IN THE SUPREME COURT OF NEW JERSEY

Docket No. 089292

JAMES CALDERON, *Pro Se Plaintiff-Petitioner,* vs. CITY OF JERSEY CITY WARD COMMISSION, JOHN MINELLA, Chairman, SEAN J. GALLAGHER, Secretary, and Commissioners DANIEL E. BECKELMAN, PAUL CASTELLI, JANET LARWA, and DANIEL MIQUELI, *Defendants-Respondents.*	ON PETITION FOR CERTIFICATION FROM THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO.: A-0560-22 CIVIL ACTION Sat Below: Hon. Robert Gilson P.J.A.D. Hon. Patrick DeAlmeida, J.A.D. Hon. Avis Bishop-Thompson, J.A.D.

DEFENDANTS-RESPONDENTS' OPPOSITION TO PETITION FOR CERTIFICATION OF PLAINTIFF-PETITIONER JAMES CALDERON

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PRELIMINARY STATEMENT

This matter is one of two related applications for certification, seeking this Court's review of a ruling of the Appellate Division that affirmed the dismissal of claims filed by the *pro se* Plaintiff-Petitioner in this matter, James Calderon ("Petitioner"), and by a group of other plaintiffs led by the special-purpose organization "Jersey City United Against The New Ward Map" and including Ward F Councilman Frank E. Gilmore (collectively "JC United"). This opposition is submitted in response only to the claims espoused by Mr. Calderon (Docket No. A-0560-22) and as to which he urges this Court to grant certification: first, that the map ("Map") adopted by the Commission Jersey City Municipal Ward Commission ("Commission" or "MWC") violates the Municipal Ward Law, N.J.S.A. 40:44-9 et seq. ("MW Law"); and second, that the Commission's proceedings violated the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. ("OPMA" or the "Act").

In its ruling, the Appellate Division affirmed the trial Court's dismissal of Plaintiff's OPMA claim and remanded the parties' claims under the MW Law, with limiting instructions, for the trial Court to make a factual determination of whether there was a "rational basis" supporting the Map. Those remand proceedings have been scheduled by the Court but have not yet occurred.

Plaintiff's application for certification should be denied because the

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Appellate Division's ruling did not dispose of all matters with finality, and because the proceedings below are not yet complete. Thus, whether Mr. Calderon or the coalition—or, for that matter, the Commission—may ultimately have grounds for appeal and certification remains to be seen.

Plaintiff's application also fails on its merits. Plaintiff begins by presenting this Court with a question that is rhetorical at best: "Does the Constitution of New Jersey matter?" [Pb6].[1] Plaintiff then goes on to recite a series of bald assertions that the trial Court and Appellate Division "erred"—few of them supported even with references to case law. Even where Petitioner cites a case, it does not support his position and in fact demonstrates that the Appellate Division correctly dismissed Petitioner's claims and those of the other plaintiffs.

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

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

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Our State's Municipal Ward Law, N.J.S.A. 40:44-9 et seq., requires that, when a municipality is divided into wards for purposes of electing some or all of the members of its municipal governing body, the populations of those wards must not vary by more than ten percent in order to protect the American democratic principle of "one person, one vote." See N.J.S.A. 40:44-14. The 2020 decennial Census revealed that in the City of Jersey City, the population of the most and least populous wards deviated by a whopping 59 percent—the result of strong population growth in particular parts of the City during the 2010s. As a result, the City's existing ward map, which was based on the 2010 federal census, was unlawful and a new one needed to be created. As required by the MW Law, a Municipal Ward Commission was convened, comprised of the six members of the Hudson County Board of Elections and the City's Municipal Clerk. See N.J.S.A. 40:44-11. The Commission held three public meetings, beginning on December 15, 2021, and concluding on January 22, 2022. At the last of these meetings, the Commission received public comment before reviewing and adopting a new ward Map.

The Map adopted more than satisfies all of the statutory requirements: the wards established are contiguous, compact, and achieve an impressive balancing of the City's population—reducing the population deviation among the wards to

a miniscule 1.8% deviation. This is well below the statutory threshold of 10%. See N.J.S.A. 40:44-14.

Unhappy with the Map, Petitioner filed a *pro se* Complaint asserting violations of the MW Law and the OPMA. Respondents moved to dismiss, a motion which was granted against both Petitioner and JC United by the Honorable Joseph A. Turula, P.J.Cv. Petitioner and JC United both appealed, the matter was briefed, and on March 12, 2024, the Appellate Division issued an Opinion and Order affirming the dismissal in substantial part—including as to Petitioner's OPMA claim—but reversing and remanding for limited fact-finding: "a focused and limited proceeding," in which "plaintiffs are not entitled to discovery," solely to determine "whether the Commission had a rational basis for the ward boundaries and map it adopted." [Aa, Exhibit A at 29].

That remand proceeding is currently moving forward. The Court held a post-remand scheduling conference on April 4, 2024, and instructed the parties to make written submission on the remand issues on May 10 and 24, 2024, respectively, with further proceedings to be scheduled soon thereafter.

LEGAL ARGUMENT

I. BECAUSE PETITIONER'S PETITION DOES NOT MEET THE CRITERIA FOR CERITFICATION, IT SHOULD BE DENIED.

A petition for certification to this Court from a ruling of the Appellate Division may be granted only for special reasons. R. 2:12-4. Certification will

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

Petitioner's application satisfies none of these standards. Most important, it is not even from a final decision: While the Appellate Division affirmed the trial Court's dismissal as to Petitioner's OPMA claim, it remanded for the trial Court to evaluate a factual question under the MWL and the Appellate Division did not retain jurisdiction. [See Aa, Exhibit A at 29]. The parties have already made submissions to the trial Court, and Judge Turula, P.J.Cv. has already convened a post-remand status conference (held April 4, 2024) and has set a briefing schedule which is to conclude by the end of May. A grant of certification at this point would be inappropriate, because only further proceedings will bring the case to finality—at which time any party still aggrieved, possibly including the Ward Commission itself, would have the opportunity to seek this Court's review. Further, on the merits, Petitioner disputes nothing more than the Appellate Division's application of well-established case law, consistent with prior rulings and the statutory requirements

applicable to a municipal ward commission. Contrary to Petitioner's scurrilous allegations, the commission's work was entirely consistent with the requirements of the law and returned Jersey City to a state of compliance with the most basic principle of American democracy: one person, one vote.

For all these reasons, Petitioner's request for certification should be denied.

A. TO THE EXTENT PETITIONER CHALLENGES THE APPELLATE DIVISION'S INTERPRETATION OF THE MUNICIPAL WARD LAW, THE RULING BELOW LACKS FINALITY AND CERTIFICATION WOULD BE PREMATURE.

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

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

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[2] The last of these does not apply here, as the Appellate Division has already decided and remanded the case.

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

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

N.J. 73 (1999); see also Moon, 182 N.J. at 511 (2005) (improvidently hearing appeals while trial court proceedings are pending would "'encourage an unseemly parade to the appellate courts and ... add to the time and expense of administration.'") (quoting Dickinson Indus. Site v. Cowan, 309 U.S. 382, 389 (1940)). This approach to judicial efficiency is long-standing. See, e.g., Hudson, supra; Robert L. Clifford, Civil Interlocutory Appellate Review in New Jersey, 47 Law & Contemp. Probs. 87, 88 (1984) ("The emphasis in New Jersey upon an uninterrupted proceeding at the trial level with a single and complete review has resulted in the requirement that an appeal as of right will normally lie only from a ... judgment ... that is final as to all issues and to all parties.") (citations omitted).

Here, Petitioner is asking this Court to interject at a clearly interlocutory stage. Simply put, the Appellate Division's ruling did not dispose of all issues as to all parties; instead, it remanded Petitioner's claim under the MW Law, for limited fact-finding and entry of a final ruling by the trial court.[3] [Aa, Exhibit A at 29]. As noted, those proceedings are on-going, with the parties' submissions

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[3] An interlocutory order, like the one Petitioner is now attempting to appeal, is preserved for appeal with the final judgment, if it is identified as a subject of the appeal. Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 140-41 (2016) (citing In re Carton, 48 N.J. 9, 15 (1966)). Petitioner must allow the trial Court to complete its limited assignment as instructed by the Appellate Division, and only then—if at all—seek further review of any resulting final order.

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due in May and a hearing scheduled thereafter.[4]

Granting this petition would therefore result in exactly the sort of piecemeal litigation that is "anathema" to orderly appellate practice. S.N. Golden Estates, Inc., 317 N.J. Super. at 87. For this reason, Petitioner's request for the Supreme Court to review the Appellate Division's ruling on his claim under the MW Law should be denied as premature.

B. THE APPELLATE DIVISION CORRECTLY AFFIRMED DISMISSAL OF PETITIONER'S OPMA CLAIMS.

In addition to the avoidance of piecemeal litigation by denying review "unless final judgment has been entered disposing of all issues as to all parties," Hudson, 36 N.J. at 553, this Court will also be justified in denying certification because Petitioner's claim under the Open Public Meetings Act, N.J.S.A. 10:4-17 et seq., is meritless.

As Judge Turula found, and the Appellate Division observed, the Jersey City Ward Commission held the two formal public meetings required by statute: its organizational meeting on December 15, 2021, when it determined that the

[4] Petitioner's arguments also fail on the merits, for all the reasons set forth in Respondents' briefs below. The Petition itself is a confusing mix of baseless arguments—such as that "the commissioners committed a crime" when they adopted the new Map—and recapitulations of arguments with which the Appellate Division already agreed, such as the fact that MW Law is not a constitutional provision like those governing Congressional and Legislative redistricting. [Pb8; cf. Aa, Exhibit A at 17-18].

disparate populations of Jersey City's then-existing Wards required them to be re-drawn pursuant to the MW Law, and its final meeting on January 22, 2022, when it took public comment and adopted a new Map. It is undisputed that both of these meetings were duly-noticed and otherwise conducted in conformity with the Act.

In his Complaint, Petitioner nevertheless asserted that the Commission violated the Act by holding "non-conforming meetings" between its initial and final meetings. [Pa7, ¶¶ 23-25]. However, Petitioner's pleading did not allege—because he ***could not*** allege—that any official act had occurred at any of these allegedly "non-conforming" meetings. On the contrary, as the Appellate Division correctly observed,

> Plaintiffs' allegations failed to state a viable OPMA violation. [Because t]he Commissioners certified that all non-public working sessions involved less than a quorum of the Commissioners . . . , the Commission was . . . entitled to a dismissal of those claims.
>
> The MW Law contemplates that ward commissioners will engage in working, non-public meetings. See N.J.S.A. 40:44-12 (allowing the commissioners to retain and consult with a surveyor, an engineer, or "other assistants as shall be necessary to aid them in the discharge of their duties"). . . . ***The OPMA does not prohibit individual commissioners or a group of commissioners, constituting less than a quorum, from meeting with "assistants" and considering information, including alternative maps, in private meetings.***
>
> Additionally, plaintiffs cannot show that the Commission

> took any formal action in a non-public meeting. There is no dispute that the Commission voted to adopt new ward boundaries and a new map at the January 22, 2022 public meeting. Adopting new boundaries and a map are the only actions required of the Commissioners under the MW Law. In short, plaintiffs have not alleged, nor could they allege, viable OPMA claims.

[Aa, Exhibit A at 26-27 (emphasis added)]. The Appellate Division was correct, and relied upon valid and long-standing New Jersey case law, that the OPMA—by its plain terms—does not apply to meetings attended by less than a quorum of the public body's members. See N.J.S.A. 10:4-8(b); Gandolfi v. Town of Hammonton, 367 N.J. Super. 527, 539–40 (App. Div. 2004) (an effective majority or quorum of members must be present for (1) an action to be taken; and (2) the OPMA to apply); see also, e.g., Witt v. Gloucester Cty. Bd. of Chosen Freeholders, 94 N.J. 422, 430 (1983)("Typical partisan caucus meetings [...] are neither covered nor intended to be covered by the provisions of this act."). Indeed, the evidence available[5] to the trial Court—the Commissioners'

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[5] Defendants presented certifications from each of the Commissioners attesting that the working sessions were not attended by a quorum of Commissioners. [See Pa156-182]. While Judge Turula did not consider these certifications [See Aa, Exhibit C at 11:19-12:25; 13:5-11], he could have: R. 4:69-2, which governs prerogative writs, expressly permits a Court to provide summary disposition at any time: "If the complaint demands the performance of a ministerial act or duty, the plaintiff may, at any time after the filing of the complaint, by motion ***supported by affidavit and with briefs***, apply for summary judgment." (emphasis added). Likewise, R. 4:6-2 allows courts to convert motions to dismiss into motions for summary judgment. The Court could also take judicial notice of the certifications as "specific facts and propositions of generalized knowledge which are capable of immediate

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certifications that none of the working sessions had been attended by a quorum of commissioners—places the dispute here squarely within the protection of OPMA as interpreted in rulings like Gandolfi.

Further, even if any of Petitioner's allegations regarding non-public meetings had been found actionable, Petitioner still would have had no entitlement to relief because the remedy for violation of the OPMA is recession of any official acts that occurred at the non-conforming meeting. See N.J.S.A. 10:4-8(b); McGovern v. Rutgers, 211 N.J. 94, 112 (2012) (N.J.S.A. 10:4-15 is inapplicable to meetings where no action is taken). It is undisputed that the challenged Map was adopted at a meeting that complied with OPMA.[6]

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

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determination by resort to sources whose accuracy cannot reasonably be questioned." N.J.R.Evid. 201.

[6] Even if any of the working group meetings had violated OPMA, any such violation (none being admitted) was remedied when the Commission met and took action on January 22, 2022. See N.J.S.A. 10:4-15(a) (a public body may take "corrective or remedial action" to cure a past OPMA violation, by acting *de novo* at a conforming public meeting).

CONCLUSION

For all the foregoing reasons, Petitioner's application fails to meet this Court's standards for certification, and the application should be denied.

Respectfully submitted,

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Dated: April 30, 2024