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American Civil Liberties Union of New Jersey

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

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

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,

Dated: November 12, 2024

By: /s/ Peter Slocum

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Appendix 01

New Jersey Municipal Ward Law (legislative history)

40:44-9

LEGISLATIVE HISTORY CHECKLIST

(Municipal ward law--method for fixing ward boundaries)

NJSA 40:44-9 et al.

LAWS 1981 CHAPTER 496

Bill No. S3157

Sponsor(s) Perskie

Date Introduced March 23, 1981

Committee: Assembly County Government

Senate County & Municipal Government

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Jan. 4, 1982

Senate June 18, 1981

Date of approval Jan. 12, 1982

Following statements are attached if available:

Sponsor statement	Yes	No
Committee Statement: Assembly	Yes	No
Senate	Yes	No
Fiscal Note	Yes	No
Veto Message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	No

Report, referred to in statements:

974.90 Reock, Ernest C.
M966 Forms of municipal government in
1979 New Jersey... January, 1979.
New Brunswick, 1979.

[see pp. vi & 57-60]

6/22/81

BEC

[OFFICIAL COPY REPRINT]
SENATE, No. 3157

STATE OF NEW JERSEY

INTRODUCED MARCH 23, 1981

By Senators PERSKIE and MUSTO

Referred to Committee on County and Municipal Government

AN ACT providing a uniform method for the fixing and determination of municipal ward boundaries by ward commissioners and revising parts of the statutory law pertaining thereto.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. (New section) This act shall be known and may be cited as
2 the "Municipal Ward Law."

1 2. (New section) This act shall apply to and govern any municipi-
2 pality having adopted a charter or form of government, or ordi-
3 nance, providing that the municipality shall be divided into wards,
4 or other similar representation districts, for the purpose of the
5 election or appointment of any municipal officers. It shall constitute
6 the exclusive method whereby the boundaries of wards, or other
7 similar representation districts, in municipalities shall be fixed
8 and determined, and to this end all acts or parts of acts, whether
9 of a general or special character, which conflict or are incompatible
10 with its provisions are superseded to the degree of the conflict or
11 incompatibility. Nothing in this act shall be sufficient in itself to
12 authorize any municipality to divide into wards or other similar
13 representation districts, nor to increase or decrease the number
14 of its wards or similar representation districts.

1 3. (New section) A municipality shall be divided by the ward
2 commissioners, in the manner provided in this act, into so many
3 wards as the charter or form of government, or ordinance, may
4 provide. The members of the county board of elections of the
5 county in which the municipality is located, together with the mu-
6 nicipal clerk, shall constitute the ward commissioners.

1 4. (New section) Each ward commissioner shall be entitled to be
2 reimbursed for necessary expenses incurred in the performance of
3 his duties and to such compensation as the governing body may
4 provide by ordinance.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

5 The ward commissioners shall be entitled in the performance of
6 their duties to the assistance of a surveyor or engineer, and, when
7 they deem necessary, may employ a surveyor or engineer and such
8 other assistants as shall be necessary to aid them in the discharge
9 of their duties.

10 The governing body of the municipality shall provide, upon cer-
11 tification of the ward commissioners, for payment of the expenses
12 of the ward commissioners, their compensation as determined by
13 ordinance, and the expenses for the services of the surveyor, engi-
14 neer or other assistants as the ward commissioners shall have in-
15 curred. No person employed under this section shall be compen-
16 sated by receiving a percentage of the contract under which he
17 renders services.

1 5. (New section) a. Within 5 days following any election at
2 which the voters of the municipality shall have adopted a charter,
3 or an amendment thereof, or a form of government requiring the
4 division of the municipality into a number of wards, the ward com-
5 missioners shall meet and, having first taken and subscribed, be-
6 fore an officer authorized to administer oaths, an oath to faithfully
7 and impartially perform their duties, shall proceed to divide the
8 municipality into wards as required by the charter or form of
9 government and this act.

10 b. Within 30 days following the final adoption pursuant to law
11 by the municipal governing body of any ordinance which by its
12 terms requires that the municipality be divided into wards, or that
13 the existing wards of the municipality be increased or decreased,
14 or that the existing ward boundaries of the municipality be ad-
15 justed to allow for the annexation or deannexation of territory,
16 the ward commissioners shall meet in the manner provided in sub-
17 section a. of this section and proceed to divide the municipality
18 into wards, or to make such ~~*[adjustments]*~~ **adjustments** in
19 ward boundaries, as shall be required to conform with the pro-
20 visions of the ordinance and this act.

21 c. Within 3 months following the ~~*[completion]*~~ **promulgation*
22 *by the Governor pursuant to law** of each Federal decennial census,
23 the ward commissioners shall meet in the manner provided in sub-
24 section a. of this section and proceed to make such adjustments
25 in ward boundaries as shall be necessary to conform them to the
26 requirements of this act.

1 6. (New section) The ward commissioners shall fix and deter-
2 mine the ward boundaries so that each ward is formed of compact
3 and contiguous territory. The ~~*[wards so created shall not differ~~
4 in population, according to the most recent Federal decennial cen-

5 sus, by more than 10% of the population of the least populous ward
 6 created] * *population of the most populous ward so created shall*
 7 *not differ from the population of the least populous ward so cre-*
 8 *ated, by more than 10% of the mean population of the wards*
 9 *derived by dividing the total population of the municipality by the*
 10 *number of wards created. The most recent Federal decennial census*
 11 *shall be used as the population determinant*.*

1 7. (New section) Within 30 days following their initial meeting
 2 pursuant to section 5 of this act, the ward commissioners shall file
 3 their report, certified by at least three of their signatures, setting
 4 forth and properly describing the ward boundaries fixed and de-
 5 termined. There shall be annexed to the report a map of the mu-
 6 nicipality with the ward boundaries clearly marked thereon.

7 The report so certified shall be filed in the office of the county
 8 clerk, and copies shall be filed with the Secretary of State and in
 9 the office of the municipal clerk.

1 8. (New section) Within 2 weeks immediately following the
 2 filing of the certified report by the ward commissioners, the mu-
 3 nicipal clerk shall cause to be published at least once in at least
 4 one newspaper generally circulating in the municipality a notice of
 5 the ward boundaries as fixed and determined in the report.

6 Upon completion of the publication, the former wards, if any,
 7 shall be superseded, and thereafter all officers elected or appointed
 8 in the municipality for or representing the wards thereof shall be
 9 elected from, or appointed for, the wards fixed and determined by
 10 the ward commissioners*; *except that, in municipalities wherein*
 11 *municipal officers are elected at the general election held on the*
 12 *first Tuesday after the first Monday in November, if the publication*
 13 *shall be completed in a year in which municipal officers are elected*
 14 *during the period between the date 75 days before the primary*
 15 *election and the date of the general election, the wards so fixed*
 16 *and determined shall take effect on the day following the holding*
 17 *of that general election; and, in municipalities wherein municipal*
 18 *officers are elected at a regular municipal election held on the*
 19 *second Tuesday in May, if the publication shall be completed in*
 20 *a year in which municipal officers are elected during the period*
 21 *between the date 75 days before the regular municipal election and*
 22 *the date of the election, the wards so fixed and determined shall*
 23 *take effect on the day following the holding of that regular muni-*
 24 *pal election*.*

1 9. (New section) Whenever the boundaries of existing wards
 2 are adjusted pursuant to subsection b. or c. of section 5 of this
 3 act, all officers elected therefor shall continue in office until their

4 respective terms of office shall expire and until their successors
5 are elected and qualified from adjusted wards.

1 10. (New section) Nothing contained in this act shall invalidate
2 any wards or ward boundaries existing in any municipality on the
3 effective date of this act which were fixed and determined pursuant
4 to any previous law, but the provisions of this act shall apply to and
5 govern any municipality on and after the date on which any of the
6 circumstances set forth in section 5 of this act shall occur therein.

1 11. R. S. 40:131-1 is amended to read as follows:

2 40:131-1. ~~【The】~~ *Except as otherwise provided by referendum of*
3 *the voters, the governing body of any town containing more than*
4 *5,000 inhabitants may, by ordinance or resolution, 【divide】 require*
5 *the division of the town into not less than three nor more than five*
6 *wards. 【Such ordinance or resolution shall define the boundaries*
7 *of each ward.】*

1 12. Section 6 of P. L. 1897, c. 30 (R. S. 40:108-1(6)) is amended
2 to read as follows:

3 40:108-1 (6). The governing body of any such city, in office, shall
4 have power and authority to ~~【divide】~~ *require the division of such*
5 *city 【(not already divided into wards)】 into two or more wards【,*
6 *and, in making such division, such body shall have regard to equality*
7 *in population】*【:】* * or to require an increase or decrease in the*
8 *number of wards* ,* such division shall be 【made】 required by*
9 *ordinance 【or resolution as soon after the passage of this act as*
10 *is practicable】.*

1 13. Section 6 of P. L. 1899, c. 52 (C. 40:109-3 (6)) is amended to
2 read as follows:

3 40:109-3 (6). Wards; division of city; ordinance or resolution.
4 6. The governing body of any such city, in office, shall have power
5 and authority to ~~【divide】~~ *require the division of such city 【(not*
6 *already divided into wards)】 into two or more wards, 【and, in*
7 *making such division, such body shall have regard to equality in*
8 *population】 or to require an increase or decrease in the number of*
9 *wards; such division shall be 【made】 required by ordinance 【or*
10 *resolution as soon after the passage of this act as is practicable】.*

1 14. Section 5 of P. L. 1948, c. 437 (C. 40:144-20) is amended to
2 read as follows:

3 5. If such proposition shall be adopted and become effective, any
4 and all proceedings theretofore had in respect to, the division of
5 the township into wards, ~~【the appointment of commissioners to~~
6 ~~make the division into wards, the report of the commission,】~~ the
7 selection of township committeemen and any other proceedings had
8 or taken, pursuant to the prior adoption of the proposition as to the

9 division of the township into wards, shall be nullified and be of no
10 effect, except as provided in the next section.

1 15. Section 5 of P. L. 1963, c. 149 (C. 40:103-5 (75)) is amended
2 to read as follows:

3 5. Number and Term.

4 The city shall be governed by an elected mayor and a city council
5 consisting of two elected councilmen from each ward, each of whom
6 shall serve for a term of 4 years beginning at 12:00 o'clock noon
7 January 1 next following his election.

8 *The governing body of the city shall require the division of the*
9 *city into wards, and may require an increase or decrease in the*
10 *number of wards. Any division, or increase or decrease, shall be re-*
11 *quired by ordinance.*

1 16. Section 29 of P. L. 1977, c. 435 (C. 40:43-66.63) is amended
2 to read as follows:

3 29. a. Following the adoption of the question of consolidation in
4 each of the participating municipalities, the nomination and elec-
5 tion of officers for the consolidated municipality shall be conducted
6 in accordance with the plan or form of government adopted for the
7 consolidated municipality, and the participating municipalities
8 shall be deemed consolidated on the date on which such officers shall
9 be authorized to take office under such plan or form of government;
10 provided, however, that, if the commission shall have recom-
11 mended submission to the Legislature of a special charter, the pro-
12 vision for the election of new officers and the date of consolidation
13 shall be at such time following the approval of such special charter
14 by the Legislature as shall be set forth in such charter.

15 b. [Within 45 days after the adoption of the question of con-
16 solidation, the commission shall draw the ward boundaries, if any,
17 for the consolidated municipality in the manner prescribed by law
18 for the plan or form of government adopted. If the plan of con-
19 solidation has recommended the submission of a special charter to
20 be submitted to the Legislature, the commission shall draw such
21 ward boundaries, if any, in the manner prescribed in such special
22 charter within 45 days after the ratification of such special charter.

23 Ward boundaries shall be so fixed and determined that each
24 ward is formed of compact and contiguous territory. The wards so
25 created shall not differ in population, according to the most recent
26 Federal census, by more than 10% of the population of the least
27 populous ward created.] *Ward boundaries for the consolidated*
28 *municipality, if any shall be required by the charter or form of*
29 *government adopted, shall be fixed and determined pursuant to the*
30 *"Municipal Ward Law" (P. L., c.; C.).*

31 c. Within 45 days after the adoption of the question of con-
 32 solidation, the county board of elections shall establish the election
 33 district boundaries for the consolidated municipality in the manner
 34 prescribed in Article 2 of chapter 4 of Title 19 of the Revised
 35 Statutes.

36 d. For the purpose of conducting the nomination and election
 37 of officers for the consolidated municipality as provided in sub-
 38 section a. of this section, the municipal clerks of the participating
 39 municipalities shall organize themselves as a committee. Such
 40 committee shall, as prescribed by law for the plan or form of
 41 government adopted for the consolidated municipality: furnish
 42 forms for, and receive, petitions of nomination for such officers;
 43 conduct the certification of such petitions; prepare, cause to be
 44 printed, and authenticate the ballot for the election of such officers;
 45 cause any notices for such election to be published; and, receive
 46 and canvass the returns of such election.

1 17. N. J. S. 40A:7-13 is amended to read as follows:

2 40A:7-13. Ordinance of annexing municipality; wards; limita-
 3 tion on municipal boundaries. The governing body of the munici-
 4 pality to which land is sought to be annexed may, in its discretion,
 5 by ordinance adopted by a two-thirds vote annex the land specifi-
 6 cally described in the petition to such municipality. If the munici-
 7 pality is divided into wards, the [ordinance shall also designate the
 8 ward or] *boundaries of the existing wards [of which said land*
 9 *shall become a part, but in all cases the annexed lands shall become*
 10 *part of the ward or wards to which it is contiguous] shall be*
 11 *adjusted as necessary to together encompass the annexed land, pur-*
 12 *suant to the "Municipal Ward Law" (P. L. . . . , c. . . . ; C.).*
 13 The boundaries of such municipality shall not be extended so as to
 14 include a portion of any county other than that in which such
 15 municipality is located.

1 18. The following are repealed:

2 R. S. 40:44-1 through 40:44-8, inclusive;
 3 R. S. 40:123-6;
 4 R. S. 40:123-7;
 5 R. S. 40:131-6;
 6 R. S. 40:144-7 through 40:144-10, inclusive;
 7 R. S. 40:144-15;
 8 P. L. 1950, c. 210, sections 17-48 through 17-55, inclusive (C.
 9 40:69A-197 through 40:69A-204);
 10 P. L. 1971, c. 407 (C. 40:69A-199.1 and 40:69A-199.2).

1 19. This act shall take effect immediately.

7 pality is divided into wards, the [ordinance shall also designate the
8 ward or] *boundaries of the existing wards* [of which said land
9 shall become a part, but in all cases the annexed lands shall become
10 part of the ward or wards to which it is contiguous] *shall be*
11 *adjusted as necessary to together encompass the annexed land, pur-*
12 *suant to the "Municipal Ward Law" (P. L., c.; C.).*
13 The boundaries of such municipality shall not be extended so as to
14 include a portion of any county other than that in which such
15 municipality is located.

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2 R. S. 40:44-1 through 40:44-8, inclusive;

3 R. S. 40:123-6;

4 R. S. 40:123-7;

5 R. S. 40:131-6;

6 R. S. 40:144-7 through 40:144-10, inclusive;

7 R. S. 40:144-15;

8 P. L. 1950, c. 210, sections 17-48 through 17-55, inclusive (C.
9 40:69A-197 through 40:69A-204);

10 P. L. 1971, c. 407 (C. 40:69A-199.1 and 40:69A-199.2).

1 19. This act shall take effect immediately.

Sponsor's STATEMENT

The bill revises or repeals various statutes in order to provide for a uniform method for fixing and determining municipal ward boundaries by ward commissioners. The bill would implement recommendation No. 6 of the County and Municipal Government Study (Musto) Commission in its report, *Forms of Municipal Government in New Jersey*, that existing ward laws be updated and consolidated into a single, uniform ward statute prior to the 1980 census.

The provisions encompassed in the proposed new law are based upon the existing provisions of the Faulkner Act (Optional Municipal Charter Law) with certain additions which are necessary to make the law useful to other forms of government.

The proposed law would not affect the existence or number of wards into which municipalities are to be divided. It would not authorize any municipality to divide into wards nor to increase or decrease the number of its wards. Those matters are, and shall continue to be, governed by the statutes authorizing various forms of municipal government. The proposed law would, however, constitute the exclusive method under which municipal ward boundaries shall be fixed and determined.

S3157 (1981)

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 3157

STATE OF NEW JERSEY

DATED: JUNE 29, 1981

The purpose of Senate Bill No. 3157 is adequately explained by the Senate County and Municipal Government Committee Statement which is appended hereto.

Senate Bill No. 3157, the "Municipal Ward Law," provides for a uniform method for fixing and determining municipal ward boundaries by ward commissioners. The bill would implement recommendation No. 6 of the County and Municipal Government Study (Musto) Commission in its report, Forms of Municipal Government in New Jersey, that existing ward laws be updated and consolidated into a single, uniform ward statute prior to the 1980 census.

The provisions encompassed in the proposed new law are based upon the existing provisions of the Faulkner Act (Optional Municipal Charter Law) with certain additions which are necessary to make the law useful to other forms of government.

The proposed law would not affect the existence or number of wards into which municipalities are to be divided. It would not authorize any municipality to divide into wards nor to increase or decrease the number of its wards. Those matters are, and shall continue to be, governed by the statutes authorizing various forms of municipal government. The proposed law would, however, constitute the exclusive method under which municipal ward boundaries shall be fixed and determined.

The Senate committee amendments clarify the method of establishing the 10% overall deviation in population among the wards to be drawn under the act, as suggested by experts who have worked with municipal clerks in this regard. The amendments also clarify that municipal ward boundary changes shall not take effect in most instances in a municipal election year until after the municipal election, in order to prevent wards from being changed in the midst of a municipal election campaign. The boundary changes would be required to be completed more than 75 days before the primary election (in municipalities holding general elections) or the regular municipal election (in municipalities holding such elections) or the changes shall not take effect until after the general or regular municipal election.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 3157

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1981

Senate Bill No. 3157, the "Municipal Ward Law," provides for a uniform method for fixing and determining municipal ward boundaries by ward commissioners. The bill would implement recommendation No. 6 of the County and Municipal Government Study (Musto) Commission in its report, Forms of Municipal Government in New Jersey, that existing ward laws be updated and consolidated into a single, uniform ward statute prior to the 1980 census.

The provisions encompassed in the proposed new law are based upon the existing provisions of the Faulkner Act (Optional Municipal Charter Law) with certain additions which are necessary to make the law useful to other forms of government.

The proposed law would not affect the existence or number of wards into which municipalities are to be divided. It would not authorize any municipality to divide into wards nor to increase or decrease the number of its wards. Those matters are, and shall continue to be, governed by the statutes authorizing various forms of municipal government. The proposed law would, however, constitute the exclusive method under which municipal ward boundaries shall be fixed and determined.

The Senate committee amendments clarify the method of establishing the 10% overall deviation in population among the wards to be drawn under the act, as suggested by experts who have worked with municipal clerks in this regard. The amendments also clarify that municipal ward boundary changes shall not take effect in most instances in a municipal election year until after the municipal election, in order to prevent wards from being changed in the midst of a municipal election campaign. The boundary changes would be required to be completed more than 75 days before the primary election (in municipalities holding general elections) or the regular municipal election (in municipalities holding such elections) or the changes shall not take effect until after the general or regular municipal election.

S-1673, sponsored by Senator John Cauffield (D-Essex), establishing a Commodities and Services Council within the Department of Human Services to assure a state agency market for products produced by the blind and the handicapped.

S-3504, sponsored by Senator John Russo (D-Ocean), providing that a deputy clerk of the Appellate Division of the State judiciary be in the unclassified division of the civil service.

S-3157, sponsored by Senator Steven Perskie (D-Atlantic), providing for a uniform method of fixing municipal ward boundaries, as recommended by the County and Municipal Government Study (Musto) Commission.

The bill applies to all municipalities (52 in the State) which have wards, and boundaries would be fixed following adoption of certain government forms; following adoption of an ordinance requiring ward divisions; and following the promulgation by the Governor of the decennial federal census.

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. No changes in the boundaries can be made within 75 days of a primary or general election.

S-3351, sponsored by Senator Wayne Dumont Jr. (R-Sussex), appropriating \$600,000 for the initial costs of establishing county colleges in Sussex and Warren Counties. Under the bill, the new colleges, needed because of the increased student populations in these counties, will operate out of existing school buildings. The money will not be used for the construction of any new buildings or campuses.

S-1549, sponsored by Senator Joseph Merlino (D-Mercer) and known as the "Community Development Bond Act of 1982," would authorize the issuance of \$85 million in bonds for urban revitalization: \$45 million for a State program similar to the federal UDAG program, to be administered by the new Department of Commerce; \$30 million for capital construction projects in cities, to be administered by the Department of Community Affairs; and \$10 million for industrial parks, to be administered by the Economic

- 2) It is recommended that amendments to the City Form and Town Form of government laws permit reduction of any governing body with nine or more members to nine, seven, or five members, through a petition and referendum process.

The various city form statutes would have to be amended to implement this objective. The referendum act for the incorporation of towns (1895) N.J.S.A. 40:123-1 et seq. provides for the division of the town into wards, N.J.S.A. 40:123-6, and that two councilman-at-large, designated as the mayor, N.J.S.A. 40:125-1. Initially, it would appear necessary to amend N.J.S.A. 40:125-1 to place a cap on the number of councilmen. A procedure for reduction in the size of the governing body could be provided as a supplement and amendment to the statutes.

- 3) It is recommended that an amendment to the Township Form of government laws be made to limit, prospectively, to three the number of wards in townships with over 7,000 in population. The township statutes, N.J.S.A. 40:142-1 et seq., authorize townships having a population of more than 7,000 to be divided into not less than three wards. N.J.S.A. 40:144-1. To cap the number of wards at three, this section would have to be amended. The amendment would not affect townships that currently have more than three wards.

- 4) It is recommended that the statute N.J.S.A. 40:123-1 permitting any town, village, borough, or township with over 4,000 population to form itself into a town, with a council elected entirely from wards, be repealed.

This repeal would be drafted so that it would not affect existing towns. Suitable language foreclosing the future use of N.J.S.A. 40:123-1 would be inserted in the section.

- 5) It is recommended that the Legislature consider carefully any petition for a special charter which includes a municipal governing body based entirely on ward elections.
- 6) It is recommended that the general law for re-drawing wards N.J.S.A. 40:44-1 et seq., and the Optional Municipal Charter Law provides for re-drawing wards, N.J.S.A. 40:69A-197 et seq., be updated and consolidated into a single, uniform ward statute prior to the 1980 census.
- 7) It is recommended that the City Form of government laws be amended to provide for a three-year or four-year term of office for the council member elected at large. Amendments to the city laws saved from repeal (N.J.S.A. 40:103-1 to 40:112-1 et seq.) as well as to N.J.S.A. 40:167-1 et seq. appear to be required to realize this objection.
- 8) It is recommended that the Town and Township Form (with wards) of government laws be amended to permit a change, through a petition and referendum process, to the election of three members of the governing body from each of two or three wards, for three-year staggered terms of office. Towns and townships currently using the two-year term would be permitted to retain this pattern or switch to the new patterns, but no other municipality would be permitted to adopt the two-year term in the future, except by special charter.

To implement this recommendation it appears that it would be necessary to amend the town law, N.J.S.A. 40:123-6 (requiring division of town into not less than three wards), N.J.S.A. 40:125-1 (providing for two councilmen from each ward and one councilman-at-

The use of wards for representative purposes can serve a legitimate public purpose, particularly when a municipality includes diverse groups of residents. A number of recent court decisions from other jurisdictions have indicated the desirability of wards or districts in assuring minority representation. Two restrictions on wards are reflected in the existing New Jersey statutes, although not being uniformly applied, and both appear to have some validity. First, wards generally are not authorized by the Legislature for very small communities, the assumptions being that the rationale in favor of wards becomes weaker in a small municipality, and that wards would fragment the community unnecessarily. The second restriction is that, where the representative role of individual governing body members is accompanied by a strong, institutionalized, executive role, as in the Commission Form, the use of wards is not appropriate. A commissioner of public safety, or of public works, if elected at all, probably should be elected by, and should represent, all of the voters of the municipality, not just those of a single ward.

Election of the entire governing body from wards, a variation found in only 13 places, received a very poor evaluation by municipal officials. It is authorized under some of the City and Town government laws, in townships over 7,000 in population, and in two special charters. Specific comments by respondents pointed out the difficulty of getting ward council members to take a broad view of the problems of the entire community. The temptation to recommend elimination of this method of representation is tempered by a knowledge of cases in other parts of the country where at-large elections and even combinations of at-large and ward elections have been challenged as devices for diluting or obliterating the voting strength of minorities. The issues remain to be resolved finally, and the only structural recommendations made at this time are intended to foreclose the extension of this form of representation without adequate legislative deliberation:

It is recommended that the statute (N.J.S.A. 40:123-1) permitting any town, village, borough, or township with over 4,000 population to form itself into a town, with a council elected entirely from wards, be repealed. The repealer would have prospective application and not affect any municipalities presently organized in this manner.

It is recommended that the Legislature consider carefully any petition for a special charter which includes a municipal governing body based entirely on ward elections.

In terms of procedure, consideration may be given to further changes. Wards should be re-examined and, if necessary, their boundaries re-drawn to attain equality of representation when new population data become available. Numerous statutes apply at the present time, with two - - the OMCL and a general ward revision law - - covering most municipalities. The general statute antedates judicial action of the 1960's and 1970's on legislative apportionment, and is relatively vague in terms of standards. The two laws set up different procedures, to be carried out by different agencies (See Table III-5). The process would be simplified and probably facilitated if a single statute applied to all New Jersey municipalities using wards for representative purposes. It is recommended that the general law for re-drawing wards (N.J.S.A. 40:44-1 et seq.) and the Optional Municipal Charter Law provisions for re-drawing wards (N.J.S.A. 40:69A-197 et seq.) be up-dated and consolidated into a single, uniform ward statute prior to the 1980 Census.

Governing Body Term of Office

The term for which governing body members are elected varies from two years in a few places under the City and Town Forms, the Townships using wards, and one special charter; to three years

Table III-5 Statutory Provisions for Drawing Municipal Ward Boundaries.

	General Ward Law 40:44-1 et seq.	Optional Municipal Charter Law 40:69A-197 et seq.
Applies To:	Any municipality (but this law, in itself, does not authorize a municipality to elect any officers from wards).	All municipalities adopting an OMCL charter which requires wards.
When done:	<p>(a) Law may be used initially at any time. 40:44-1.</p> <p>(b) Boundaries may be readjusted and number changed whenever population of one ward exceeds population of any two other wards, but not more than once every 5 years. 40:44-5.</p> <p>(c) Court cases indicate need for re-adjustment after every census if ward population differ significantly.</p>	<p>(a) Done initially when municipality adopts OMCL charter. 40:69A-197.</p> <p>(b) Boundaries must be readjusted within 3 months after every Federal decennial census. 40:69A-203.</p> <p>(c) Number of wards may be changed only by changing charter.</p>
Who initiates action:	Municipal governing body sets number of wards and initiates action by ordinance. 40:44-1.	Board of ward commissioners initiates action; number of wards set by charter provision. 40:69A-199,203.
Who draws ward boundaries?	Commission of 4 residents and legal voters appointed by mayor or other chief executive, or if there is no such officer, by governing body. No more than two members from same political party. If mayor or governing body fails to make appointments, Superior Court assignment judge may do so. 40:44-2.	Board of ward commissioners consisting of 4 members of county board of elections, plus the municipal clerk. 40:69A-198.
Compensation for ward commission:	Commissioners entitled to necessary expenses, and compensation may be set by governing body. 40:44-6.	Commissioners entitled to necessary expenses, and compensation up to \$500 may be set by governing body. 40:69A-199.2.
Technical assistance:	Commission may hire surveyor and other personnel, with compensation set by governing body. 40:44-6.	Commission may hire surveyor and other personnel, with compensation set by governing body. 40:69A-199.1, 199.2.

Table III-5 (Continued).

	General Ward Law	Optional Municipal Charter Law
Standards for wards:	(a) Formed of contiguous territory. (b) "...shall have regard to equality of population". 40:44-3.	(a) Formed of contiguous territory. (b) Formed of compact territory. (c) Shall not differ in population by more than 10% from population of least populous ward. 40:69A-200.
Time for completion:	60 days. 40:44-3.	30 days. 40:69A-201, 203.
Majority for decision:	Majority of commissioners; if unable to agree, mayor or other chief executive may break tie. 40:44-6.	Majority of commissioners. 40:69A-201.
Report:	Map, description of boundaries, and statement of population of each ward to be filed with Municipal clerk. 40:44-3.	Map and description of boundaries to be filed with: municipal clerk county clerk Secretary of State. Municipal clerk must publish notice of boundaries in at least one newspaper circulating in the municipality within 2 weeks of filing. 40:69A-201, 202.
Effective date of wards:	10 days after filing of report. 40:44-4. If new ward boundaries necessitate new election districts, such districts also are drawn by ward commissioners. 40:44-8.	Upon publication of notice of ward boundaries by municipal clerk. 40:69A-202.

Other ward statutes:

- 40:43-26.....Wards in annexations.
- 40:87-2.....Wards in Boroughs over 10,000 population.
- 40:107-1.....Wards in Cities over 12,000 population.
- 40:108-1.....Wards in Cities under 12,000 population.
- 40:110-1.....Wards in Cities between 6,000 and 10,000 population.
- 40:113-1.....Wards in municipalities governed by improvement commissions in Townships of more than 7,000 population.
- 40:123-6.....Wards in newly-created Towns.
- 40:131-1.....Wards in Towns over 5,000 population.
- 40:144-1.....Wards in Townships over 7,000 population.
- 40:169-10.....Wards in Cities between 5,000 and 6,000 population by the last State census, having 2 precincts, and 9 councilmen.

in some cities and towns, in the Borough, Township and Village Forms, and in the Small Municipality plans of the OMCL; to four years in a few cities and in the Commission Form and the Mayor-Council and Council-Manager options of the OMCL (See Table III-6). Governing body members in places using the Municipal Manager Form of Government (1923) may have either three-or four - year terms, depending upon the prior form of government and the language of the referendum held to change the form of government, although no municipality is currently using the three-year option.

Three-year terms gain the highest degree of approval from most kinds of respondents to the municipal official survey, although four-year terms are not far behind (See Table III-7). In fact, the CAAO'S and clerk-CAAO's are so strong in their support for the longer term that, when their responses are grouped with those of other respondents, they swing the balance slightly in favor of a four-year term of office. Much clearer is the inclination of those officials having experience with two-year terms against such a short period of governing body service.

In the three cities which currently have some members of the city council elected for two-year terms, it is the at-large council member who is affected, while the members elected from wards serve for three years (Englewood, North Wildwood, Summit). There seems to be no logical reason for this combination; in view of the criticism of two-year terms, some change should be considered. It is recommended that the City Form of government laws be amended to provide for at least a three-year term of office for the council member elected at large.

Seven towns elect all of their governing body members from wards for two-year staggered terms, thus having an annual election in every ward. The same pattern holds for two townships which use wards for election of the township committee. These places should have an opportunity to eliminate the unpopular two-year term of office without changing the essential nature of the electoral pattern for governing body members. It is recommended that the Town, Township (with wards) Form of government laws be amended to permit a change, through a petition and referendum process providing for the election of three members of the governing body from each of two or three wards, for three-year staggered terms of office. Towns and townships currently using the two-year term would be permitted to retain that pattern or switch to the new pattern, but no other municipality would be permitted to adopt the two-year term in the future, except by special charter.

Arrangement of Governing Body Terms of Office

Most New Jersey municipalities have forms of government in which the terms of office of the municipal governing body are staggered, so that the full membership does not stand for election at the same time. The use of concurrent terms, where all members are elected at the same time and serve for the same period, is largely a product of the optional laws of the 20th century, and is found today only in municipalities using the Commission Form, the Municipal Manager Form, and certain of the Mayor-Council, Council-Manager, and Small Municipality plans under the OMCL (See Table III-8).

Attitudes of municipal officials run strongly in favor of the use of staggered terms of office, as shown in Table III-9. While respondents from places using concurrent terms are not opposed to that system, the highest level of approval — from the mayors in the survey — is only 76.9%. This may be compared with more than 95% approval of staggered terms among every class of respondent from the municipalities electing only a portion of their governing body in any single election.

Appendix 02

Nairne v. Ardoin 2022 U.S. Dist. LEXIS 88282

Nairne v. Ardoin

United States District Court for the Middle District of Louisiana

May 17, 2022, Decided; May 17, 2022, Filed

CIVIL ACTION NO. 22-178-SDD-SDJ

Reporter

2022 U.S. Dist. LEXIS 88282 *; 2022 WL 1559074

DR. DOROTHY NAIRNE, et al. VERSUS R. KYLE ARDOIN

Subsequent History: Stay granted by Nairne v. Ardoin, 2022 U.S. Dist. LEXIS 155706, 2022 WL 3756195 (M.D. La., Aug. 30, 2022)

Motion denied by Nairne v. Ardoin, 2023 U.S. Dist. LEXIS 159116, 2023 WL 5831051 (M.D. La., Sept. 8, 2023)

Motion denied by Nairne v. Ardoin, 2023 U.S. Dist. LEXIS 199618, 2023 WL 7323204 (M.D. La., Nov. 7, 2023)

Motion granted by, in part, Motion denied by, in part Nairne v. Ardoin, 2023 U.S. Dist. LEXIS 201175, 2023 WL 7388850 (M.D. La., Nov. 8, 2023)

Motion denied by Nairne v. Ardoin, 2023 U.S. Dist. LEXIS 201444, 2023 WL 7427789 (M.D. La., Nov. 9, 2023)

Summary judgment denied by Nairne v. Ardoin, 2023 U.S. Dist. LEXIS 203477, 2023 WL 7673856 (M.D. La., Nov. 14, 2023)

Motion denied by, Request denied by, Findings of fact/conclusions of law at, Judgment entered by, Injunction granted at Nairne v. Ardoin, 2024 U.S. Dist. LEXIS 22181, 2024 WL 492688 (M.D. La., Feb. 8, 2024)

Motion denied by, Without prejudice Nairne v. Ardoin, 2024 U.S. Dist. LEXIS 81506 (M.D. La., May 3, 2024)

Counsel: [*1] For Dorothy Nairne, Dr., Jarrett Lofton, Cleo E. Lowe, Rev., Alice Washington,

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For State Of Louisiana, by and through
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Judges: SCOTT D. JOHNSON, UNITED
STATES MAGISTRATE JUDGE.

Opinion by: SCOTT D. JOHNSON

Opinion

ORDER GRANTING INTERVENTION

Before the Court are two Motions seeking intervention under Rule 24 of the Federal Rules of Civil Procedure—the Motion of the Presiding Officers of the Louisiana Legislature to Intervene (R. Doc. 13), filed by Clay Schexnayder (Speaker of the Louisiana House of Representatives) and Patrick Page Cortez (President of the Louisiana Senate), as well as the State of Louisiana's Motion to Intervene (R. Doc. 33), filed by Attorney General Jeff Landry.

This is one of three cases pending in the Middle District of Louisiana, challenging the State's new congressional districting plan. See *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. filed March 30, 2022); *Galmon v. Ardoin*, No. 22-cv-214-SDD-SDJ (M.D. La. filed March 30, 2022). While all 3 cases present common issues of law and fact (R. Doc. 23), *Robinson* and *Galmon* have been consolidated because the plaintiffs in those cases have sought preliminary injunctions. Plaintiffs in this related litigation have not, however. Both the Louisiana Legislators and the Attorney General filed similar Motions to Intervene in both *Robinson* and *Galmon*. Those Motions [*4] have already been granted, allowing intervention. See Order, *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. April 19, 2022), ECF No. 64.

As explained below, considering the similar issues presented in *Robinson* consolidation and this litigation, and the detailed analysis and reasoning of the district judge's Order allowing intervention in *Robinson*, the Court finds the same result is warranted here. And so, both Motions to Intervene (R. Docs. 13, 33) will be **GRANTED**.

A. Applicable Law

Rule 24 of the Federal Rules of Civil Procedure provides for "[i]ntervention—a procedure by which an outsider with an interest in a lawsuit may come in [even] though [it] has not been named as a party by the existing litigants." Wright & Miller, 7C Fed. Prac. & Proc. Civ. § 1901 (3d ed. 2007). The rule distinguishes between two kinds of intervention—intervention as of right and permissive intervention. See Fed. R. Civ. P. 24(a) (intervention as of right) and 24(b) (permissive intervention).

A court must allow intervention if the motion is

timely¹ and the movant either: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the action and is so situated that disposing of the action may impair or impede the movant's ability [*5] to protect its interest, unless existing parties adequately represent that interest. Fed. R. Civ. P. 24(a) (intervention as of right). Rule 24(b) provides that the Court may permit anyone to intervene who (1) is given a conditional right to intervene by a federal statute or (2) has a claim or defense that shares with the main action a common question of law or fact.

B. Louisiana Legislators

First, the Motion of the Presiding Officers of the Louisiana Legislature to Intervene (R. Doc. 13), filed by Clay Schexnayder (Speaker of the Louisiana House of Representatives) and Patrick Page Cortez (President of the Louisiana Senate), has not been opposed by Plaintiffs. The time for filing an opposition has passed, see LR 7(f) (responses due within 21 days), and the Court therefore considers the Motion to Intervene (R. Doc. 13) (filed on April 4, 2022) to be unopposed. Moreover, Clay Schexnayder and Patrick Page Cortez (the Legislators) present arguments like those raised in the *Robinson* consolidation. See Legislators' Motion to Intervene, *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. filed April 6, 2022), ECF. No. 10.

The Court finds that the Legislators have articulated a legitimate interest, citing their desire to defend the [*6] merits of the redistricting plans passed by the Legislature. (R. Doc. 13 at 4). And their interest will be impaired if Secretary of State Ardoin, whose function is one of implementation, not

development or defense of state legislative maps, is the sole Defendant. For these and the additional reasons already stated by the district judge in *Robinson*, see Order at 4-7, *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. April 19, 2022), ECF No. 64, the Court finds the Legislators have demonstrated their entitlement to intervene as of right under Rule 24(a). And so,

IT IS ORDERED that the Motion of the Presiding Officers of the Louisiana Legislature to Intervene (R. Doc. 13), filed by Clay Schexnayder (Speaker of the Louisiana House of Representatives) and Patrick Page Cortez (President of the Louisiana Senate), is **GRANTED**.

C. Attorney General Jeff Landry

Second, the State of Louisiana, through Attorney General Jeff Landry, filed a Motion to Intervene (R. Doc. 33) on April 19, 2022, which was timely opposed by Plaintiffs (R. Doc. 39). The Attorney General claims it satisfies both intervention as of right, as well as permissive intervention, pursuant to Rule 24(a) (as of right) and Rule 24(b) (permissive) of the Federal [*7] Rules of Civil Procedure. The Attorney General likewise raises arguments similar to those made in the *Robinson* consolidation. See AG's Motion to Intervene, *Robinson v. Ardoin*, No. 22-cv-211-SDDSDJ (M.D. La. filed April 13, 2022), ECF. No. 30.

As the district judge has already explained, no federal statute gives the Attorney General the right to intervene under Rule 24(a)(1). See Order at 7, *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. April 19, 2022), ECF No. 64.

The Court is also "underwhelmed" by the Attorney General's remaining arguments concerning his alleged right to intervene under Rule 24(a)(2), Order at 7, *Robinson v. Ardoin*,

¹ Here, both Motions (R. Docs. 13, 33) were timely filed within 5 weeks of the Complaint and before anything meaningful took place in this litigation.

No. 22-cv-211-SDD-SDJ (M.D. La. April 19, 2022), ECF No. 64, all of which center around a generalized interest in this litigation: "[T]o protect the interests of the State." (R. Doc. 33 at 6). But intervention as of right requires a "direct, substantial, legally protectable interest in the proceedings," *Edwards v. City of Houston*, 78 F.3d 983, 1004 (5th Cir. 1996) — one "that goes beyond a generalized preference that the case come out a certain way," *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015).

The Court does credit the Attorney General's argument as to the adequacy of representation by Secretary Ardoin, given the distinction between the Secretary of State's role of implementing [*8] laws and the Attorney General's role of defending the legality of those laws. (R. Doc. 33 at 11-13). However, the Attorney General's argument that the State's interests would be impaired in his absence is "lacking." Order at 9, *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. April 19, 2022), ECF No. 64. While the Attorney General insists that "the Court's determination could have long lasting impacts on the State," (R. Doc. 33 at 7), that would be true regardless of whether the Attorney General were a party to this suit. And so, for these and the reasons already stated by the district judge, the Court finds the Attorney General has not shown a "direct, substantial, legally protectable interest" that would establish his right to intervene under Rule 24(a)(2). *Edwards*, 78 F.3d at 1004.

Nonetheless, the Supreme Court has recently instructed that "a State's opportunity to defend its laws in federal court should not be lightly cut off." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, -- U.S. --, 142 S. Ct. 1002, 1011, 212 L. Ed. 2d 114 (2022). Under Louisiana law, the Attorney General is the "chief legal officer," charged with "the assertion or protection of any right or interest of the state."

La. Const. art. IV, § 8 (Attorney General; Powers and Duties). "Overall, *Cameron* suggests that the Attorney General's desire to represent Louisiana as a sovereign [*9] state is a legitimate interest in this proceeding." See Order at 9, *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. April 19, 2022), ECF No. 64.

In light of *Cameron*, the Court will permit the Attorney General to intervene to defend the enforceability of Louisiana's existing maps. See Fed. R. Civ. P. 24(b). The Attorney General's proposed defense shares common questions of law or fact with the claims in the underlying litigation. Therefore, the Court exercises its discretion to grant permissive intervention, finding that "no one would be hurt and the greater justice could be attained." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015). And so,

IT IS ORDERED that the Attorney General's Motion to Intervene (R. Doc. 33) is **GRANTED** pursuant to Rule 24(b) of the Federal Rules of Civil Procedure.

D. Plaintiffs' Concerns of Duplication and Delay

The Court is mindful of Plaintiffs' legitimate concerns of duplicative efforts and delay if intervention is allowed. (R. Doc. 39). As the district judge has already stated, these concerns are well-founded and shared by the Court. See Order at 10-11, *Robinson v. Ardoin*, No. 22-cv-211-SDD-SDJ (M.D. La. April 19, 2022), ECF No. 64. Since the Attorney General was allowed to intervene in the *Robinson* consolidation, Plaintiffs claim he has "already shown himself to be obstructionist [*10] and an agent of delay," citing the Attorney General's efforts to stay that litigation. (R. Doc. 39 at 7 n.1). While the Court understands Plaintiffs' concerns, it reminds the parties of its "inherent power[]" to control its

docket and take steps "necessary to achieve the orderly and expeditious disposition" of cases. *National Gas Pipeline Company of America v. Energy Gathering, Inc.*, 86 F.3d 464, 467 (5th Cir. 1996).

Signed in Baton Rouge, Louisiana, on May 17, 2022.

/s/ Scott D. Johnson

SCOTT D. JOHNSON

UNITED STATES MAGISTRATE JUDGE

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