To: Jonathan Cervas, Ph.D. & Bernard Grofman, Ph.D.

From: Scott Matsuda

Date: 10/4/2022

Case Briefing **[NEW JERSEY]**

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| **Citation** | * *Matter of Congressional Districts by New Jersey Redistricting Comm’n*, 268 A.3d 299 (N.J. 2022). |
| **Judicial Breakdown / Partisan or Nonpartisan** | * Rabner, C.J. (D), issued the 5-0 opinion, joined by Justices Albin (D), Patterson (Federalist Party), and Solomon (R); temporarily assigned, Judge Fuentes (D), also joined the order.[[1]](#footnote-1)   + Justices Fernandez-Vina (R) and Pierre-Louis (D) did not participate. |
| **Procedural History** | * Plaintiffs, the Republican delegation to the Commission, filed an amended complaint on 1/5/2022 to challenge the map selected by the independent Chair, and filed their complaint directly with the NJ Supreme Court, pursuant to Article II, Section 2, Paragraph 7 of the NJ Constitution.   + Plaintiffs asked the Court to vacate the Commission's decision and remand the matter to the Commission for further proceedings, with the Chair recused.   + Plaintiffs argued that the actions of the Chair were "arbitrary, capricious, and unreasonable," violated "federal and state constitutional equal protection and due process protections," and posed a "common law conflict of interest."     - The complaint also asserted that there were "significant differences between the [two] maps" and described ways in which the Republican delegation's map better met the standards the Chair had applied.     - Plaintiffs did not, however, “assert that the map the Commission adopted . . . was itself ‘unlawful.’” * Defendants, the Democratic delegation to the Commission, filed a motion to dismiss the amended complaint, asserting that the amended complaint failed to state a claim upon which relief could be granted. * On 2/2/2022, Plaintiffs submitted a second amended complaint, and added the Princeton Gerrymandering Project (PGP) as a defendant, arguing that “the group advised and provided independent analysis of the parties' proposed redistricting maps to the Chair during the redistricting process and breached an alleged promise of confidentiality by providing valuable feedback to the Democratic delegation.”   + Plaintiffs also alleged that PGP was supported by private donors who have contributed to Democratic officials and causes. |
| **Disposition** | * Defendants' motion to dismiss the complaint with prejudice was granted. |
| **Facts** | * Under the NJ Constitution, the Redistricting Commission is initially comprised of six individuals affiliated with the Democratic Party, and six who are affiliated with the Republican Party.   + A thirteenth member is to be selected by the members, who will then serve as Chair and tiebreaker. * Here, because the original twelve members were unable to agree on a thirteenth member by a majority vote, each delegation submitted one name to the Court.   + From those names, the Court had to select the thirteenth member, in accordance with the Constitution; the Court chose the Hon. John E. Wallace, Jr. (ret.), to serve as the independent member, and neither party objected. * On 12/22/2021, a majority of the Commission's members—including the Chair—voted in favor of the map the Democratic delegation presented.   + In deciding between the two maps, the Chair concluded that both maps were constitutional, and noted that “[t]he only area where one map [the Democrat’s] pulled ahead of the other is in partisan fairness.”     - However, the Chair did not rely on this factor in making his determination.   + Rather, the Chair stated that, “In the end, I decided to vote for the Democratic map, simply because in the last redistricting map it was drawn by the Republicans. Thus, I conclude that fairness dictates that the Democrats have the opportunity to have their map used for this next redistricting cycle.” |
| **Issue(s) or**  **Question(s)**  **Presented** | * Whether plaintiffs' allegations were insufficient to support a claim upon which relief could be granted, because they did not assert any constitutional violation. |
| **The Rule(s)** | * Justiciability of the NJ Supreme Court Over the Redistricting Process   + The Court has no role in the outcome of the redistricting process unless the map is "unlawful." N.J. Const. art. II, § 2, ¶¶ 7, 9.     - So long as the final map is constitutional, the Court cannot grant any relief.   + If it is [unconstitutional], the Commission must reassemble and adopt another redistricting plan. * Standing   + NJ jurisprudence takes a more liberal approach to standing than federal law; the State Constitution does not limit " judicial power to actual cases and controversies."   + To possess standing in state court, a party must have "a sufficient stake in the outcome of the litigation" and "real adverseness," and there must be "a substantial likelihood that the party will suffer harm in the event of an unfavorable decision."     - Weight is also given to the public's interest in the resolution of a matter and favor a just ruling on the merits over "procedural frustrations." * Requirements of a Constitutional NJ Redistricting Map   + "[C]ongressional districts . . . shall be geographically contiguous" and account for each district's total population;   + "Mapmakers shall comply with the Voting Rights Act" and other relevant authority, and   + "[S]hould include sufficient numbers of minority/majority districts";   + Maps "shall not split political subdivision boundaries and communities of interest unless necessary" to comply with the above standards;   + "Competitive districts are favored";   + “No district may be formed solely to favor or disfavor any political party or the election of any person" (which the Chair described as "partisan fairness");   + "[D]istricts may include the cores of existing districts" "[to] assist voters in assessing incumbents and minimizing voter confusion"; and   + “All districts shall be as compact and regularly shaped as possible unless deviation is required to comply with any of the above standards." |
| **Holding(s)** | * Court held that plaintiffs' allegations were insufficient to support a claim upon which relief could be granted, because they did not assert any constitutional violation. |
| **Rationale** | * First, the Court rejected Defendants’ argument that plaintiffs lacked standing, noting that they “have a strong stake in the outcome of the redistricting process and are plainly adverse to the map adopted.”   + Defendants’ assertion of personal harm as members of the delegation is less strong, but the overriding public interest in this case is compelling.     - “Resolving the map for congressional districts for the next decade is of the utmost importance,” and “[d]oing so expeditiously, in time for candidates and election officials to plan for the upcoming primary and general elections, is also significant to the public.” * The Court then determined that there was no justiciability, because the maps were not unlawful.   + “Reasonable people may differ with a tiebreaker's evaluation of, and support for, a particular plan, but that decision is not subject to review by the Court unless the plan is unlawful or reflects invidious discrimination.”     - “No count in the complaint . . . asserts that the final map itself is unlawful or that it is the result of invidious discrimination.”   + “Plaintiffs' argument focuses on the Chair's thought process but does not allege how the map suffers from invidious discrimination or is otherwise unlawful.” * Court dismissed as moot the Plaintiffs’ arguments related to the Chair’s amplified statement, because the Court did not rely on that statement in consideration of this matter. * Court similarly dismissed the Plaintiffs’ arguments in their second amended complaint as to PGP, because the “plaintiffs' additional claim[s] do[] not assert that the redistricting plan is unlawful or is the result of invidious discrimination,” and therefore falls outside the Court's “limited scope of review in redistricting matters and therefore cannot prevail.” * Court dismissed the common law conflict of interest claim.   + The Chair’s political contribution information was readily available to the public and appears on the FEC’s public database of contributions to candidates and committees in federal elections.     - Because plaintiffs either knew or reasonably should have known of the contribution, they could have raised the argument earlier.       * Instead, they did not object to the Chair's participation until after he selected the other side's map.       * On those facts, a strong argument can be made that plaintiffs waived their conflict claim.   + Also, “[b]ecause the Constitution specifies requirements for the tiebreaker, we do not look to the common law, as plaintiffs request, to insert additional qualifications.”     - The Constitution does not bar the selection of a person who has contributed to a political campaign or a partisan political group, or whose spouse has done so, as the independent member, and therefore there is no finding of disqualifying conduct. |
| **Arguments of Parties** | * Plaintiffs   + Also raised a threshold argument contending that the Chair's amplified statement of reasons cannot be considered because it violates the State Constitution's public meeting requirement and analogous principles in the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21, failing to provide proper notice and due process.[[2]](#footnote-2)   + Contended that the Chair had a conflict of interest under the common law and should have recused himself because his wife made a political contribution to a member of Congress from New Jersey in 2021. * Defendants   + Contended that plaintiffs lack standing because they have no "personal stake" and have not alleged a "personal injury."   + Argued that the complaint must be dismissed because it presents a nonjusticiable political question. |
| **Notes/**  **Reactions** | * N/a. |

1. The political party designations of the judges were obtained via Google desktop searches, which may not be entirely accurate. [↑](#footnote-ref-1)
2. On 1/4/2022, the Court requested an amplified statement of reasons to assist in its review of this matter. By analogy to Rule 2:5-1(b), which allows a trial judge or agency head to submit "an amplification of a prior statement, opinion or memorandum" when an appeal is taken, the Court asked the Chair to amplify the grounds for his oral decision on 12/22/2021. The Chair presented a written statement to the Court and the parties on 1/11/2022, and it was posted on the Judiciary's website the same day. [↑](#footnote-ref-2)