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Attorneys for Plaintiffs

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 LOGRIPPO, in her official capacity  
as Member of the New Jersey Redistricting  
Commission, and LYNDA PAGLIUGH, in  
her official capacity as Member of the New  
Jersey Redistricting Commission,

Plaintiffs,

vs.

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

SUPREME COURT OF NEW JERSEY

DOCKET NO.: 086587

**NOTICE OF MOTION FOR CASE  
MANAGEMENT ORDER  
PROVIDING FOR EXPEDITED  
BRIEFING AND ORAL  
ARGUMENT**

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.

TO: Heather J. Baker, Clerk  
Supreme Court of New Jersey  
Hughes Justice Complex  
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PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiffs hereby apply to the Supreme Court of New Jersey by Motion for a Case Management Order Providing for Expedited Briefing and Oral Argument in the instant litigation.

PLEASE TAKE FUTURE NOTICE that the undersigned will rely upon the attached Letter Brief in support of this Motion.

A Proposed form of Order is annexed hereto.

KING, MOENCH, HIRNIAK & COLLINS, LLP  
Attorneys for Plaintiffs

Dated: January 5, 2022

By: s/*Matthew C. Moench*  
MATTHEW C. MOENCH

# KING MOENCH HIRNIAK & COLLINS, LLP

A Limited Liability Partnership<sup>†</sup>

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\* Member of the Bar of New York



January 5, 2022

## VIA HAND DELIVERY AND ELECTRONIC MAIL

Heather J. Baker, Clerk  
Supreme Court of New Jersey  
Hughes Justice Complex  
25 W. Market Street  
PO Box 970  
Trenton, New Jersey 08625-0970

**Re: In Re Establishment of Congressional Districts, 086587**

**Brief In Support of Motion for Case Management Order Providing for Expedited Briefing and Oral Argument**

Dear Ms. Baker:

As you know, this office represents Plaintiffs in the above-captioned matter. Please accept this letter brief in support of Plaintiffs' instant motion for the Court's entry of a case management order providing for: (a) an expedited briefing schedule by all parties to this litigation and (b) setting forth the scope of issues which should be briefed before the Court. Plaintiffs also request oral argument before the full Court on these issues given their public importance.

A. The Court Should Set a Briefing Schedule To Ensure the Parties' Due Process Rights Are Protected.

Article II, Section II, Paragraph 7 of the New Jersey Constitution specifically provides that this Court has original and exclusive jurisdiction to review "any action, including the establishment of Congressional districts, by the commission or other public officer or body under the provisions of this section." As such, this is the only venue wherein Plaintiffs can bring their

cause of action challenging the decision by the Independent Member to select “the Democratic map, simply because in the last redistricting map it was drawn by the Republicans.”

While we recognize that there are no specific court orders or rules governing how the Supreme Court should handle matters of original jurisdiction – as this is essentially the only one under our Constitution – due process dictates that the Court should be guided by the Court Rules governing prerogative writ actions pursuant to R. 4:69-1 et seq. These rules provide for an expedited briefing schedule and a trial on the record below.

Plaintiffs respectfully move before this court for a case management order upon the terms contained in the proposed order attached hereto and incorporated by reference. This includes full briefing and oral argument by all litigants before this matter is submitted to the Court. Plaintiffs contend that these terms are consistent with Part IV of the court rules ordinarily applicable to prerogative writ actions in the Law Division, and that these terms are minimally required for this Court to afford the parties with a fair and prompt disposition of Plaintiffs’ original jurisdiction claims.

Plaintiffs specifically propose that briefing take place immediately following the January 11, 2022 deadline for a submission by Chair Wallace contained in the Court’s “amplification” order, so that all parties may write in response to same. Plaintiffs propose that their brief in support of prerogative writ relief be filed by January 12, 2022, Defendants’ briefs in opposition to prerogative writ relief be filed by January 14, 2022, and that Plaintiffs’ reply brief be filed by January 16, 2022. Plaintiffs further request that the litigants be afforded oral argument before the Court prior to the January 18, 2022 deadline for certification of the redistricting map under the New Jersey Constitution, and propose January 17, 2022 for same.

B. The Briefs Must Address the Preliminary Issue of the Constitutionality of “Amplifying” the Rationale of the Independent Member, As Well As The Underlying Arbitrariness of the Decision.

i. Retroactively Modifying the Actions of the NJRC Is Unconstitutional

The briefs submitted by the parties must address the unconstitutionality of permitting the Independent Member to retroactively justify his action in selecting a Congressional Map outside of the constitutionally-prescribed process for doing so. Article II, Section II, Paragraph 3 of the New Jersey Constitution specifically states that “[t]he commission shall certify the establishment of districts pursuant to a majority vote of the full authorized membership of the commission convened in open public meeting, of which there shall be at least 24 hours’ public notice.” That meeting was commenced on December 22, 2021 pursuant to legal notice, with the Independent Member casting the tie-breaking vote based upon his determination “to vote for the Democratic map, simply because in the last redistricting map it was drawn by the Republicans.” The transcript is appended to Plaintiffs’ complaint and constitutes the record below.

Permitting the Independent Member to essentially modify the record of a constitutionally-mandated public meeting retroactively, and outside the scope of the process set

forth in the New Jersey Constitution, is unconstitutional and should not be permitted. Considering it appears that the Court agrees with Plaintiffs that Chair Wallace's reasoning placed on the record is insufficient to support the adoption of a Congressional Map, the remedy should be to vacate the adoption of the map and to remand the matter for further proceedings and consideration by the New Jersey Redistricting Commission.

Second, the Court's utilization of the "amplification" procedure under Rule 2:5-1(b) – as in a typical appellate action – is inconsistent with the Court's unique and specific grant of original and exclusive jurisdiction in litigation challenging actions of the New Jersey Redistricting Commission. The reasoning of the Independent Member has been challenged in the within lawsuit, pursuant to Article II, Section II, Paragraph 7 of the New Jersey Constitution, which grants original and exclusive jurisdiction of the Supreme Court to review "any action, including the establishment of Congressional districts, by the commission or other public officer or body under the provisions of this section." Plaintiffs did not have the opportunity to file this action in the Law Division and were constrained to file with the Court. Thus, this Court's handling of this matter under its original jurisdiction should be consistent with the rules governing the Law Division, which requires the submission of a transcript that constitutes the entire record below and is not subject to "amplification." See R. 4:69-4.

Moreover, to the extent that the record is "amplified," such amplification should only expound upon the reason stated for the Independent Member's actions – that which party "won" in the last redistricting cycle is a valid basis for breaking a tie between two otherwise purportedly equal maps. Even under Rule 2:5-1(b), a court or administrative agency would be limited to expanding on the reasons already provided or correcting a factual mistake – not otherwise offering reasons that are new or inconsistent with those offered below. Doing so would only expand the constitutional and due process concerns raised herein.

For these reasons, Plaintiffs contend that a full opportunity to brief the legal issues presented by the Court's "amplification" order must be afforded to all litigants.

ii. The Rationale of the Independent Member Was Arbitrary

Following briefing as to whether the Court may consider an "amplification" by the Independent Member outside of the Constitutional process, the parties must be able to brief before the Court the issues raised in the Amended Complaint so the Court can determine whether Chair Wallace's decision meets any applicable standard of review to be prescribed by this Court – which it does not.

As set forth in the Amended Complaint, Chair Wallace laid out a series of factors he believed should be considered when selecting a map. The respective partisan caucuses spent months working toward maps they believed would meet the criteria set forth by Chair Wallace, and that they believed would be used by Chair Wallace when evaluating the proposals. Those factors were: (1) Equal Population, (2) Voting Rights Act/Equal Population/Minority Populations, (3) Political Subdivisions/Communities of Interest, (4) Competitive Districts, (5)

No District May be Formed Solely to Favor or Disfavor Any Political Party or Person, (6) Maintain the Core of Existing Districts, and (7) Compactness.

Chair Wallace stated publicly that both maps were tied in these factors, and therefore, he utilized a previously undisclosed – and completely arbitrary – basis for selecting a map: that it was the Democrats’ turn to “win” because the Republicans “won” last time. The very reason itself is unsupportable as a basis for selecting a map and becomes more untenable and irrational when the maps are actually compared under the factors that the partisan delegations believed would be used to evaluate maps.

As set forth in the Amended Complaint, the Republican “Voter Empowerment Map” contains key differences from the adopted map, including but not limited to: increased minority representation in all election districts, less splits of counties and voting districts, maintaining the joint base within one district, twice as many competitive districts, and less partisan skew in favor of one party. The Voter Empowerment Map also displaces nearly one half million less people than the adopted map by maintaining more of the cores of existing districts, while creating a more compact map.

The Court must have the benefit of a full briefing on these issues so it may evaluate the arbitrary and unreasonable decision of Chair Wallace in selecting a map based upon which party “won” in 2011.

The Amended Complaint also contains a fourth count concerning a potential conflict of interest possessed by Chair Wallace that was recently publicized in the media. This Court is required to determine if a 2021 donation by Chair Wallace’s spouse to a current member of the New Jersey congressional delegation – whose political fortunes are uniquely affected by the NJRC’s redistricting determinations – presents a conflict of interest as a matter of law. This issue must also be fully briefed for a proper adjudication.

C. Conclusion

In sum, Plaintiffs respectfully request that all parties to this litigation be afforded with the opportunity to brief the claims set forth in Plaintiff’s Amended Complaint, as well as the corollary issues presented by the Court’s “amplification” order, followed by oral argument before the Court.

Plaintiffs respectfully contend that any denial of an opportunity to brief and argue this matter before the Court would undermine the public’s confidence in the judicial review function for Congressional redistricting that is expressly prescribed by the New Jersey Constitution.

Respectfully Submitted,

/s/ Matthew C. Moench

MATTHEW C. MOENCH, ESQ.

MICHAEL L. COLLINS, ESQ.

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Attorneys for Plaintiffs

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  
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MARK LOGRIPPO, in her official capacity  
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Commission, and LYNDA PAGLIUGH, in  
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Jersey Redistricting Commission,

Plaintiffs,

vs.

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

SUPREME COURT OF NEW JERSEY

DOCKET NO.: 086587

**AMENDED COMPLAINT IN LIEU  
OF PREROGATIVE WRITS**

**PURSUANT TO ORIGINAL  
JURISDICTION OF THE  
SUPREME COURT OF NEW  
JERSEY UNDER ART. II, § II, ¶ 7 of  
the NEW JERSEY CONSTITUTION**

**CASE MANAGEMENT ORDER**



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.

THIS MATTER having come before the Court on the application of King, Moench, Hirniak, & Collins LLP, Attorneys for Plaintiffs, for a Case Management Order, and the Court having considered the moving papers and papers filed in opposition thereto, if any; and for good cause having been shown;

IT IS HEREBY, on this \_\_\_\_\_ day of January, 2022, ORDERED as follows:

1. Plaintiffs shall file a brief in support of the relief requested in their Amended Complaint on or before January 11, 2022.
2. Defendants shall file a brief in opposition to the relief requested in Plaintiffs' Amended Complaint on or before January 14, 2022.
3. Plaintiffs shall file a reply brief on or before January 16, 2022.
4. The Supreme Court of New Jersey shall hold oral argument upon the claims raised in Plaintiffs' Amended Complaint in lieu of prerogative writs on January 17, 2022.
5. The litigants may address the validity of the Court's consideration of any submissions by Chair Wallace in response to this Court's order dated January 4, 2022 as part of their briefing that is prescribed by this Order.

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Clerk of the Supreme Court

**KING MOENCH HIRNIAK & COLLINS, LLP**

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51 Gibraltar Drive, Suite 2F  
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Attorneys for Petitioners

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 LOGRIPPO, in his official capacity as Member of the New Jersey Redistricting Commission, and LYNDA PAGLIUGH, in her official capacity as Member of the New Jersey Redistricting Commission,

Plaintiffs,

vs.

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

SUPREME COURT OF NEW JERSEY

DOCKET NO.: 086587

Civil Action

**CERTIFICATION OF SERVICE**

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.

I, MATTHEW C. MOENCH, hereby certifies as follows:

1. I am an attorney with the law firm, King, Moench, Hirniak & Collins, LLP, and I am the attorney for Plaintiffs in the above-captioned matter.

2. In that capacity, on January 5, 2022, I submitted to the Clerk of the Supreme Court of New Jersey, via hand delivery and email, an Amended Complaint, Notice of Motion seeking a Case Management Order, Letter Brief in Support of Motion, and Certification of Service.

3. A copy of the Amended Complaint, Notice of Motion seeking a Case Management Order, Letter Brief in Support of Motion, and Certification of Service was sent by email and hard copy as follows:

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Raysa Martinez Kruger, Secretary  
New Jersey Redistricting Commission  
c/o Office of Legislative Services  
P.O. Box 068  
Trenton, NJ 08625  
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Hon. Tahesha Way, Esq.  
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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

          s/Matthew C. Moench            
Matthew C. Moench, Esq.