

SUPREME COURT OF NEW JERSEY

R-3 September Term 2021

086587

**In the Matter of Establishment of
Congressional Districts by the New
Jersey Redistricting Commission,**

Douglas Steinhardt, in his official
capacity as Delegation Chair and
Member of the New Jersey
Redistricting Commission, Michele
Albano, in her official capacity as
Member of the New Jersey
Redistricting Commission, Jeanne
Ashmore, in her official capacity as
Member of the New Jersey
Redistricting Commission, Mark
Duffy, in his official capacity as
Member of the New Jersey
Redistricting Commission, Mark
LoGrippe, in his official capacity as
Member of the New Jersey
Redistricting Commission, and Lynda
Pagliughi, in her official capacity as
Member of the New Jersey
Redistricting Commission,

Plaintiffs,

v.

New Jersey Redistricting Commission,
John E. Wallace, Jr., in his official
capacity as Chair and Member of the
New Jersey Redistricting Commission,
Janice Fuller, in her official capacity as

Delegation Chairwoman and Member of the New Jersey Redistricting Commission, Iris Delgado, in her official capacity as Member of the New Jersey Redistricting Commission, Vin Gopal, in his official capacity as Member of the New Jersey Redistricting Commission, Stephanie Lagos, in her official capacity as Member of the New Jersey Redistricting Commission, Jeff Nash, in his official capacity as Member of the New Jersey Redistricting Commission, Dana Redd, in her official capacity as Member of the New Jersey Redistricting Commission, and Tahesha Way, in her official capacity as New Jersey Secretary of State,

Defendants.

**Response to Order of January 4, 2022
Requesting Amplification of Grounds for Division**

Following the filing of plaintiff's complaint in lieu of prerogative writs on December 30, 2021, the Supreme Court issued its order on January 4, 2022, requesting the Chairperson of the Redistricting Commission amplify the grounds for his decision and present that amplification to the parties and to the Court by January 11, 2022.

This is the amplification requested by the Court. Preliminary, as I am sure the Court is aware, the New Jersey Congressional Redistricting Commission ("Commission") is a political commission. The United States Supreme Court recognized that redistricting judgments are inherently political and "politics and political considerations are inescapable from districting and apportionment". Gaffney v. Cummings, 412 US 735, 753 (1973). Thus, my vote, as Chair, on the political consideration of redistricting has no greater intrinsic weight than the vote

of the other 12 Commissioners. As such courts do not generally consider political decisions.

Prior to providing the amplification requested by the Court, I want to provide some background information.

Each delegation requested that I keep my discussions with them concerning their draft maps confidential, which I did. My team provided both delegations with extensive feedback when the Commission met over four days at a hotel in Cherry Hill. Each delegation received feedback from my team and modified their maps in an effort to earn my vote. I believe that our substantial discussions resulted in each delegation presenting a final map that satisfied the majority of my written standards.

Throughout the lengthy meetings, I sought to have the delegations share their map with each other in an attempt to reach agreement on a single map. Unfortunately, the delegations rejected my efforts to share their map and sharing never occurred.

Even so, after the four days of extensive meetings the delegations agreed to meet between themselves. I made it clear that if there were any possibility of successful discussions, I would postpone the agreed to date for the final hearing. Because those discussions were unsuccessful, the final hearing was held December 22, 2021.

The unfortunate part of how the process unfolded is that neither delegation took the opportunity to share their map with the other side. It was only my team that had the opportunity to review and evaluate both maps prior to the final hearing.

To be sure, both delegations were very kind to me as each delegation sought my vote. In particular, the Republican Chairman during the last presentation of their map began the discussion by commenting that he had undertaken background research on me and noted my reputation for fairness and impartiality.

With this background in mind, I turn now to adhere to the Court's request to amplify my comments concerning my vote on redistricting.

As noted in my comments at the final hearing, I believe both maps are constitutional. They each comply with the Voting Rights Act and each meets the standards I recommended for map evaluation.

In its order of January 4, 2022, the Court referenced my comments regarding Standard 5, “No district may be formed to favor or disfavor any political party or the election of any person”. For ease of discussion I call this Partisan Fairness. This Standard is a typical anti-gerrymandering provision. To evaluate compliance with this Standard, the competition provision, and the Plan’s overall fairness normally require an assessment of Partisan Fairness.

Although I noted in my comments that my team used various statewide test to evaluate Partisan Fairness, I did not describe those tests. I do so now.

Many tests for Partisan Fairness are accepted by the social science community. They fall into two broad categories, a category based on partisan symmetry and a category based on geography.

Tests of partisan symmetry have their roots in a simple and intuitive concept of fairness: what would happen if the tables were turned? Social scientists have overwhelmingly endorsed such a concept. For example, in the ideal case, given the same statewide electoral totals, each side should win the same number of seats. Using such mathematical tests, my team determined that the Democratic plan shows superior partisan symmetry to the Republican plan.

The second category of test is to use the natural geography of the state. Modern technology allows hundreds of thousands of alternative plans to be drawn automatically, providing a way to determine what a “natural” outcome would be if plans were drawn in a party-blind manner generally following the required redistricting standards. Such an approach is called the ensemble comparison method, and is used by state courts to evaluate partisan gerrymandering claims. My team found that the Democratic plan is closer to the average of the ensemble than the Republican plan, and therefore is more “party-blind”.

If my team had discussed with each delegation that their map would be evaluated by the social science accepted partisan evaluation techniques outlined above, I would have stated that Standard 5 for Partisan Fairness tipped the scales in favor of the Democrats’ map. However, because my team did not inform each

delegation that we would use these tests to evaluate their maps, I determined that further considerations were necessary to choose a map.

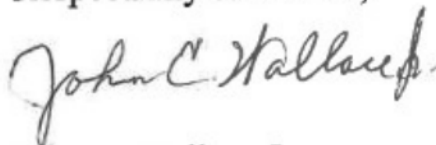
Upon reflection, I realize I mistakenly failed to consider my team's evaluation of Partisan Fairness of the maps. I should have been more concerned with the fairness to the citizens of New Jersey. Simply put, I should have stated that the Democrats' map better satisfied the standard for Partisan Fairness. I do that at this time to further support my vote in favor of the Democrats' map.

Additionally, I should have also noted that as a further reason in support of my decision in favor of the Democrats' map, I was particularly impressed in the manner and substance of the initial presentation by the Democrats of their proposed districts. Specifically, each of the six Commissioners discussed at least two proposed districts describing many of the community interest and referred to various citizen recommendations presented during the public hearings. The Republicans, on the other hand, presented their proposed districts by their experts and did not refer to public testimony to the degree the Democrats did. Thus, the Democrats' presentation helped to reinforce my decision to select their map.

In stating that I would vote for the Democrats' map because the prior map was formulated by the Republicans, I did so because just as the principles reflected in the Republican 2011 map produced competitive elections throughout the prior decade, I believed it would be fair to allow the Democratic principles reflected in their map to attempt to do the same for the coming decade.

I confirm my decision to vote in favor of the Democrats' map for the additional reasons that their map better met the standard of Partisan Fairness and the Democrats gave a more impressive presentation of the reasons for the districts, utilizing citizen testimony from the public hearings.

Respectfully submitted,



John E. Wallace Jr.,
Chair of Redistricting Commission

Date: January 11, 2022