



Genova Burns LLC
494 Broad Street, Newark, NJ 07102
Tel: 973.533.0777 Fax: 973.533.1112
Web: www.genovaburns.com

Rajiv D. Parikh, Esq.
Partner
Member of NJ and NY Bars
rparikh@genovaburns.com
Direct: 973-535-4446

January 30, 2022

VIA JEDS & ELECTRONIC MAIL

Honorable Robert T. Lougy, A.J.S.C.
Superior Court of New Jersey, Mercer County
400 South Warren Street, Courtroom 4A
Trenton, New Jersey 08608

Re: *Sweeney v. Jones, et al., Docket No.: MER-C-007-22*

Dear Judge Lougy:

We represent Commissioners LeRoy J. Jones, Jr.¹, Cosmo Cirillo, Laura Matos, Gary Taffet and Diane Testa in their official capacities as the Democratic appointed commissioners (the "Democratic Delegation") of defendant New Jersey Apportionment Commission (the "Commission"). Kindly accept this letter, in lieu of a more formal brief, in response to Plaintiff Stephen M. Sweeney's ("Plaintiff") Motion for Preliminary Injunction with Temporary Restraints dated January 27, 2022. As set forth below, the Democratic Delegation asserts that the Commission should not have been named as a party defendant in this action, and as such, opposes Plaintiff's application for preliminary injunctive relief against the Commission.

A. Factual Background

The mandate and structure of the Commission are guided by provisions of the New Jersey Constitution. *See N.J. Constitution*, Art. IV, §§ 2-3. The Commission consists of ten members, "five to be appointed by the chairman of the State committee of each of the two political parties whose candidates for Governor receive the largest number of votes at the most recent gubernatorial election." *Id.* at §3, ¶1. While the Commission was not party to the removal at issue here, the Democratic Delegation disputes Plaintiff's claims that the Commission's work is substantially complete. *See* Verified Complaint (the "Compl.") at ¶ 27-28. In addition, neither partisan delegation is "scheduled" to present a map to independent member Judge Carchman on or before February 3, 2022, nor has the Commission finalized specific internal deadlines for its map drawing efforts. *Id.*

The Commission's public hearing schedule (past and present) are publicly available on its website – apportionmentcommission.org. As may be informative to the Court here, the Commission has held six (6) meetings to receive public input with testimony from approximately

¹ As the Court is aware, Mr. Jones is also the Chair of the New Jersey Democratic State Committee.



Hon. Robert T. Lougy, A.J.S.C.
January 30, 2022
Page 2

57 members of the public in total prior to January 25, 2022. *See generally* www.apportionmentcommission.org/schedule.asp (last accessed January 30, 2022). The last meeting with public input (following the State Party Chair's removal of Plaintiff) occurred on January 26, 2022, and was the longest single Commission meeting to date, with registration and/or testimony from approximately 60 members of the public.² *Id.* The Commission has and continues to receive written testimony and proposed maps from the public through its website. *Id.* There are at least three (3) additional public meetings which are scheduled for February 2, 5 and 9, 2022, several tentatively planned days of confidential internal Commission deliberations in mid-February, and a final map adoption meeting on or before March 1, 2022. *Id.*; *see also* Const. Art. IV, §§ 2-3.

The Democratic Delegation also disputes several factual allegations in the Verified Complaint that support a conclusion that the Commission should not be a named defendant in this action, but rather – at most – named as an interested party.³ For example, the Commission was not involved in Plaintiff's removal. *See* Compl. at ¶¶ 37, 39-40. Indeed, while members of the Democratic Delegation have publicly indicated their support for the State Democratic Party Chair's authority to appoint and remove delegation members, neither the *Commission*, nor the *Democratic Delegation*, undertook any prior official action with respect to same. *See* January 26, 2022 Commission Meeting (available via [Direct Link](#) from Commission website).

B. Legal Argument

As Plaintiff acknowledges, to prevail on the present application for preliminary injunctive relief he has the substantial burden of establishing each of the four *Crowe* factors, by clear and convincing evidence. *Crowe v. De Gioia*, 96 N.J. 126 (1982) ((1) irreparable injury absent relief, (2) applicable law is well settled, (3) material facts not in dispute and reasonable probability of success on the merits, and (4) balance of hardship weighs in favor of the requested relief)); *see also Subcarrier Communications, Inc. v. Day*, 299 N.J. Super. 634, 639 (App. Div. 1997) (“there must be clear and convincing proof in order to grant an injunction”). Here, the fourth factor -- balancing of hardships -- weighs in favor of the Commission. As a result, this Court must deny Plaintiff's request for injunctive relief against the Commission.⁴ *Crowe*, 96 N.J. at 132-133.

² While at least 60 members of the public registered to testify, upon information and belief, approximately 56-59 actually testified on January 26, 2022. A full transcript of this meeting has not yet been finalized.

³ While Count II of the Verified Complaint contains factual allegations regarding Plaintiff and defendant Jones in his capacity as Chair of the New Jersey Democratic Party, its prayer for relief seeks to enjoin the Commission. As such, the Democratic Delegation notes their belief that the document memorializing the desire that they vote as a unit is not a “contract” as claimed by Plaintiff. *See* Compl. ¶¶ 20-23; *accord De Marco v. Board of Chosen Freeholders of Bergen County*, 36 N.J. Super. 382, 386 (Law Div. 1955), *aff'd* 21 N.J. 136 (1956) (public office holders do not have contractual, vested or proprietary rights in public office).

⁴ As noted above, the Verified Complaint contains allegations regarding the Commission that the Democratic Delegation disputes. To the extent these allegations are “material” to the requested relief, then Plaintiff is also unable to satisfy the third *Crowe* factor as to the Commission. Simply, there is no evidence that the Commission performed any act which resulted in Plaintiff's removal. This is because the Commission did not take any such action.



Hon. Robert T. Lougy, A.J.S.C.
January 30, 2022
Page 3

A balancing of the hardships alleged by Plaintiff in this litigation versus the harm to the Commission and people of the State of New Jersey if a preliminary injunction is entered against the Commission, weighs heavily in favor of denying the requested relief. Our courts have long held that “[i]njunctive relief should generally be granted in a suit where the issue presented is grave and difficult, where the injury to the moving party will be irreparable if the relief is denied, and where the inconvenience or loss to the opposing party will be minimal if the relief is obtained.” *Sueman v. Society Valley Hospital*, 155 N.J. Super. 593, 597 (Law Div. 1977). The public interest is an important consideration in this regard. *Waste Management of New Jersey, Inc. v. Union County Utilities Authority*, 399 N.J. Super. 508, 520 (App. Div. 2008) (“in some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant.”).

Here, Plaintiff seeks to enjoin “the Commission from taking further action until [Plaintiff] is reinstated as a member of the Commission.” *See generally* Compl. However, the Commission has several meetings scheduled to seek the public input required by the Constitution, with members of the public having already registered to testify. Additionally, there is a March 1, 2022, Constitutional deadline to certify the final maps. These efforts are part of the Commission’s public charge as set forth in the New Jersey Constitution. If the Court were to enjoin the Commission at this time, it would significantly impact the Commission’s ability to have full public participation, engage in a robust deliberative process among its 11 members, and satisfy the March 1 Constitutional deadline.

As such, the Democratic Delegation respectfully submits that the Court deny Plaintiff’s Motion for Preliminary Injunction with Temporary Restraints as to the Commission.

Respectfully,

GENOVA BURNS LLC

s/ Rajiv D. Parikh
RAJIV D. PARIKH

c: Clerk, Chancery Division (via JEDS)
Counsel of Record (via JEDS and electronic mail)