactness and contiguity concern the shape of a district," and "[t]he purpose of constructing districts that are compact and contiguous is to avoid the practice of gerrymandering and assist in maintaining communities of interest"); see also Davenport v. Apportionment Com., 65 N.J. 125, 149 (1974) (Pashman, J., dissenting) ("Compactness is not a political concept, but a constitutional tool to better facilitate and guarantee that a community of interest is represented properly.").

The Appellate Division ignored cases from other jurisdictions interpreting "compact," noting that they are "of limited use" when "we are construing . . . a New Jersey statute"—a puzzling statement given the longstanding practice of this Court to consider the decisions of other courts as persuasive authority. E.g., State v. Morrison, 227 N.J. 295, 315 (2016) (citing to federal interpretation of a "public function" as persuasive authority); State v. Lawn King, Inc., 84 N.J. 179, 192 (1980) (holding that "federal court interpretations" of the federal Sherman Antitrust Act "constitute persuasive authority as to the meaning of" the New Jersey act); Facebook, Inc. v. State, 254 N.J. 329, 354 (2023) (giving "careful consideration to federal decisions interpreting the federal" Wiretap Act).

The Appellate Division, instead, relied on Merriam-Webster's general and vague definition of "compact"—"having a dense structure or parts or units

closely packed or joined" and "occupying a small volume by reason of efficient use of space." This definition can undoubtedly have several plausible interpretations in the municipal ward context. For example, "dense," "packed," "joined," "small volume," and "efficient use of space" can be interpreted in many ways—referring to the number of people in each ward, the surface area of the ward, the number of housing units in each ward, the number of businesses in each ward, or any number of other reasonable interpretations in this context.

It is far from clear how the Appellate Division gleaned the intent of the legislature in passing the MWL simply from a vague and nonspecific dictionary definition. Reliance on the dictionary was wrong, particularly when N.J.S.A. 1:1-1 instructs that "[i]n the construction of the laws and statutes of this state, . . . words and phrases shall be read and construed with their context . . . . [and] [t]echnical words and phrases . . . shall be construed in accordance with such technical . . . meaning."

The context here certainly bears a technical sense, as the ordinary person cannot attribute an everyday meaning to the word "compact" in the municipal ward context. In fact, when courts around the country are tasked with determining if voting districts are compact, they rely heavily on expert testimony to define compactness using widely accepted mathematical measures

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like the Reock test and the Polsby-Popper test.[2] See, e.g., Nairne v. Ardoin, 2024 U.S. Dist. LEXIS 22181, at *55 (M.D. La. Feb. 8, 2024) (considering expert testimony about the districts' compactness scores) (ACLUa18-23); Grace, Inc. v. City of Miami, 684 F. Supp. 3d 1285, 1319 (S.D. Fla. 2023) (same); Vesilind v. Va. State Bd. of Elections, 813 S.E.2d 739, 751 (Va. 2018) (same). With the availability of such widely used and accepted statistical measures for compactness, the Appellate Division's reliance on the dictionary definition of compact—without any consideration of the technical nature of the word or of how the word is defined in this context throughout the country—must be rejected.

The standard used by other courts makes more sense. It prevents outcomes like what we have here—with historic communities of interest split in half, buildings being divided without reason, and natural boundaries being ignored. Indeed, it is hard to imagine a starker example of "fragmenting the community unnecessarily" (ACLUa14) than occurred here, where neighbors within the same apartment complex find themselves arbitrarily divided.

[2] As defined in the complaint, the Reock measure scores districts from 0 to 1, with scores closer to 1 indicating a more compact district; it "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." (Pa20.) The Polsby-Popper measure also scores districts from 0 to 1, with scores closer to 1 indicating a more compact district; it "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." (Ibid.)

The ACLU-NJ therefore urges the Court to reject the Appellate Division's unsupported definition of "compact" and to instead adopt the widely accepted definition of compact that includes consideration of several criteria, including keeping communities of interest together. In doing so, the Court will give Plaintiffs the chance to present why the redistricting failed to keep communities of interest together and why that violates the mandates of the MWL.

II. The Supreme Court Should Reject the Appellate Division's Instructions to the Trial Court on Remand.

To be clear, the ACLU-NJ agrees with the Appellate Division that the trial judge's decision should be reversed because it dismissed Plaintiffs' claims without holding any proceeding or developing any factual record to conclude that the wards were compact. Where the ACLU-NJ asks the Court to reject the Appellate Division's decision is in its instruction to the trial court on remand, which was informed by a flawed interpretation of the MWL and a rational basis test that is not sufficiently related to compactness.

The Appellate Division's instructions expressly prohibited any evidence or testimony about compactness measures like the Polsby-Popper measure or the Reock measure and precluded Plaintiffs from being able to challenge the 2022 Ward Map based on whether it breaks up communities of interest or historic neighborhoods—a clear and stark departure from the nationally accepted definition of "compact," as explained above. Consistent with the process

followed throughout the country, this matter requires a proper evidentiary hearing on the merits of Plaintiffs' allegations. See, e.g., Wright v. Rockefeller, 376 U.S. 52, 54-55 (1964) (district court held hearings where plaintiffs "offered maps, statistics, and some oral evidence designed to prove their charge"); Milligan, 599 U.S. at 16-17, 21 (in a preliminary injunction hearing, district court heard "live testimony from 17 witnesses, reviewed more than 1000 pages of briefing and upwards of 350 exhibits, and considered arguments from the 43 different lawyers who had appeared in the litigation"); Stephenson v. Bartlett, 562 S.E.2d 377, 383 (N.C. 2002) (at trial, plaintiffs presented deposition testimony, election forecasting data, and other statistics); Ariz. Minority Coal. for Fair Redistricting, 121 P.3d at 849, 863-65 (proceeding to trial on a compactness challenge, among other claims, because a Native American tribe was removed from one district and placed into another).

Even if this Court declines to adopt the definition used by other courts, it should nevertheless reject the Appellate Division's instruction that the trial court hold a proceeding that focuses only on whether the Commission had a "rational basis" for each ward's shape. Such an instruction does not follow the MWL's demand to address whether the ward's shape is compact.

If the Commission could express a "rational basis" for creating a salamander-shaped Ward F, it would not transform the ward's long, windy,

convoluted shape into a compact one. If the legislature only wanted there to be a rational basis for a ward's shape no matter the shape's compactness, it would not have included compactness as a requirement under the MWL. The test for compactness must instead more closely align with whatever definition of compact this Court adopts. If the Court follows the ACLU-NJ's recommendation to adopt the definition that considers statistical measures and keeping together communities of interest, then the trial court must be permitted to hold a hearing and proceed to trial on those topics. And if the Court instead adopts some variation of the standard, then the hearing should permit a meaningful exploration of evidence tied to that standard—not simply whether a ward's shape is justified by some rational basis.

Either way, to sufficiently address whether Plaintiffs have stated plausible claims under the MWL, the trial court must hear Plaintiffs' expert evidence under the Polsby-Popper measure, the Reock measure, and other scientific measures of compactness. It is quite extreme to prohibit Plaintiffs from doing so, particularly when their Complaint pleads with specificity that the Jersey City wards fail those measures. See Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989) (when considering a motion to dismiss, courts should "search the allegations of the pleading in depth and with liberality" to determine whether the cause of action "is suggested by the facts"). The ACLU-

NJ implores the Court not to ignore the methods of measuring compactness that are used as standard-practice to adjudicate compactness throughout the country.

The ACLU-NJ asks the Court to set forth the proper test for compactness and remand for further proceedings on Plaintiffs' MWL challenges. If those challenges are ultimately found to have merit after an appropriate hearing, the trial court can then determine whether the violation found would cause resultant violations of the Equal Protection Clause or the New Jersey Civil Rights Act, issues that the Court need not decide on the current record.

CONCLUSION

For the above reasons, the ACLU-NJ respectfully urges the Court to reverse the Appellate Division's decision, adopt the federal definition of compactness that considers communities of interest, and remand for thorough proceedings that permit Plaintiffs to present proofs to show whether it has stated plausible claims that Jersey City's wards are not compact.

Respectfully submitted,

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