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January 30, 2022

Via JEDS

Hon. Robert T. Lougy, A.J.S.C.
Superior Court of New Jersey
New Criminal Courthouse
400 S. Warren Street, 4th Floor
Trenton, New Jersey 08650

RE: Sweeney v. Jones, et al.
Docket No. MER-C-7-22

Dear Judge Lougy:

Please accept this letter on behalf of Philip Carchman in his official capacity as the 11th member ("11th Member") of the New Jersey Apportionment Commission ("Commission"). The 11th Member submits this letter for the sole purpose of opposing Plaintiff Stephen M. Sweeney's application for a preliminary injunction to enjoin the Commission from taking further action pending the resolution of this matter and, respectfully, requests that the Court deny the injunction.

Sweeney challenges his removal from the Commission and seeks reinstatement. In moving to enjoin the Commission from acting, Sweeney argues that irreparable harm will result from the voters of southern New Jersey being "denied a voice" in the Commission's work if Sweeney is not a member of the Commission. Sweeney also argues that the balance of hardships favors an injunction because the voters of southern New Jersey will suffer greater harm than the Commission if the injunction is not granted. Not so. The harm and the hardship, in fact, flow the opposite way.

Injunctive relief is a drastic remedy, to be granted sparingly, and only on a showing by clear and convincing evidence. See Waste Mgmt. of N.J., Inc. v. Morris Cnty. Mun. Utils. Auth., 433 N.J. Super. 445, 452-53 (App. Div. 2013). An injunction cannot rest on speculation. See Mladenov v. Wegmans Food Markets, Inc., 124 F. Supp. 3d 360, 379 (D.N.J. 2015) ("[B]ecause injunctions regulate future conduct, a party seeking prospective injunctive relief must demonstrate a 'real and immediate' as opposed to a merely speculative or hypothetical threat of future harm.").

Here, Sweeney's claim that the voters of southern New Jersey will be harmed if he is not reinstated as a Commissioner is not supported by clear and convincing evidence. It is speculation. The record before the Court contains no evidence that the other partisan Commissioners or, indeed, the 11th Member will not provide a voice to the residents of southern New Jersey in fulfilling the Commission's duties.

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Moreover, the potential for irreparable harm and the balance of the hardships weigh against enjoining the Commission's work. The Commission is a creation of the New Jersey Constitution, and its work must be completed by March 1, 2022. N.J. Const. Art. IV, § III, ¶ 4. That deadline is less than four weeks from the return date of this application. If the Commission's work is halted during the pendency of this litigation, it is certain that the Commission will violate its constitutional deadline to adopt a new legislative map.

Scheduled public hearings would be canceled, stripping New Jersey's residents of the opportunity to engage the Commission. The Commission would be unable to convene and to draw and to adopt a new legislative map. That irreparable harm is real and will be forced on the more than 9 million citizens of New Jersey who are served by the Commission and, without question, the 11th Member. Through that lens, the balance of hardships is clear: the work of the Commission, for more than 9 million citizens, outweighs the interest of one person seeking to stop the Commission's work. See Garden State Equality v. Dow, 216 N.J. 314, 321 (2013) ("When a case presents an issue of 'significant public importance,' a court must consider the public interest in addition to the traditional" elements of injunctive relief.); see also Waste Mgmt. of N.J., 443 N.J. Super. at 454 (noting that courts may "go much farther" to "withhold [injunctive] relief in furtherance of the public interest than they are accustomed to go when only private interests are involved").

The 11th Member takes no position on the merits of Sweeney's underlying claims but urges the Court—in the interest of New Jersey's citizens, the duties of the Commission, and the constitutional magnitude of the work at stake—to deny Sweeney's request for an injunction to stop the Commission from taking further action.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Andrew Gimigliano
Andrew Gimigliano

cc: All counsel of record (*via electronic mail*)