

Statement of Reasons- Georgia M. Curio, AJSC (ret) 5th Commissioner/Atlantic

It is an honor to have been appointed to this commission and to work with its distinguished and knowledgeable members.

I wish to complement counsel for both parties and to thank county counsel and his staff for attending to the administrative details of the commission's work.

My deliberations in arriving at my vote are guided and informed by the standards that I submitted to the commission, at the commissioners' request, upon my appointment as the fifth commissioner. They have been referenced and discussed throughout our work. While similar, the statement of standards issued by Judge Philip Carchman in connection with the statewide reapportionment work, (recently concluded) is a more expansive, not to mention, more eloquent document. These standards, too, have been discussed and referenced throughout our work pursuant to the commissioners' agreement. The Carchman standards, likewise, inform and guide my deliberations. Both sets of standards are derived from statutory law, case law and generally recognized principles of redistricting. While this is a political, not a legal process, the commission, of course, works within the framework and parameters and requirements of the law.

I have studied the maps. I have considered the arguments ably presented by the party chairs and the written submissions of counsel urging support of each party's proffered map. I have considered the opinions of consultants submitted by each side and of the commission's engineer. I have contemplated the public comment, of which there was a great deal, much of it intense and passionate. I recognize that some of those who came forward may have done so out of party loyalty, or are perhaps activists or officeholders affiliated with one party or the other. But I presume that most, if not all comments were made in good faith and sincerity.

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To paraphrase what Judge Carchman said in his standards, and I can say it no better, - “apportionment is a complex undertaking, which requires harmonizing competing factors. At its core, apportionment is about the public interest [and fairness]... The commission cannot look only to the past to draw a new map but must also look at the present... and toward the future...”

My starting point in evaluating each of the proposed partisan maps is an analysis and weighing of the relevant standards and the competing factors.

First, the standards set out in NJSA 40:41A-120.

Contiguity

Both maps conform to this standard and have been so noted by the commission’s engineer in his professional opinion.

Compactness

Both maps are in compliance and have been so noted by the commissioner’s engineer in his professional opinion.

As equal in population as possible

The parties acknowledge that a 5% deviation is acceptable but that lower deviations are generally regarded as better, more desirable, something to strive for. Both maps meet the measure, but the Republican map has districts with lesser population deviation. Both maps have been certified by the commission’s engineer as being, in his professional opinion, in compliance with the population standard.

Additional standards

Preservation of municipal boundaries

The Democratic map splits Egg Harbor Township and Hamilton Township; the Republican map splits Atlantic City, Egg Harbor Township and Hamilton Township. The maps, in my view, on this subject are on virtually equal footing with the understanding that far more voters are impacted by the Democratic map than the Republican map.

Competitiveness and partisan fairness

“Fairness requires a map that does not inherently favor one party over another for the next decade”, quoting again from the Carchman standards.

Each side with equal vigor accuses the other of using the redistricting process to gain unfair partisan advantage. While gaining political advantage is not a purpose of redistricting, this is indeed a political process, designed to be driven by partisan proposals, and as evidenced by the very make up of the commission itself. Each party has a stake in the outcome. The consequence of this commission’s work is undeniably political and is meant to be. The status quo has resulted in Republican advantage; the Democratic map appears presumptively to make districts 2, 3 and 4 more competitive.

Continuity of representation

This standard includes considerations of stability, voter confidence and voter disruption.

The Democratic map moves 42,744 registered voters to new districts; The Republican map only impacts two election districts, affecting 3570 voters.

That's nearly 50% of the electorate vs. 4.4%.

Municipalities that have had a long-standing membership in a particular district will be disrupted under the Democratic plan, for instance, and by way of example, Absecon and portions of Egg Harbor Township, and there are others, of course. This is no small thing; there were pleas from residents and elected officials to leave these areas as is. However, in support of the Democratic map it has been argued that all five district commissioner incumbents would remain in their districts. Under that view, continuity of representation is preserved, but voter disruption or, at the very least, voter impact or shifting is undeniably greater under the Democratic map.

Communities of interest

There has been considerable focus on the standard of communities of interest. This is because the Democratic map proposes (along with other, less dramatic changes) to include Atlantic City with the Downbeach communities of Ventnor, Margate and Longport and to combine Pleasantville and Absecon with the Mainland communities of Somers Point, Northfield and Linwood. Adamant and opposing points of view were articulated in robust fashion and with absolute certitude. There were equally vociferous and impassioned statements that, on the one hand, the Downbeach communities are aligned with and share the interests of the Mainland communities and ought never be separated and, on the other hand, that they are not so indivisibly aligned. Similarly, it was expressed that, unequivocally Pleasantville belongs with Atlantic City and equally so that it belongs with the Mainland communities. Likewise, the notion was expressed that Atlantic City absolutely belongs with Ventnor, Margate and Longport and conversely that it absolutely does not. There was no middle ground with the commissioners on this issue and there is no middle ground with the public it would seem, or at least the members of the

public who have spoken out. Reasonable minds and persons of goodwill simply are unable to agree about this.

At first blush, the realignment of Atlantic City with the Downbeach communities may seem jarring or discordant. So too the placement of Pleasantville and Absecon with the Mainland communities. But perhaps that's simply a function of the fact that that's the way things have been for so long. To be sure, there are pluses and minuses on each side of this equation. By way of example, Atlantic City is urban and the Downbeach communities are not. There are differences in land use and environmental concerns among the municipalities that would be realigned under the Democratic proposal. Absecon and Galloway are virtually indistinguishable and happily so, and so forth and so on. For as many who say it is impractical, illogical and violative of common sense to combine communities as the Democrats propose, there is an equal if not greater number who take the position that the combinations proposed by the Republicans are equally infirm. There's been no convincing argument that shared services cannot continue to be sought and implemented between and among various municipalities without regard to which commissioner district any given town is part of; for instance, are all the towns participating now or expected to do so in the future in Atlantic county's innovative regional Municipal Court required to all be in the same commission district? There's been no convincing argument that citizens accustomed to going back and forth from the Mainland communities to the Downbeach communities and vice versa will be curtailed from doing so simply because of a commissioner district designation. The map that is ultimately chosen will speak to who is represented by whom in future commissioner elections - a very significant, very important consideration, to be sure - but will that in and of itself disrupt residents' habits and behaviors in their daily lives and routines in so far as moving among and between the communities where they carry on business, leisure, commerce and other pursuits? Communities of

interest is an important topic; all things being equal communities of interest should be preserved. The arguments presented by each side on this topic render the matter in equipoise. In essence, in my mind it's been fought to a draw.

One last point on the public debate on this subject: there was much made of the comments of a planner presented by the Republican members. In discussing the issue of communities of interest, she listed property values and income among many other factors leading to her professional opinion that Atlantic City should not be included in the same district with the Downbeach communities and that Pleasantville should not be included with the Mainland communities. The reality is, under the current state of the law, economic status is one of many factors taken into account concerning redistricting. Her comments were not perceived or received in their proper legal context. Neither her opinion, nor that of any other consultant, of course, is dispositive of this issue or any other issue. However, in my view, the reaction to her comments was very telling and that's why I raise it here. The reaction was swift, it was intense and it overwhelmingly conveyed a sense of outrage and a desire to move beyond separateness and otherness and social, economic and racial dichotomies – to move toward inclusion. And it wasn't minority individuals alone who heard those words as offensive but rather a wide swath of the community at large. This observation factors into a discussion of the remaining standard which is compliance with the voting rights act.

Voting Rights Act of 1965

My purpose here is to discuss whether, as a voting member of the commission, I find the proffered maps to comply with the Voting Rights Act, a mandatory standard. This is not a legal opinion or ruling which would be beyond the scope of my duty as a commissioner; it is

part of a statement explaining my vote. Citations are omitted.

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Multiple cases, state and federal, have been briefed, argued, analyzed, compared and discussed. The Voting Rights Act is designed to protect and advance the opportunity of minorities for full participation in the electoral process and the opportunity to elect representatives of their choosing. It applies to all redistricting efforts. A violation of the act need not be predicated on intention. The act ensures equal opportunity to participate in the political process by protected groups and the opportunity to elect candidates of their choice. One important issue discussed in case law is the proposition that an overwhelming racial majority in a district in excess of what is needed for electoral victory can be seen as a violation of section 2 of the VRA. The point here is that if minorities are packed into only one district they will be presumed certain to achieve representation by only one candidate. A majority minority district which achieves excessive electoral wins may foster voter dilution. The law talks about “safe districts“, “influence districts“ and “crossover districts“. Under present doctrine section 2 of the Voting Rights Act can require creation of “safe districts“. Section 2 does not require creation of influence districts or crossover districts. However, such districts may be created as a matter of choice. Here, the Republicans argue that the Democratic map is out of compliance with the Voting Rights Act because it abolishes the required majority minority district of Atlantic City/Pleasantville. The Democrats argue that their map is in compliance with the VRA because it allows greater opportunities for minority populations to influence elections and to create coalitions with majority voters or other minority voters. A similar argument to that advanced here by the Republicans was advanced in the Page case (the federal companion case to the New Jersey Supreme Court McNeil case). That argument was rejected, with the reviewing body satisfied that the plan to spread minority voters to other districts would “enhance and expand the opportunity for African-Americans and Hispanics to participate in a meaningful way in the political

process“. This was true even noting a reduction in the voting age

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population of African-Americans in the existing majority minority district, similar to the impact on the Atlantic City/Pleasantville majority minority district here. The New Jersey Supreme Court came to the same conclusion.

According to numbers submitted by the Democrats, if Atlantic City and Pleasantville are split as proposed in the Democratic map, district 1 would continue as a majority minority district with 68.76% minority residents and district 2 would result in a minority influence district. The population numbers submitted by the Republicans trend downward because of use of citizen voting age population rather than adjusted voting age population. The latter is the more accepted and acceptable calculus. The Democratic population figures are more closely borne out by the population data provided by Remington and Vernick. Under the Democratic map, then, the majority minority district is maintained and minority voter influence is expanded, satisfying the Voting Rights Act standard. Because the Republican map maintains the existing majority minority district, it may be seen as technically satisfying that aspect of the VRA standard, but it lays itself open to a challenge that it does so at the expense of minority voter influence and results in minority voter dilution.

In this connection, there was overwhelming public support from the minority community for the Democratic map, notably from persons in leadership who expressed confidence that the democratic map would enhance minority voter influence and increase minority election opportunities. I found significant, in particular, the public statements of commissioner Coursey , whose majority minority district is split under the Democratic plan. He spoke at two public hearings and is a signatory to a statement of African-American leaders supporting the Democratic map. He confided his initial ambivalence, but upon reflection gave the Democratic map his full throated endorsement. As did other prominent leaders, which is significantly different from the circumstances 10 years ago when the splitting of Atlantic City and

Pleasantville was being considered by the then-empaneled

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commission and ultimately, it's tiebreaker.

As alluded to earlier, in addition to the African American and other minority leadership support, there was a great deal of public comment, in person, on the remote platform at the public meetings and by email to the county website established for the purpose of receiving public comment. There was overwhelming support for increased minority participation expressed in emphatic, often moving terms. Significantly, it was not expressed solely by persons of color or minorities. To call it a groundswell of support is not an overstatement. And those who spoke came from various districts and proposed districts - the citizens of Atlantic county speaking with fervor and with zeal. Many of those public statements raised issues using such terms as race, systemic racism, voters rights, disenfranchisement, voter access, dilution of minority votes, voter suppression and gerrymandering - all issues that impact squarely public confidence in the electoral process.

Weighing the standards

Having discussed the standards, I will now discuss the weight I ascribe to each.

On the issues of contiguity and compactness, I find the maps to be in parity;

On the issue of population equality I find an advantage to the republican map;

Similarly, on the issue of continuity of representation, because it is less disruptive of voters and impacts fewer voters, there is a slight advantage to the Republican map;

Regarding preservation of the municipal boundaries, the maps are more or less in parity;

I find the maps to be very close on the issue of partisan fairness, with

a slight advantage to the Democratic map; The Democratic map has

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the advantage as far as competitiveness is concerned; On the issue of communities of interest, the maps are in parity. Each of these standards is given minimal or moderate weight in comparison to the VRA standard. In my view, consideration of the VRA and minority participation and influence carry far greater weight under the totality of the circumstances presented in this redistricting process at this moment in time. This is so not only because it is a federal statute that requires compliance, but because it is supported by significant numbers of the public and because it is the right result. The population deviation in the Democratic map, though not ideal, is tolerable because it fosters the greater goals of the Voting Rights Act; the same is true of the disruption created by the Democratic map; likewise, the concern for the preservation of communities of interest must yield to achieve the mandatory standard of the Voting Rights Act. Disruption pales in comparison to disenfranchisement. I have every confidence in the willingness and ability of those shifted to different districts to overcome the disruption, confusion, inconvenience and disappointment so as to continue their active involvement in our processes of democracy. While I don't for a minute dismiss or diminish the deeply held and long-standing connections among and between various towns rooted in historic, economic, familial, emotional, religious and, yes, political ties, those considerations must yield.

For the reasons I've stated, I respectfully cast my vote for the Democratic map.

Respectfully submitted,



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