A-202

Supreme Court of New Jersey

DOCKET NO.

9,872

APPLICATION OF

EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH,

Appellants.

CIVIL ACTION—On Appeal from Judgment of the Superior Court of New Jersey, Appellate Division. Sat Below: Matthews, Pressler and Petrella, JJ.A.D.—Petrella, J.A.D. (Dissenting)

BRIEF AND APPENDIX OF APPLICANTS-APPELLANTS EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA AND CHRISTOPHER H. SMITH

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PROCEDURAL HISTORY

This action was commenced on April 27, 1982 by the filing of a verified application (24a) in the Appellate Division, pursuant to N.J.S.A. 1:7-4, for a judgment declaring P.L. 1982, c.1 to be void on the ground that it was enacted in violation of Article IV, Section IV, ¶ 6 of the Constitution of the State of New Jersey, and preliminarily and permanently enjoining the Secretary of State of the State of New Jersey from conducting the scheduled June 8, 1982 primary and November 2, 1982 general elections for the office of Member of Congress based on the congressional districts purportedly created by that invalid statute. In support of their application, applicants filed on the same date the Certification of Joseph E. Gonzalez, Jr. (34a) and a supporting memorandum of law.

The Appellate Division (Matthews, P.J.A.D., Pressler and Petrella, JJ.A.D.) heard oral argument on April 27, 1982. The Attorney General of New

Jersey, apparently having been "required so to do by the Governor" pursuant to N.J.S.A. 1:7-4, appeared in defense of the statute on behalf of the State. The Attorney General conceded in oral argument that the facts alleged in the verified application and the Certification of Gonzalez are true.

On April 30, 1982, the Appellate Division filed a per curiam opinion dismissing the application. (1a) Judge Petrella filed a dissenting opinion (11a) on May 3, 1982, by which he would have declared P.L. 1982, c.1 invalid and enjoined the Secretary of State from conducting primary or general elections for the office of Member of Congress based on the congressional districts purportedly created by the statute.

Applicants-appellants filed a notice of appeal as of right in this Court on May 5, 1982. In addition, applicants-appellants filed the present brief on the merits and a motion to accelerate the appellate time schedule on the ground that the appeal involves issues of great public importance which

urgently require prompt final adjudication before the scheduled primary elections for the office of Member of Congress on June 8, 1982.

STATEMENT OF FACTS

The 1980 federal decennial census revealed that New Jersey's population has grown at a slower rate than the population of other states. As a result, the Clerk of the United States House of Representatives has notified the Governor of New Jersey pursuant to 2 U.S.C. § 2a(b) that the number of representatives to which New Jersey will be entitled in the next Congress has been decreased from 15 to 14. This notification imposed upon the New Jersey Legislature the obligation to divide the State into 14 congressional districts in conformity with the 1980 census and in accordance with the legislative procedures established by the Constitution and laws of New Jersey. 2 U.S.C. § 2c.

A congressional redistricting bill known as Senate Bill No. 711 ("S-711") was introduced in the New Jersey Senate on January 12, 1982. After a first reading upon introduction, the bill was read for the second time in the Senate on the same date, January 12, 1982. On January 18, 1982, the bill was read for

the third time in the Senate, passed by the Senate and delivered to the General Assembly.

A congressional redistricting bill known as Assembly Bill No. 605 ("A-605") was introduced in the New Jersey General Assembly on January 12, 1982 and read for the first time in the General Assembly on that date. On the evening of January 12, 1982, A-605 received a second reading in the General Assembly. On January 18, 1982, S-711 was received in the General Assembly from the Senate with a message notifying the General Assembly that the Senate had passed the bill and requesting the General Assembly to concur therein. See Exhibit A to Certification of Gonzalez. (38a) All subsequent action on S-711 in the General Assembly occurred on the same day the bill was received from the Senate, January 18, 1982.

S-711 was read for the first time in the General Assembly upon its receipt from the Senate on January 18, 1982. See Exhibit B to Certification of Gonzalez. (39a) By motion of the General Assembly,

which was required by General Assembly rule if the bill was to be read a second time on the same day as the first reading, S-711 was advanced to second reading in the General Assembly on the same day, by a vote of 41 in favor to 34 against. See Exhibit C to Certification of Gonzalez. (40a) After S-711 was read in the Assembly for the second time on January 18, 1982, the sponsor of A-605 moved to substitute S-711 for A-605. The motion was adopted by the General Assembly. See Exhibit D to Certification of Gonzalez. (42a)

Despite the clear requirement of Article IV, Section IV, ¶ 6 of the Constitution, which mandates that no bill be read a third time in either house until after the intervention of one full calendar day following the day of the second reading, S-711 was immediately given a third reading and passed by the General Assembly on January 18, 1982 --- the same day it was received from the Senate, read for the first time, read for the second time by special order, and substituted for A-605. No attempt was made to satisfy the sole constitutional exception

to the "intervention of one full calendar day" rule by passage of a resolution voted by three-fourths of all the members of the General Assembly that S-711 was "an emergency measure." Such a resolution would have required the affirmative votes of 60 members, far more than the 42-34 margin by which S-711 was actually passed in the General Assembly on January 18, 1982. See Exhibit E to Certification of Gonzalez. (43a)

The inauguration of Governor Thomas Kean took place on the next day, January 19, 1982. S-711 was signed by then-Governor Brendan Byrne on the morning of January 19th, only hours before he left office and a full day before the earliest moment that S-711 could legitimately have been passed by the General Assembly if the requirements of the Constitution had been respected.

The Secretary of State of the State of New Jersey is charged with the responsibility to administer and to enforce the election laws of this State. In this capacity she supervises and oversees

the primary and general elections for membership in the United State House of Representatives from New Jersey, tabulates, computes and canvasses the votes cast for all candidates in such elections, and relays such returns to the Governor. The Secretary of State has taken action which indicates that she intends to conduct congressional primary elections on June 8, 1982 and congressional general elections on November 2, 1982 based on the districts established by P.L. 1982, c.1.

ARGUMENT

I. THE MOTION TO ACCELERATE THE SCHEDULE FOR APPEAL SHOULD BE GRANTED

Applicants-appellants have moved pursuant to R. 1:1-2 and R. 2:9-2 to accelerate the schedule for this appeal. The congressional primary elections are currently scheduled for June 8, 1982, less than five weeks from now. All candidates have filed their nominating petitions, and the Secretary of State has begun the process of printing ballots and preparing for the elections pursuant to the districts purportedly created by P.L. 1982, c.1.

If this Court rules that P.L. 1982, c.1 is void, any election conducted in accordance with the districts created by that invalid statute will be a nullity. It is therefore essential that the Court establish a schedule for the State's response to this brief and for oral argument which will permit it finally to determine the issues presented by the application substantially before the June 8th primary. There can be no dispute that "the litigation is of great public importance and urgently

requires prompt final adjudication," and the motion to accelerate the time schedule for this appeal should therefore be granted. DeSimone v. Greater Englewood Housing Corp., 56 N.J. 428, 434 (1970).

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II. THE APPELLATE DIVISION HAD JURISDICTION TO ENTERTAIN THE APPLICATION PURSUANT TO N.J.S.A. 1:7-4

Chapter 7 of Title 1 of the New Jersey Statutes prescribes the procedure for judicial annulment of a law on the ground that it was not duly passed by both houses of the Legislature or made effective as law in the manner required by the Constitution. N.J.S.A. 1:7-1 provides in pertinent part as follows:

> If, at any time within one year after any law or joint resolution has been filed with the Secretary of State pursuant to sections 1:2-5, 1:2-6 or 1:2-7 of this Title, the Governor has reason to believe that any such law or joint resolution was not duly passed by both houses of Legislature, or approved by the Governor or otherwise made effective as law in the manner required by the Constitution, he may direct the Attorney-General to apply to the Appellate Division of the Superior Court, to have the law or joint resolution adjudged void.

In the present case, S-711 was duly filed with the Secretary of State after it was signed by then-Governor Byrne on January 19, 1982.

The instant private action is specifically authorized by N.J.S.A. 1:7-4, which provides as follows:

> Any two or more citizens of the State may, within the time prescribed by section 1:7-1 of this Title, present to the Appellate Division of the Superior Court an application, such as is authorized by said section 1:7-1 to be presented by the Attorney-General, and the court shall proceed thereon in the manner provided by sections 1:7-2 and 1:7-3 of this Title. The applicants may prosecute the application, and the Attorney-General may, if required so to do by the Governor, defend on behalf of the State.

N.J.S.A. 1:7-2 requires that the Appellate Division "inquire summarily into the circumstances" of the enactment of the statute in question. After such hearing as the Court deems necessary, it is empowered to "adjudge the law . . . to be void" if it is "satisfied that the constitutional and statutory provisions relating to the enactment . . . of laws . . . have not been complied with." N.J.S.A. 1:7-3.

The essence of the application was summarized by this Court in In re Application of McCabe, 81 N.J. 462, 467 (1980):

> It is important to understand the nature of a proceeding authorized by N.J.S.A. 1:7-1 et seq. The act confers original jurisdiction upon the Appellate Division, on proper application, to inquire summarily as to whether any law or joint resolution was not duly passed by both houses of the Legislature, or approved by the Governor or otherwise made effective as law in the manner required by the Constitution. The act provides for a full hearing, witnesses and discovery. However, it has been uniformly held that the subject matter of the inquiry involves only the mechanics of the enactment of the law and not the unconstitutional validity of the law itself. In re Application of Lamb, 67 N.J. Super. 39, 43 (App. Div.), aff'd 34 N.J. 448 (1961); In re Application of McGlynn, 58 N.J. Super. 1, 13 (App. Div. 1959); In re An Act Concerning Alcoholic Beverages, 130 N.J.L. 123, 124 (Sup. Ct. 1943); In re Borg, 123 N.J.L. 104, 106 (Sup. Ct. 1939); see Meadowlands Regional Development Agency v. State, 63 N.J. 35, 40-41, n.1, appeal dismissed 414 U.S. 991, 94 S. Ct. 343, 38 L. Ed. 2d 230 (1973).

The instant action raises solely a question of "the mechanics of the enactment of" S-711, and not any issues concerning the substantive validity of the law itself. Applicants seek under N.J.S.A. 1:7-1 et seq.

a declaration that P.L. 1982, c.1 is "no statute at all because never passed," rather than a substantive constitutional finding that it was "duly enacted but without efficacy because of constitutional limitations." In re Borg, 123 N.J.L. 104, 109 (Sup. Ct. 1939), cited in In re Application of McCabe, supra, 81 N.J. at 469.

III. SINCE IT WAS ENACTED IN VIOLATION OF THE CONSTITUTION, P.L. 1982, c.1 IS VOID, AND THE SECRETARY OF STATE MUST BE ENJOINED FROM CONDUCTING PRIMARY OR GENERAL CONGRESSIONAL ELECTIONS BASED ON THE CONGRESSIONAL DISTRICTS PURPORTEDLY CREATED BY THIS UNCONSTITUTIONAL STATUTE

The pertinent portion of Article IV, Section IV, ¶ 6 appeared for the first time in the 1947 Constitution of the State of New Jersey, and provides as follows:

> All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. . . .

The Constitutional Convention's purpose in adding the "major improvement" represented by the "intervention of one full calendar day" rule was succinctly summarized by the Honorable Leon S. Milmed

in his definitive commentary on the Constitution of 1947

> To "effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents", the Convention's Committee on the Legislative recommended, and the Convention adopted, a new provision (Article IV, Section IV, Paragraph 6) which has contributed immeasurably to the more orderly conduct of the legislative process. This provision prohibits any bill or joint resolution from being read a third time in either house until after the intervention of one full calendar day following the day of the second reading. The Committee on the Legislative recognized "that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies, which might require immediate action". To guard against such a contingency the Committee proposed, and the Convention adopted an exception to the one day lay-over clause which permits a bill or joint resolution to proceed forthwith from second to third reading in either house if that house resolves by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that it is an emergency measure.
>
> In proposing the provision requiring a full day's intervention between second and third reading of a bill or joint resolution, the Convention's Committee on the Legislative expressed "confident expectation" that the provision

"will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading."

Milmed, L. "The New Jersey Constitution of 1947," N.J.S.A. Const., vol. 1, at 95 (1971).

The slim 42-34 majority by which S-711 was passed by the General Assembly clearly demonstrates why the General Assembly simply flouted this clearly-established constitutional mandate. Since the General Assembly has 80 members, compliance with the "emergency" exception to the one-day lay-over requirement would have required the evidently unavailable affirmative votes of 60 members. That nowhere near 60 affirmative votes were available was apparent to the General Assembly as soon as the motion to advance S-711 to second reading by special order garnered only 41 affirmative votes.

Nor does the substitution of S-711 for

A-605 cure the constitutional defect.[1] Indeed, the very existence of a "substitution" confirms that what was substituted (S-711) is a different bill from that

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[1] Once S-711 was substituted for A-605 in the Assembly, as Judge Petrella observed, "A-605 [was] no longer viable and its then position in the General Assembly legislative process [became] immaterial and irrelevant." Dissenting opinion of Petrella, J., at 11. (21a) There is absolutely no basis in law for the majority's assertion that S-711 somehow inherited the Assembly's prior consideration and action upon A-605, and the majority posits none. Judge Petrella succinctly summarized S-711's status:

> It is merely the bill the General Assembly elects to consider in place of A-605. . . . There is no metamorphosis of S-711 by the resolution to substitute it for A-605. Such action in no way advances or changes the status of S-711 except that the sponsors of A-605 may be listed as co-sponsors of S-711.

Dissenting opinion of Petrella, J., at 11 (21a).

The fact that Rule 15:20 contains the co-sponsoring provision illustrates the reasons why S-711 and A-605 are not the same "bill" within the meaning of the Constitution. If the Assembly had simply passed A-605 without taking any action on S-711, there would have been no "bill [which had] finally passed both houses" to present to the Governor in accordance with Article V, Section I, ¶ 14(a). Either A-605 would have had to be passed by the Senate after three readings with the intervening day required by the Constitution, or S-711 would have had to be passed by the Assembly in conformity with the same constitutional requirements. In re Ross, 86 N.J.L. 387 (Sup. Ct. 1914). If the Assembly had simply passed S-711 without substituting it for A-605, on the other

for which it was substituted (A-605). The General Assembly obviously recognized that the two prior readings of A-605 in the Assembly had no bearing upon the requirement of Article IV, Section IV, ¶ 6 that "[a]ll bills . . . shall be read three times in each house before final passage." (emphasis added) The General Assembly therefore properly found it necessary to have S-711 read for the first time upon its receipt from the Senate on January 18, 1982, and to adopt a special order permitting S-711 to be read for a second time on the same day as the first reading.

The per curiam majority opinion in the Appellate Division misperceives applicants-

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[1] (cont'd) hand, the names of the Assembly sponsors of A-605 would not have appeared on S-711 when the Governor signed S-711 into law.

Rule 15:20 bridges this gap. It permits the Legislature to enact a single bill (S-711) and thereby to abandon A-605, but also permits the Assembly sponsors of A-605 to receive due credit for their role in the enactment of the new public law. Nothing in this procedure, however, has any effect whatsoever on the constitutional requirement of an intervening full calendar day between second and third reading of S-711 in the Assembly.

appellants' contention in this action. The application does not contend, as the majority suggests, "that the substitution of S-711 for A-605 was constitutionally impermissible." Majority opinion, at 6 (6a) On the contrary, the substitution is constitutionally immaterial. Nor do applicants-appellants "argue that S-711 could not have been acted on by the Assembly in any way without the intervention of one calendar day." Id. There was no constitutional barrier to the Assembly's action in giving S-711 its first two readings on the day of its receipt from the Senate, January 18, 1982. All that the Constitution prohibited was the Assembly's advancing S-711 to third reading and final vote without either the intervention of one full calendar day between the second and third readings, or passage of an emergency resolution.

The real significance of the first two readings of S-711 in the Assembly on January 18, 1982 is that they occurred at all.[2] The Assembly thus

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[2] Assembly Rule 15:20, which prohibits substitution of an identical Senate bill for a pending Assembly

clearly demonstrated that its understanding of the requirements of the Constitution accords with applicants-appellants', and not with the "tunc pro nunc" theory devised by the per curiam majority. Despite the fact that A-605 had received first and second reading six days before S-711 reached the Assembly, the Assembly read S-711 for the first time upon its arrival from the Senate and went so far as to pass a motion to advance S-711 to second reading by special order on the same date. Had the Assembly viewed the second reading of A-605 on January 12, 1982 as constituting a "tunc pro nunc" second reading of S-711 because the text of the bills was identical,

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2 (cont'd) bill "unless the Senate bill shall have received second reading in the General Assembly," (emphasis added) also requires that the pending Assembly bill have received two readings in the Assembly before the Senate bill is substituted for it. If the majority were correct that the two readings of the Assembly bill before substitution constitute the first two of the three constitutionally-mandated readings of the substituted Senate bill in the Assembly, there would be absolutely no need for the last sentence of Rule 15:20: "No Senate bill may be substituted for an Assembly bill unless the Senate bill shall have received second reading in the General Assembly." If the two readings of the identical Assembly bill could be attributed to the post-substitution Senate bill in the Assembly, the Senate bill would invariably have "received second reading in the General Assembly" whenever it was substituted for an identical Assembly bill in compliance with Rule 15:20.

as the majority suggests, then the "first reading" of S-711 in the Assembly on January 18, 1982 would in fact have been its "third reading" and the bill would have been available for immediate passage.

The Assembly, however, interpreted the Constitution as did Judge Petrella in his dissent. Recognizing that S-711 was a different bill from A-605 and that "[e]very bill must be treated independently," dissenting opinion of Petrella, J., at 10 (20a), the Assembly treated S-711 as an independent proposal of law without any reference to A-605. Nowhere in the journal or proceedings of the Assembly can the majority find even an inkling of support for the tortured interpretation of the legislative proceedings on which it relies to sustain the statute. The Assembly understood the requirements of the Constitution, complied with them up to the point where compliance became politically inexpedient, and then simply flouted them in order to

enact S-711 in time to present it for signature to the outgoing Governor.

The per curiam majority opinion also reveals a fundamental misunderstanding of the scope of the Court's jurisdiction:

> As we have noted, the constitutional mandate under Art. IV, §4, ¶6, exists to insure that there be knowledge, at least on the part of the individual legislators, of the content of any bill before it advances to third reading and passage. That is precisely what occurred here. The legislative procedure employed to reach that result is beyond our jurisdiction.

Majority opinion, at 10 (10a) (emphasis added)

Contrary to the majority's assertion, the Constitution itself establishes the mandatory "legislative procedure" to be employed by both houses of the Legislature. Unless an emergency resolution is passed, one full calendar day must intervene between the second and third readings of every bill in either house. The Constitution does not merely

reflect the framers' purpose that legislators be informed "of the content of any bill before it advances to third reading and passage;" it affirmatively prescribes the legislative procedure which must be followed to achieve that goal.

The Legislature is not free to follow some other procedure on the pretext that it achieves the framers' purpose as well as the procedure required by the Constitution. That is precisely why Gilbert v. Gladden, 87 N.J. 275 (1981), cited by the majority opinion at 6 (6a), wholly undermines rather than supports the conclusion below. Where in Gilbert the Constitution was silent on the legislative procedure in question, here the Constitution speaks clearly and precisely. Where in Gilbert the Constitution's silence permitted the Legislature and the Governor to agree upon the system of "gubernatorial courtesy" without time limits, here the specific legislative procedure prescribed by Article IV, Section IV, ¶ 6 permits no "political" or "customary" exceptions.

As this Court held in Gilbert, "a state constitution . . . is not a grant but a limitation of legislative power." 87 N.J. at 283. Thus "the Legislature is invested with all powers not constitutionally forbidden." Id. (emphasis added) In the present case, unlike Gilbert, the Constitution specifically forbids the legislative procedure followed by the Assembly in passing S-711. Therefore, as Judge Petrella observed, "[n]either the Legislature nor the courts can ignore or change" that procedure. Dissenting opinion of Petrella, J., at 9 (19a).

No party has contended that the Assembly purported to follow or was even aware of the creative rationale advanced by the majority below in upholding P.L. 1982, c.1. Since S-711 was given three specific readings in the Assembly, the record is certainly barren of any suggestion that the Assembly believed itself free to consider the first reading of S-711 in the Assembly to be suddenly transmuted into S-711's "third reading" as a result of the two prior readings of A-605 in that house, on the theory that such a fiction satisfies the constitutional goal as well as

the procedure mandated by the Constitution. Even if any party had made such a claim, however, the Appellate Division had not only jurisdiction but the duty to reject it.

Having recognized that three readings of S-711 in the General Assembly were necessary before it could be passed, the General Assembly was confronted with the constitutional barrier of the "intervention of one full calendar day" requirement. Arrayed against the mandate of the Constitution were the dual political realities of the unavailabilty of sufficient votes to comply with the "emergency" exception, and the impending inauguration of the new Governor on the following day --- one full day before the General Assembly could legitimately give S-711 its third reading and pass it in conformity with the Constitution.

Faced with this choice, the General Assembly chose to violate the Constitution. Without even attempting to pass an emergency resolution as Article IV, Section IV, ¶ 6 would have required, the

General Assembly simply pretended that the constitutional barrier did not exist. Promptly after the second reading of S-711 and its substitution for A-605, the General Assembly flouted the Constitution by giving S-711 its third reading and voting to pass it that very day. The bill was thus ready for signature by the outgoing Governor the next morning before the inauguration, and was thereby purportedly enacted as P.L. 1982, c.1.

In summary, neither the State nor the per curiam majority opinion maintains that a mere Assembly rule can abrogate requirements imposed by the organic law of this State. Where a particular legislative procedure is prescribed by the Constitution, the courts of New Jersey must enforce it. The majority below erred in declaring "beyond our jurisdiction" the very issue which it had the duty to decide. The Constitution required either the intervention of one full calendar day between the second and third readings of S-711 in the Assembly, or the passage of an emergency resolution by the affirmative votes of three-quarters of all the

members of that house. Since there is no dispute that neither of these exclusive constitutional alternatives was satisfied, P.L. 1982, c.1 was not "made effective as law in the manner required by the Constitution" and is therefore void. N.J.S.A. 1:7-1.

Applicants-appellants have proven the undisputed facts and have established by clear and convincing evidence the unconstitutionality of the manner in which S-711 was passed by the General Assembly. Application of McGlynn, 58 N.J. Super. 1 (App. Div. 1959). There is no dispute that the Secretary of State has filed and enforced "P.L. 1982, c.1" as if it were the law of this State. Since this purported public law is in fact "no statute at all because never passed," In re Borg, supra, 123 N.J.L. at 109, this Court has the constitutional duty so to declare by reversing the order of the Appellate Division, issuing a judgment of invalidity pursuant to N.J.S.A. 1:7-6, directing the Clerk to certify the judgment and to deliver it to the Governor, directing the Governor to issue the proclamation required by

N.J.S.A. 1:7-6, and enjoining the Secretary of State from conducting congressional primary and general elections based on the congressional districts created by this invalid legislation.

CONCLUSION

For the foregoing reasons, applicants-appellants respectfully pray that the Court reverse the order appealed from, adjudge P.L. 1982, c.1 to be void, direct that the Clerk and the Governor take the action required of each of them by N.J.S.A. 1:7-6, and preliminarily and permanently enjoin the Secretary of State from conducting congressional primary or general elections based on the congressional districts created under P.L. 1982, c.1.

Respectfully submitted,

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APPENDIX

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3650-81-T1

Application of EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH

Argued: April 27, 1982 - Decided:

Before Judges Matthews, Pressler and Petrella.

Jonathan L. Goldstein argued the cause for the petitioners (Hellring, Lindeman, Goldstein & Siegel, attorneys; Bernard Hellring, Robert A. Raymar, Stephen L. Dreyfuss and Mr. Goldstein, of counsel and on the brief).

William Harla, Deputy Attorney General, argued the cause for the State of New Jersey (Irwin I. Kimmelman, Attorney General of New Jersey, attorney).

PER CURIAM

These proceedings were instituted by seven citizens of the State who are all presently members of the House of Representatives, questioning the constitutionality of the enactment procedure employed by the Legislature in the passage of Chapter 1 of the Laws of 1982. The petition is filed under the provisions of N.J.S.A. 1:7-4 which gives

this court jurisdiction in the premises in the first instance. The petition broadly alleges that the law in question is void on the ground that it was not passed by both houses of the Legislature in the manner required by Art. IV, §4, ¶6 of the State Constitution:

> All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading....

The uncontroverted facts, drawn largely from the petition, disclose that as the result of the 1980 decennial census, it became necessary for the New Jersey Legislature to divide the State into new congressional districts on the basis of that census and in accordance with the procedures established by the Constitution and laws of this State. That obligation became incumbent upon the Legislature after notification was given to the Governor that the number of representativ s to which this State is entitled has been decreased from 15 to 14. See 2 U.S.C.A. §2A(b).

Thereafter, on January 12, 1982 a congressional redistricting bill, denominated S-711, was introduced in the New Jersey Senate. That bill was advanced to second reading in the Senate on the same date, and on January 18, 1982 was given third reading and thereupon passed by the Senate. The bill as passed was, on January 18, 1982, delivered to the General Assembly.

A congressional redistricting bill, numbered A-605, was introduced in the General Assembly on January 12, 1982 and given first reading there on that date. The bill was given second reading on the evening of January 12, 1982. A-605 was identical in its provisions to those contained in S-711.[1]

On January 18, 1982 S-711 was received in the General Assembly from the Senate with a request that the Assembly concur therein. S-711 was given a first reading in the Assembly upon its receipt on January 18, 1982 and, on the same date, by motion, was advanced to second read-

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[1] In using the word "identical" we refer to the substantive provisions of the bills commencing with the title and enactment clauses. See Rule 15:20 of The Rules of the General Assembly, quoted infra.

ing by special order on a vote of 41 in favor and 34 against. Thereafter, still on January 18, 1982, S-711 was substituted for A-605 in the General Assembly by motion without roll call vote.

S-711 was thereupon immediately given a third reading in the Assembly and passed on January 18, 1982 by a vote of 42 in favor and 34 against.

The bill was thereupon delivered to the Governor who signed it into law.

The substitution of S-711 for A-605 in the General Assembly on January 18, 1982 was made under the provisions of Rule 15:20 of The Rules of the General Assembly:

> When a bill originating in the Senate shall have been delivered to this House, with a message that the Senate has passed the same and requesting the concurrence of this House therein, and a bill identical therewith, originating in this House, is then pending in this House, the Senate Bill may be substituted for such Assembly Bill, on motion of a sponsor of such Assembly Bill, upon or after the second reading of the Assembly Bill and the Senate Bill may then be advanced to, and have, third reading and be passed in substitution for the Assembly Bill and take the usual course of passed bills and the sponsors of the Assembly Bill may, upon the motion of one of them, be added as co-sponsors of the Senate Bill, with the Senator or Senators who were sponsors of the Senate Bill in the Senate and the names of

such co-sponsors shall be endorsed upon the jacket containing the Senate Bill. The provisions of this Rule are expressly subject to the provisions of Rule 15:12. No Senate bill may be substituted for an Assembly bill unless the Senate bill shall have received second reading in the General Assembly.

It is the petitioners' contention that since the proponents of S-711 knew that they had been able to muster only 41 votes in favor of the motion to advance S-711 to second reading in the Assembly by special order, they also knew there was no way in which 60 affirmative votes, which would have been necessary to hold that S-711 was an emergency measure under the aforementioned constitutional provision, could be obtained. Petitioners contend that the Assembly majority was thus presented with a direct conflict between political expediency and compliance with the mandate of the Constitution. The inauguration of the incoming Governor was to take place on January 19, 1982, and if the Assembly was to comply with the Constitution it could not pass S-711 before January 20, 1982, and therefore would be required to submit it to the new Governor who probably would veto it. Petitioners allege that the only way that the outgoing Governor could receive S-711 to be signed into law was for the Assembly simply to disregard the constitutional mandate and move S-711 to third reading and passage

the same day as its receipt from the Senate.

The gist of petitioners' argument is that the substitution of S-711 for A-605 was constitutionally impermissible. They argue that S-711 could not have been acted on by the Assembly in any way without the intervention of one calendar day.

In exercising our jurisdiction under the statute establishing the procedure here involved, N.J.S.A. 1:7-1 et seq., we emphasize at the outset that our jurisdiction extends only to resolving the question of whether Chapter 1 of the Laws of 1982 was adopted by a procedure in conformity with the constitutional requirement set out in Art. IV, §4, ¶6 of our Constitution. We do not claim to assert, nor could we assert, jurisdiction over the internal procedures of the General Assembly, or the rules of that body which are adopted in accordance with the provisions of Art. IV, §4, ¶3 of the Constitution. Compare Gilbert v. Gladden, 87 N.J. 275 (1981). Our sole quest is to determine whether the statute in arriving in its status as a law reached there by a route condoned by the Constitution.

In his comments on the New Jersey Constitution of

1947, Judge Milmed,[2] referring specifically to the provisions of Art. IV, §4, ¶6, stated:

> To "effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents", the Convention's Committee on the Legislative recommended, and the Convention adopted, a new provision (Article IV, Section IV, Paragraph 6) which has contributed immeasurably to the more orderly conduct of the legislative process. This provision prohibits any bill or joint resolution from being read a third time in either house until after the intenvention of one full calendar day following the day of the second reading. The Committee on the Legislative recognized "that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies, which might require immediate action". To guard against such a contingency the Committee proposed, and the Convention adopted an exception to the one day lay-over clause which permits a bill or joint resolution to proceed forthwith from second to third reading in either house if that house resolves by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that it is an emergency measure.
>
> In proposing the provision requiring a full day's intervention between second and third read-

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[2] "The New Jersey Constitution of 1947," N.J. Const.; N.J.S.A. 91, 97. Judge Milmed was a legal advisor to the 1947 Constitutional Convention, and also personal counsel to Governor Alfred E. Driscoll.

> ing of a bill or joint resolution, the Convention's Committee on the Legislative expressed "confident expecation" that the provision "will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading."

We have no doubt that the constitutional provision here involved was adopted by the framers to insure that legislation would be studied, or at least read, by legislators before it went to third reading and adoption by a house. We do not understand the comment just quoted or, more importantly, the wording of the constitutional provision itself, to demand that any particular rite be followed in the adoption of legislation as long as the content of a bill remains unchanged before a house of the Legislature for one calendar day before third reading and passage. We believe that that is what occurred here.

As noted at the beginning of this opinion, the contents of both S-711 and A-605 are identical, excepting of course the number at the top of the bill and the name of the sponsor which are not part of the enactment but are part of the rite.[3] As a matter of common sense, it is

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[3] The dissent posits questions as to variations in bills which might possibly pass both houses under the procedures questioned here. We deem it totally unnecessary to deal with such "hypothetical horribles" since they do not exist in this case.

apparent that the content of the bill that would eventually become Chapter 1 of the Laws of 1982 was before each house of the Legislature for at least six calendar days before final passage by each house. Such being the case, the inescapable conclusion is that the constitutional condition has been obeyed.

We do not regard a bill as being a piece of paper with a number at the top and a name of a sponsor at its head, or a particular color on its backer. A bill in the legislative sense consists of its content--the words which are to be adopted by the Legislature that ultimately will become law. The number, the name and the color are mere accidents--mere tangible affects adopted for the purpose of easy identification. A bill, on the other hand, represents the effort of both houses of the Legislature to adopt a law. Regardless of where a bill is introduced, it must pass both houses of the Legislature in identical form before it may be entertained by the Governor for signature. Indeed, every bill in whichever house introduced, if it is to become a law of this State, must begin with the injunction: "Be it enacted by the Senate and General Assembly of the State of New Jersey." See Art. IV, §7, ¶6 of our Constitution.

We see nothing in our Constitution that prohibits identical bills from proceeding through both houses of the Legislature.[4] It seems to be a matter of common sense that the house whose bill has not yet been passed should defer to the other house which has passed the identical bill in entertaining the bill which is to become law. As we have noted, the constitutional mandate under Art. IV, §4, ¶6, exists to insure that there be knowledge, at least on the part of the individual legislators, of the content of any bill before it advances to third reading and passage. That is precisely what occurred here. The legislative procedure employed to reach that result is beyond our jurisdiction. We are satisfied, however, that the bill ultimately adopted by the Legislature and submitted to the Governor had its provisions before both houses of the Legislature for a period in excess of the one calendar day required in the Constitution.

In view of the conclusions we have reached as stated in this opinion, the application of petitioners is dismissed.

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[4] Contrary to the import of the dissent, S-711 and A-605 were identical bills.

NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3650-81-T1

Application of EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A COURTER, MARGARET S. HOUKEMA, and CHRISTOPHER H. SMITH.

PETRELLA, J.A.D. (Dissenting)

The New Jersey Constitution provides the method of adopting legislation in this State. See, N.J. Const. (1947), Art. IV, §4, par. 6 and Art. V, §1, par. 14. Even the importance of mandated congressional redistricting cannot excuse a failure to follow the organic law of this State embodied in our Constitution as adopted by the people. Notwithstanding contrary assertions by the majority, it is important within the context of the above-cited Constitutional provisions to distinguish and designate in some manner bills introduced in either the General Assembly or the State Senate. Of course the title to each bill is constitutionally mandated and limited to one object. N.J. Const. (1947), Art. IV, §7, par. 4. In addition, the constitutional requirements for the enacting of laws and for the governor's exercise of veto powers mandate such a procedure. In furtherance of the constitutional scheme there has traditionally been established under rules of the Legislature a strict system of accountability for bills with separate color-coded backers and a system of signature

endorsements for sponsorship and referrals of bills or delivery of bills. In part, the statutory framework which fleshes out the constitutional provisions as well as the rules of both houses of the Legislature serve the necessary purpose of insuring permanent safeguarding of the statute laws of this State. See, Gilbert v. Gladden, 87 N.J. 275, 287 (1981).

I must dissent from the holding of the majority because my reading of the requirements of the New Jersey Constitution differs as it applies to the procedure utilized here. What is clear is that the bill signed by former Governor Brendan T. Byrne on January 19, 1982, the last day of his term in office, was Senate Bill 711 (S-711). That bill was enacted in a method that not only did not comport with the mandates of our State Constitution, but in a fashion that even violated the rules of the General Assembly. It was thus rendered subject to challenge either by the Attorney General or by at least two citizens of this State under either N.J.S.A. 1:7-1 or 1:7-4. The challenge here under the statute is based solely on the mechanics of the enactment and is not addressed to the merits of the law or to the constitutionality of any substantive provision. See, In re Application of McCabe, 81 N.J. 462, 467 (1980). Hence, although each house of the Legislature determines its own rules as authorized by Art. 4, §4, par. 3 of our Constitution, the legislation it enacts must comply with the constitutional mandate. While I would agree that either house of the Legislature may suspend its rules by vote,[1] it is an entirely different matter when there is a failure to comply with an express

1 See, Senate Rule 177 and General Assembly Rule 21:2.

constitutional requirement. I would hold that the undisputed facts here clearly render P.L. 1982, c. 1, subject to invalidation despite any presumption in favor of enactment of legislation consistent with procedures authorized by the Constitution. See, In re Ross, 86 N.J.L. 387, 391 (Sup. Ct. 1914).

N.J. Const. (1947), Art. IV, §4, par. 6 reads:

> **Bills and joint resolutions; reading and passage; emergency measures; voting on final passage**
>
> All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. No bill or joint resolution shall pass, unless there shall be a majority of all the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal. [Emphasis added].

Art. V, §1, par. 14(a) reads:

> Every bill which shall have passed both houses shall be presented to the Governor. If he approves he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If upon reconsideration, on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved by two-thirds of all the members of that house, it shall become a law; and in all such cases the votes of each house shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If a bill shall not be returned by the Governor within 10 days, Sundays excepted, after it shall have been presented to him, the same sha become a law on the tenth day, unless the house of origin shall on that day be in adjournment. If on the tenth day the house of origin shall be in temporary adjournment in the course of a regular or special session, the bill shall become a law on the day on which the house of origin shall reconvene, unless the Governor shall on that day return the bill to that house.

These provisions evince a methodical pattern for the enactment of legislation by the Legislature, with the concurrence of the governor or over his veto. It is clear that regardless of the identical or nonidentical content of bills introduced in either house that full accountability is both necessary and required. The mischief of undue haste was taken into account by the framers of our Constitution who expressly provided for dealing with urgent matters by Art. IV, §6, par. 6 which authorizes "emergency" measures. It was for good reason that more than a simple majority has to approve a measure as an "emergency." The emergency vote by 3/4 of the members[2] is the safety valve provided consistent with reading every bill three times "in each house." Similarly, the rules of both houses of the Legislature provide detailed procedures for assuring that all bills are fully identified and moved through the Legislature in a manner that fully comports with the Constitution. See, General Assembly Rule 15:11a and Senate Rule 125 and the Joint Rules of the Senate and General Assembly.

In a commentary summarizing the principle changes brought about by New Jersey's Constitutional Convention, the Hon. Leon S. Milmed said:

> Other major improvements in the Legislative Article include:
>
> To "effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents", the Convention's Committee on the Legislative recommended, and the Convention adopted, a new provision (Article IV, Section IV, Paragraph 6) which has contributed immeasurably to the more orderly conduct of the legislative process. This provision prohibits any bill or joint resolution from being read a third time in either house until after the intervention of one full calendar day following the day of the second reading. The Committee on the Legislative recog-

2 There are 80 members of the General Assembly. Thus, 60 votes would be required to declare a bill an emergency measure in that house.

nized "that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies, which might require immediate action". To guard against such a contingency the Committee proposed, and the Convention adopted an exception to the one day lay-over clause which permits a bill or joint resolution to proceed forthwith from second to third reading in either house if that house resolves by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that it is an emergency measure.

In proposing the provision requiring a full day's intervention between second and third reading of a bill or joint resolution, the Convention's Committee on the Legislative expressed "confident expectation" that the provision "will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading."

This provision, as well as the exception which permits its suspension on a three-fourths vote, has worked well. Their effective operation has greatly improved the orderly conduct of the work of the Legislature.

[Milmed, L., "The New Jersey Constitution of 1947," N.J.S.A. Const., Vol. 1, pp. 91, 95-96 (1971)].

Senate Bill No. 711 was introduced in the State Senate on January 12, 1982 which was the first day of the 1982 session. On the same date Assembly Bill Number 605 (A-605) was introduced in the General Assembly. Both bills were advanced to second reading in their respective houses of the Legislature on that day. The Legislature then recessed until January 18 when the Senate reported S-711 out of committee and gave it the necessary third reading[3] in

3 Preliminarily, it should be observed that a bill receives its first reading in the manner set forth in Rule 15:1f of the General Assembly which reads:

> f. The reading by the Clerk of the number, title and committee reference if any, of each bill and resolution delivered to him by the Speaker shall be taken as the introduction and first reading of the bill or resolution.

A "reading" has been construed as the reading of a bill by its number, title, sponsor and committee reference. See, Anderson v. Camden, 58 N.J.L. 515 (Sup. Ct. 1896).

that house. The Senate proceeded to pass S-711 and delivered it that date to the General Assembly where it was given first reading upon receipt. S-711 was advanced to second reading on January 18 in the General Assembly by a vote of 41 in favor to 34 against. Although Assembly Bill 605 had not been given a third reading in the General Assembly, by voice vote of that house on January 18, S-711 was substituted for A-605 by resolution pursuant to Rule 15:20 of the General Assembly. The resolution recited that the two bills were identical and that Assemblyman Baer (sponsor of A-605) was joined as a co-sponsor of S-711. A vote was then taken to pass S-711 on third reading and it carried by a vote of 42 to 34, which is one more vote than required for passage.

The intent of this rule appears essentially directed at allowing a member or members of the other legislative house who have sponsored identical legislation to be listed as co-sponsor on the bill ultimately passed and thus receive due credit as a sponsor of such legislation. Indeed, R. 15:20 of the General Assembly relating to substitution expressly so provides: It reads:

> When a bill originating in the Senate shall have been delivered to this House, with a message that the Senate has passed the same and requesting the concurrence of this House therein, and a bill identical therewith, originating in this House, is then pending in this House, the Senate Bill may be substituted for such Assembly Bill, on motion of a sponsor of such Assembly Bill, upon or after the second reading of the Assembly Bill and the Senate Bill may then be advanced to, and have, third reading and be passed in substitution for the Assembly Bill and take the usual course of passed bills and the sponsors of the Assembly Bill may, upon the motion of one of them, be added as co-sponsors of the Senate Bill, with the Senator or Senators who were sponsors of the Senate Bill in the Senate and the names of such co-sponsors shall be endorsed upon the jacket containing the Senate Bill. The provisions of this Rule are expressly subject to the provisions of Rule 15:12. No Senate bill may be substituted for an Assembly bill unless the Senate bill shall have received second reading in the General Assembly.
>
> [Emphasis added]

The last sentence of this rule recognizes the necessity of a bill of the opposite house having received two readings before a substitute occurs. The substituted bill would thus be ready to be reported out on third reading after the intervening "full calendar day" or as an "emergency measure."

Notwithstanding the reasoning of the majority, I cannot agree that the simultaneous voting on identical but separate bills "in each house" of the Legislature, as opposed to the provisions of a bill which is itself read three times in each house, can be used to replace or substitute for the requirements of our State Constitution (absent, perhaps, a merger of two identical bills which have each fully passed their respective houses in accordance with Constitutional requirements). It is certainly axiomatic, and I take it that it is a principle with which the majority does not disagree, that a rule of the General Assembly can neither eradicate a mandate of the Constitution nor contravene or subvert the Constitution. However, this is exactly the effect of the majority's interpretation construing the Constitution here. Although N.J.S.A. 1:2-1 may not by its terms require a bill number, a sponsor or committee reference, a bill is constitutionally mandated to have a title which expresses and discloses its "one object," N.J. Const. (1947), Art. IV, §7, par. 14. Hence, it is incomplete without the title as well as the "Be it enacted" clause required by N.J. Const. (1947), Art. IV, §7, par. 6. See also, N.J.S.A. 1:2-1. It could hardly be argued that sponsorship by a member of either house of the Legislature is not required for introduction of a bill even though such requirement only appears in the rules of the

two houses of the Legislature and not in the Constitution. There must be a system of sponsorship and accountability for each bill. The Speaker of the General Assembly and the President of the Senate, respectively, must certify due passage of each bill in their respective houses. Absent compliance with all the constitutional requirements there cannot be a properly passed bill. The courts in their somewhat limited review of the legislative process may look behind even the certification of the Secretary of State to see if a bill has been passed in compliance with the Constitution and the Legislative Rules. See, In re Hague, 104 N.J.Eq. 31 (Ch. 1929), aff'd 104 N.J.Eq. 369 (E. & A. 1929).

Nor is it practical or possible to come within the ambit of fulfilling the Constitution when two independent bills are passed by separate houses, but neither one is passed by both houses. Common sense dictates such a requirement in a bicameral Legislature. The argument made in support of the validity of P.L. 1982, c. 1 might well lead to much mischief. Could an identical bill passed by each house then be signed by the governor without the other house having specifically acted upon it? What would be the result here if instead of identical bills there were a few minor differences, but it could be argued that the bills were substantially the same? Nor could identical bills in the same house (aside from any prohibition by house rule which the majority stresses may be virtually ignored) which had each been advanced to second reading by procedures not even requiring a vote, be sufficient to satisfy the constitutional requirement of a third reading in each house. See, Joint Rule 5 of the Senate and

General Assembly. Form certainly is not to be elevated over substance. However, we have a bicameral Legislature and the people of this State adopted the procedure for enacting statutes in our Constitution. Neither the Legislature nor the courts can ignore it or change it.

The Deputy Attorney General who argued the appeal contends that we should give more than passing deference to the Rules of the General Assembly on the theory that R. 15:20 provides for a method of expediting legislation. In effect, this is a makeshift crutch to support what is, in my view, an erroneous proposition that this rule somehow allows a method of obviating the constitutional requirement that there be an intervening "full calendar day" following the second reading of a bill before it is eligible for final passage or that there be an emergency resolution adopted by a vote of 3/4 of the members of the appropriate house of the Legislature. See, General Assembly Rule 15:11a. What is important is the existence of a duly sponsored and adopted bill. For compliance with this constitutional requirement, the substance of the bill is irrelevant.

Reliance by the Deputy Attorney General on Gilbert v. Gladden, supra, (87 N.J. 275), appears inapposite. There, the issue involved was the "presentment" of bills to the governor by the Legislature, and it was held that neither the Constitution nor N.J.S.A. 1:2-5 established a time limitation thereon. The Supreme Court found that this was an area solely within the control of the Legislative and Executive branches of the government.

The rules of the General Assembly also provide that no bill shall pass that house without three readings. Rules 15:10 and 15:11 of the General Assembly speak in terms of "every bill" and "no bill" which clearly means each specific bill regardless of its contents. Every bill must be treated independently. Those rules read:

> 15:10. Every bill and joint resolution, and every concurrent resolution proposing an amendment or amendments to the Constitution, shall be read three times in the General Assembly before final passage but no bill or joint resolution shall have a first and second reading on the same day without special order. A concurrent resolution, other than one proposing an amendment or amendments to the Constitution, shall be before the General Assembly and may be acted upon at any time after its introduction, unless it shall have been referred to committee. Any concurrent resolution, other than one proposing an amendment or amendments to the Constitution, which has been referred to committee, shall be before the General Assembly and may be acted upon at any time after the same shall have been reported by a committee.
>
> 15:11. a. No bill or joint resolution shall be considered on third reading in the General Assembly until after the intervention of one full calendar day following the day of the second reading but if the General Assembly shall resolve by vote of three-fourths of all of its members, signified by yeas and nays entered on the Minutes, that a bill or joint resolution is an emergency measure it may proceed forthwith from second to third reading.
>
> b. No bill, joint resolution or concurrent resolution shall be considered on third reading or for final action, as the case may be, in the General Assembly unless notice of the calendaring thereof shall have been distributed to the membership of the General Assembly by the Speaker at least six days prior to the day the bill or resolution is scheduled for such consideration; provided, however, that any bill, joint resolution or concurrent resolution may be considered on third reading or for final action, notwithstanding that the notice required herein has not been distributed to the membership, upon the adoption of a motion therefor. Any bills calendared for one session but not voted on, must be recalendared before consideration at any subsequent session.
>
> c. At any given meeting, the total number of bills, joint resolutions and concurrent resolutions which may be considered for final passage shall not exceed 30.

Rule 15:11a iterates the constitutional mandate of Art. IV, §4, par. 6 as to the requirements before a bill is eligible for third reading. It is abundantly clear that the General Assembly in purporting to pass S-711 on "third reading" as a substitute for A-605 violated its own rules.[4] There was clearly no intervening day

4 There is no record of any vote to suspend the General Assembly Rules. See, R. 21:2.

for S-711, the bill attempted to be substituted for A-605. In effect S-711 would have been placed on second reading in the General Assembly. Nor had there been any calendaring notice for A-605. If A-605 had been considered an Assembly Committee Substitute (which it was not) it would still have been necessary to have an intervening calendar day or an emergency vote before it could be given third reading and placed in a position for a vote. Indeed, under In re Ross, 86 N.J.L. 387 (Sup. Ct. 1914) a question might well arise as to whether it would have to go back to the Senate to receive three readings for passage notwithstanding the language of the two bills was identical. If a governor chose to veto such a bill or committee substitute, he would have to return it to the "house of origin," and that might not always be determined with certainty. Furthermore, "substituting" S-711 for A-605 confers no special status on either S-711 or A-605. The effect is that A-605 is no longer viable and its then position in the General Assembly legislative process becomes immaterial and irrelevant. S-711 likewise receives no enhanced status. It is merely the bill that the General Assembly elects to consider in place of A-605. S-711 must then be considered in whatever posture it existed. The same would apply if a committee substitute were voted out of committee. See, In re Ross, supra. There is no metamorphosis of S-711 by the resolution to substitute it for A-605. Such action in no way advances or changes the status of S-711 except that the sponsors of A-605 may be listed as co-sponsors of S-711.

Neither is U. S. Gypsum Co. v. Michigan Dept. of Revenue, 110 N.W. 2d 698 (Mich. 1961) persuasive in support of a validation of this legislation. In that case the Michigan Supreme Court, two justices dissenting, upheld the constitutionality of a bill on a challenge that it had not been read three times prior to passage in compliance with a provision in Michigan's Constitution of 1908. However, relying on Michigan precedents, the court narrowed the issue to the sole question of whether the "new" version which had passed in the house without any reading was so completely different from the original version as to constitute a "new bill" rather than an amended version. Id. at 701. The court then found that the substituted version was "germane" to the original bill in that its major purposes were all within the original objectives of the bill as first introduced. Id. at 702-703. It is clear that U. S. Gypsum Co. was grounded on the court's finding that the original bill was read at least twice in compliance with that state's constitution before the substituted version was passed. In the instant case passage of the Senate bill did not comport with our constitutional requirement that one full day intervene between the second and third readings.

There are potential time problems and scheduling difficulties because of the Congressional elections which have arisen because of delay in legislative action. Both S-711 and A-605 relate to the redistricting process and set up 14 legislative districts to be voted upon in the November 1982 elections. Nonetheless, the Constitution must be upheld not only by the governor

and the judges, but all constitutional officers, including each member of the Legislature, all of whom take a pledge to do so in their oath of office. The Legislature and the governor can in a constitutionally proper manner either enact the same or similar or different legislation to accomplish the required purpose of establishing proper legislative districts and can also provide for the mechanism for a timely election.[5]

I would declare Chapter 1 of the Laws of 1982 invalid under N.J.S.A. 1:7-1, et seq. As a result, I would enjoin the Secretary of State from conducting primary or general elections for the office of Member of Congress based on the Congressional districts purported to be enacted by P.L. 1982, c. 1.

5 Many states have their primary elections in September and there has been debate in the past, and will be in the future, about the wisdom of shortening the time between the primary and the general elections.

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.

Application of EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH	:	Civil Action
	:	VERIFIED APPLICATION PURSUANT TO N.J.S.A. 1:7-4 FOR JUDGMENT OF INVALIDITY OF P.L. 1982, C.1

Pursuant to N.J.S.A. 1:7-4, applicants present the following application to this Court:

I. THE APPLICANTS

1. Applicant Edwin B. Forsythe is a citizen and resident of the State of New Jersey, and a qualified registered voter in the Sixth Congressional District, which said applicant has represented as a Member of Congress since 1970.

2. Applicant Matthew J. Rinaldo is a citizen and resident of the State of New Jersey and a qualified registered voter in the Twelfth Congressional District, which said applicant has represented as a Member of Congress since 1973.

3. Applicant Millicent Fenwick is a citizen and resident of the State of New Jersey, and a qualified registered voter in the Fifth Congressional District, which said applicant has represented as a Member of Congress since 1975.

4. Applicant Harold C. Hollenbeck is a citizen and resident of the State of New Jersey, and a qualified registered voter in the Ninth Congressional District, which said applicant has represented as a Member of Congress since 1977.

5. Applicant James A. Courter is a citizen and resident of the State of New Jersey, and a qualified registered voter in the Thirteenth Congressional District, which said applicant has represented as a Member of Congress since 1979.

6. Applicant Margaret S. Roukema is a citizen and resident of the State of New Jersey, and a qualified registered voter in the Seventh Congressional District, which said applicant has represented as a Member of Congress since 1981.

7. Applicant Christopher H. Smith is a citizen and resident of the State of New Jersey, and a qualified registered voter in the Fourth Congressional District, which said applicant has represented as a Member of Congress since 1981.

II. JURISDICTION

8. This Court has jurisdiction over this action for a judgment that P.L. 1982, c.1 is void on the ground that it was not duly passed by the New Jersey General Assembly and made effective as law in the manner required by Article IV, Section IV, ¶6 of the Constitution, pursuant to N.J.S.A. 1:7-4.

III. CAUSE OF ACTION

9. Pursuant to the requirements of 2 U.S.C. § 2a(b), the Clerk of the United States House of Representatives has notified the Governor of the State of New Jersey that on the basis of the 1980 decennial census, the number of representatives to which New Jersey is entitled has been decreased from 15 to 14.

10. Pursuant to the requirements of 2 U.S.C. § 2c, the New Jersey Legislature was and is under an obligation to divide the State into new congressional districts on the basis of the 1980 decennial census, in accordance with the procedures established by the Constitution and laws of the State of New Jersey.

11. Article IV, Section IV, ¶6 of the Constitution of the State of New Jersey provides in pertinent part as follows:

> All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. . . .

12. A congressional redistricting bill known as S-711 was introduced in the New Jersey Senate on January 12, 1982. The bill was given a second reading in the Senate on the same date, and on January 18, 1982 was given a third reading in the Senate, passed by the Senate and delivered to the General Assembly.

13. A congressional redistricting bill known as A-605 was introduced in the New Jersey General Assembly on January 12, 1982 and given a first reading in the General Assembly on that date. On the evening of January 12, 1982, A-605 received a second reading in the General Assembly. On January 18, 1982, S-711 was received in the General Assembly from the Senate with a request that the General Assembly concur therein. S-711 was given a first reading in the General Assembly upon its receipt

from the Senate on January 18, 1982. By motion in the General Assembly, S-711 was advanced to second reading in the General Assembly by special order on the same date by a vote of 41 in favor and 34 against. Still on January 18, 1982, S-711 was then substituted for A-605 in the General Assembly by motion without roll-call vote.

14. The proponents of S-711 knew that they had been able to garner only 41 votes in favor of the motion to advance S-711 to second reading in the General Assembly by special order. It was therefore clear that the 60 affirmative votes which would have been necessary to resolve that S-711 was an emergency measure in compliance with the sole exception to the constitutional requirement that S-711 not proceed to third reading and passage before January 20, 1982, were obviously unavailable.

15. The General Assembly was thus presented with a direct conflict between political expediency and compliance with the mandate of the Constitution. The inauguration of the incoming Governor was to take place the next day, January 19, 1982. If the General Assembly complied with the Constitution, it could not pass S-711 before January 20, 1982, and would be required to submit it to the new Governor for signature or veto. The only way in which S-711 could be signed by the outgoing Governor was

for the General Assembly simply to disregard the mandate of the Constitution and move S-711 to third reading and passage the same day as its receipt from the Senate and first and second readings.

16. Accordingly, S-711 was given a third reading in the General Assembly and passed by the General Assembly on January 18, 1982 by a vote of 42 in favor and 34 against, without the intervention of one full calendar day following the second reading and without any attempt to pass a resolution by roll-call vote of three-fourths of all of the members that the bill was an emergency measure, in flagrant violation of Article IV, Section IV, ¶6 of the Constitution.

17. On January 19, 1982, one day before S-711 could constitutionally have received a third reading in the General Assembly and been passed, then-Governor Brendan T. Byrne purported to sign S-711 into law as P.L. 1982, c.1 only hours before leaving office. S-711 was subsequently delivered to and filed with the Secretary of State in accordance with N.J.S.A. 1:2-5. Since S-711 was enacted in violation of the Constitution, however, it is void.

18. The Secretary of State of New Jersey is the constitutional officer responsible for the administration and

enforcement of the election laws of the State of New Jersey. In this capacity she supervises and oversees the primary and general elections for membership in the United States House of Representatives from New Jersey, tabulates, computes and canvasses the votes cast for all candidates in such elections, and relays such returns to the Governor.

19. The Secretary of State has taken action which indicates that she intends to conduct congressional primary elections on June 8, 1982 and congressional general elections on November 2, 1982 based on the districts established by P.L. 1982, c.1.

20. Since P.L. 1982, c.1 was enacted in violation of the procedures mandated by the Constitution of the State of New Jersey, this Court must adjudge it to be void pursuant to N.J.S.A 1:7-1, et seq., and cause the Clerk so to certify in accordance with N.J.S.A. 1:7-6. Applicants further pray that this Court preliminarily and permanently enjoin the Secretary of State from enforcing P.L. 1982, c.1 in any way, and specifically from conducting primary or general congressional elections based on the congressional districts created thereunder, and direct the Governor to issue the proclamation required by N.J.S.A. 1:7-6.

WHEREFORE, applicants pray that judgment be entered as follows:

1. Adjudging P.L. 1982, c.1 to be void and of no force and effect on the ground that it was enacted in violation of the Constitution of the State of New Jersey;

2. Preliminarily and permanently enjoining the Secretary of State from enforcing P.L. 1982, c.1 in any way, and specifically from conducting primary or general elections for the office of Member of Congress based on the congressional districts created by P.L. 1982, c.1;

3. Directing the Clerk of this Court to certify this Court's judgment and to deliver a copy thereof to the Governor, pursuant to N.J.S.A. 1:7-6;

4. Directing the Governor to issue the proclamation required by N.J.S.A. 1:7-6 upon receipt of the certified Judgment of this Court;

5. And for such other and further relief as to this Court may seem just.

HELLRING, LINDEMAN, GOLDSTEIN & SIEGAL
Attorneys for Applicants

By: Jonathan L. Goldstein
JONATHAN L. GOLDSTEIN
A Member of the Firm

Dated: April 26, 1982

Of Counsel:

Bernard Hellring
Jonathan L. Goldstein
Robert S. Raymar
Stephen L. Dreyfuss

VERIFICATION

STATE OF NEW JERSEY)
)SS.
COUNTY OF ESSEX)

MATTHEW J. RINALDO, being duly sworn, deposes and says:

1. I am a Member of Congress for the Twelfth Congressional District in New Jersey, and am one of the applicants in this matter.

2. I have read the Verified Application, and the allegations contained therein are true based on my personal knowledge thereof.

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 wilfully false, I am subject to punishment.

Matthew J. Rinaldo
MATTHEW J. RINALDO

Sworn to and subscribed before
me this 26th day of April, 1982:

Jonathan L. Goldstein
JONATHAN L. GOLDSTEIN
An Attorney-At-Law of New Jersey

HELLRING, LINDEMAN, GOLDSTEIN & SIEGAL
Attorneys for Applicants
1180 Raymond Boulevard
Newark, New Jersey 07102
(201) 621-9020

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.

Application of EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH	:	Civil Action
	:	CERTIFICATION IN SUPPORT OF N.J.S.A. 1:7-4 FOR JUDGMENT OF INVALIDITY OF P.L. 1982, C.1

JOSEPH E. GONZALEZ, JR. hereby certifies as follows:

1. I am Executive Director for the Assembly Minority in the New Jersey General Assembly. I have held this position since 1974. As Executive Director, I am the principal permanent staff member for the 37-member Republican delegation in the

General Assembly. I am responsible for directing all staff activity for the Assembly minority.

2. Both my personal recollection and the records of the General Assembly, which I have examined, reflect that the following sequence of events led to the passage of Senate Bill No. 711 ("S-711") by the New Jersey General Assembly on January 18, 1982. S-711 was received in the General Assembly from the Senate on January 18, 1982. The message from the Senate, which is attached to this Certification as Exhibit A, stated that the Senate had passed S-711 and that the Senate requested the concurrence of the General Assembly therein.

3. Upon receipt of S-711 in the General Assembly from the Senate, S-711 was read for the first time in the General Assembly on January 18, 1982. The entry in the journal of the General Assembly recording the first reading of S-711 in the General Assembly is attached to this Certification as Exhibit B.

4. After the first reading of S-711 in the General Assembly, Assemblyman Doyle moved on the same date that S-711 be advanced to second reading by special order. This resolution

was adopted by a roll-call vote of 41 in favor and 34 against, and S-711 was read a second time in the General Assembly on January 18, 1982. The entries in the journal of the General Assembly recording the resolution by Assemblyman Doyle, its adoption and the exact roll-call vote are attached to this Certification as Exhibit C.

5. On the same date, after it was received from the Senate and read for the first two times, S-711 was then substituted for Assembly Bill No. 605 ("A-605") which was then pending in the General Assembly. Assemblyman Baer moved that S-711 be so substituted for A-605, and the motion was adopted by the General Assembly on January 18, 1982. The entry in the journal of the General Assembly recording the motion by Assemblyman Baer and its adoption by the General Assembly is attached to this Certification as Exhibit D.

6. Thereafter on the same date, January 18, 1982, without the intervention of one full calendar day between the second and third readings of S-711 in the General Assembly, S-711 was advanced to third reading and passed by the General Assembly by a roll-call vote of 42 in favor and 34 against. The entry in the journal of the General Assembly recording the exact roll-call vote is attached to this Certification as Exhibit E.

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 wilfully false, I am subject to punishment.

Dated: April 23, 1982

/s/ Joseph E. Gonzalez, Jr.

JOSEPH E. GONZALEZ, JR.

A 38a

State of New Jersey

SENATE CHAMBER (21)

January 18, 1982

Mr. Speaker: I am directed by the Senate to inform the General Assembly that the Senate has passed the following bills:

Senate Bill No. 711 w/o reg JAN 18 1982 2nd rd

In which the concurrence of the General Assembly is requested.

Exhibit A

Secretary of the Senate

The Clerk read a message from the Senate that the Senate has passed the following bill in which the concurrence of the General Assembly is requested, which bills were read for the first time and referred to the Committee indicated:

S-711 w/o ref. 2nd rdng.

The Clerk read a message from the Senate that the Senate has passed the following bill in which the concurrence of the General Assembly is requested, which bill was read for the first time:

S-711 w/o ref. 2nd rdng.

(21)

RESOLUTION

By Doyle

BE IT RESOLVED, That S 711

be advanced to second reading by special order.

which was read by the Clerk and adopted.

BY THE FOLLOWING ROLL CALL VOTE

Exhibit C

NEW JERSEY ASSEMBLY

REGULAR SESSION

20

ROLL CALL

10 21

1982 LEGISLATURE

	YEAS	N-V	NAYS
1	Adubato		
	Albohn		1
2	Baer		
	Barry		2
	Bennett		3
3	Bocchini		
	Brown L.		4
4	Brown W.		
5	Bryant		
6	Charles		
	Chinnici		
7	Costa		
8	Cowan		
9	Doverin		
10	Doria		
11	Doyle		
	Edwards		
12	Flynn		
13	Fortunato		
	Franks		5

	YEAS	N-V	NAYS
	Gallo, D.		6
14	Gallo, T.		
15	Garvin		
	Gill		7
	Girgenti		
16	Gorman		
	Gormley		8
	Haines		9
	Hardwick		10
	Haytaian		11
	Hendrickson		12
17	Herman		
18	Hollenbeck		
19	Jackman		
20	Janiszewski		
21	Kalik		
22	Karcher		
	Kavanaugh		13
	Kelly		14
	Kern		15

	YEAS	N-V	NAYS
	Kosco		16
	LaCorte		17
23	Lesniak		
	Littell		
	Markert		18
24	Marsella		
25	Matthews		
26	Mazur		
27	McEnroe		
	Meyer		19
	Miller		20
	Muhler		21
	Muziani		22
28	Naples		
	Ogden		23
29	Orlowski		
	Palaia		24
30	Pankok		
31	Paterniti		
32	Patero		

	YEAS	N-V	NAYS
	Pellecchia		
33	Pelly		
34	Perun		
35	Riley		
	Rocco		25
	Rod		26
	Schuber		27
36	Schwartz		
	Shusted		28
	Smith		29
37	Thompson		
38	Van Wagner		
	Villane		30
39	Visotcky		
40	Watson		
	Weidel		31
	Wolf		32
	Wright		33
41	Zangari		
	Zimmer		34

AUTHOR .....

SUBJECT S711 2nd Rdg C/C

CALL OF THE HOUSE

YEA 41

NAY 34

YEAS 100-200		N-V 100-200		NAYS 100-200	
0	0	0	0	0	0
1	1 ✓	1	1	1	1
2	2	2	2	2	2
3	3	3	3	✓3	3
✓4	4	4	4	4	4 ✓
5	5	5	5	5	5
6	6	0	0	6	6
7	7	7	7	7	7
8	0	8	8	8	8
9	9	9	0	9	0

HOUSE		BILL	
SENATE ✓		RESO.	
1000	100	10	1 ✓
2000	200	20	2
3000	300	30	3
4000	400	40	4
	500	50	5
Em. Res.	600	60	6
3rd R	✓700	70	7
Quo.	800	80	8
✓Mot.	900	90	9
	✓000	00	0

DATE:	
JAN.	1
FEB.	2
MAR.	3
APR.	4
MAY	5
JUN.	6
JUL.	7
AUG.	8 ✓
SEPT.	9
OCT.	0
NOV.	
DEC.	

A 41a

- 4 -

MOTION

(97) By Assemblyman Baer

RESOLVED, That pursuant to Rule 15:20 Senate Bill No. 711 be substituted for Assembly Bill No. 605 with which it is identical, and that Assemblyman Baer be joined as co-sponsor/s of Senate Bill No. 711.

~~which was read by the Clerk and adopted.~~

Which motion was adopted.

Exhibit D

NEW JERSEY ASSEMBLY

REGULAR SESSION

20

ROLL CALL

1982 LEGISLATURE

YEAS	N-V	NAYS
Adubato		
Albohn		1
Baer		
Barry		3
Bennett		3
Bocchini		
Brown L.		7
Brown W.		
Bryant (X)		
Charles (X)		
Chinnici		
Costa		
Cowan		
Devorin		
Doria (X)		
Doyle		
Edwards		
Flynn X		
Fortunato		
Franks		5

YEAS	N-V	NAYS
Gallo, D.		6
Gallo, T.		
Garvin		
Gill		2
Girgenti (X)		
Gorman		
Gormley		8
Haines		9
Hardwick		10
Haytaian		11
Hendrickson		12
Herman		
Hollenbeck		
Jackman		
Janiszewski		
Kalik		
Karcher		1
Kavanaugh		13
Kelly		14
Kern		15

YEAS	N-V	NAYS
Kosco		16
LaCorte		17
Lesniak		
Littell		
Markert		18
Marsella		
Matthews		
Mazur		
McEnroe		
Meyer		19
Miller		20
Muhler		21
Muziani		22
Naples		
Ogden		23
Otlowski		
Palaia		24
Pankok		
Paterniti		
Patero		

YEAS	N-V	NAYS
Pellecchia (X)		
Pelly		
Perun		
Riley		
Rocco		25
Rod		26
Schuber		27
Schwartz		
Shusted		28
Smith		29
Thompson		
Van Wagner (X)		
Villane		30
Visotcky		
Watson		
Weidol		31
Wolf		32
Wright		33
Zangari		
Zimmer		34

AUTHOR BAER

SUBJECT S 711

Exhibit E

CALL OF THE HOUSE

YEA 42

NAY 34

YEAS 100-200		N-V 100-200		NAYS 100-200	
0	0	0	0	0	0
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8

HOUSE		BILL	
SENATE		RESO.	
1000	100	10	1
2000	200	20	2
3000	300	30	3
4000	400	40	4
	500	50	5
Em. Res.	600	60	6
3rd R	700	70	7
Quo.	800	80	8
Mot.	900	90	9

DATE:	
JAN.	1
FEB.	2
MAR.	3
APR.	1
MAY	2
JUN.	3
JUL	4
AUG.	5
SEPT.	6
OCT.	7
NOV.	8

A 43a
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A-202-81 A 202 SEP 1981

Supreme Court of New Jersey

DOCKET NO. 19,872

APPLICATION OF

EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH, Dkt.

Appellants.

CIVIL ACTION—On Appeal from Judgment of the Superior Court of New Jersey, Appellate Division. Sat Below: Matthews, Pressler and Petrella, JJ.A.D.—Petrella, J.A.D. (Dissenting)

REPLY BRIEF FOR APPLICANTS-APPELLANTS EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA AND CHRISTOPHER H. SMITH

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Adams Press Corp., 5 Commerce Street, Newark, N. J. 07102—(201) 623-8611

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PRELIMINARY STATEMENT

This brief is submitted by applicants-appellants Edwin B. Forsythe, et al. in reply to the briefs filed by respondent State of New Jersey and intervenors New Jersey General Assembly and New Jersey Senate. Both briefs were served on counsel for applicants-appellants on the afternoon of Friday, May 7, 1982.

ARGUMENT

I. S-711 AND A-605 WERE SEPARATE BILLS WITHIN THE MEANING OF ARTICLE IV, SECTION IV, ¶ 6 OF THE CONSTITUTION, AND WERE SO TREATED BY THE GENERAL ASSEMBLY

Both the State and the intervenors have submitted lengthy justifications of the actions of the General Assembly in rushing S-711 to the outgoing Governor in time for him to purport to sign it into law as P.L. 1982, c.1. The sum of their contention is "that six days elapsed between the time A-605 was given second reading and the time it was given third reading as a bill labelled S-711 but otherwise the same bill." (Rb10) The fatal flaw in this post hoc rationale, however, is not even mentioned in either brief: the General Assembly simply did not do what the State claims was done.

The State relies heavily on the majority opinion below for the proposition that A-605 and S-711 are "the same bill." The majority below defined a bill as "the effort of both houses of the Legislature to adopt a law." (Aa9; emphasis added) This assertion is simply inaccurate. In a bicameral legislature a bill is a proposal of either house that a law be enacted. If and only if that bill is passed by both houses in accordance with the procedures mandated by the Constitution does it become "the effort of both houses of the Legislature to adopt a law."

The Assembly's treatment of A-605 and S-711 demonstrates the error of the State's contentions here. The Assembly did not treat S-711 as "the same bill" as A-605. It did not treat the first reading of S-711 in the Assembly on January 18, 1982 as A-605's "third reading as a bill labelled S-711 but otherwise the same bill." On the contrary, the Assembly at all times treated S-711 as the separate and independent proposed law it was.

It is undisputed that A-605 never received a third reading in the Assembly, and was never passed by either the Assembly or the Senate. The suggestion by the State and by the majority below that S-711's first reading in the Assembly somehow constituted A-605's third reading is thus conclusively contradicted by the facts. S-711 was given its first reading in the Assembly upon its receipt from the Senate on January 18, 1982. (39a) Under the State's theory, this reading constituted A-605's third reading and would therefore have rendered A-605 (though not S-711) ready for passage by the Assembly. There are several problems with this claim:

(1) The Assembly obviously did not understand itself to be doing what it and the State now contend it did, since it proceeded to adopt a special order to give S-711 its second reading in the Assembly on the same date as its first reading, (40a and subsequently gave S-711 a third reading. (43a)

(2) A-605 was never passed by the Assembly, and even if it had been passed it would still have had to be sent to the Senate for passage there before being presented to the Governor for enactment.

(2) It is undisputed that only S-711 was passed by both houses of the Legislature, and therefore that S-711 is the only bill which the Governor purported to enact into law as P.L. 1982, c.1.

Nowhere in either of their briefs do the State or the intervenors even mention, much less explain, the fact that the Assembly expressly gave S-711 three separate readings before passing it. Nowhere in the official records of the Assembly has either the State or the intervenors found the flimsiest support for their claim that the first reading of S-711 was actually the third reading of A-605. Nowhere has either the State or the intervenors explained why, if their argument is true, it was S-711 and not A-605 that was purportedly enacted into law.

Both the State and the majority below rely upon the "substitution" of S-711 for A-605, under Assembly Rule 15:20, as justification for the violation of Article IV, § IV, ¶ 6 of the Constitution. No principle of law is better established, however, than that a mere rule or even a statute cannot vitiate the requirements of the Constitution. In their principal brief, applicants-appellants pointed out that the majority below significantly mischaracterized applicants-appellants' position in

declaring that "[t]he gist of petitioners' argument is that the substitution of S-711 for A-605 was constitutionally impermissible." (Ab19-20; 6a) The State now joins in that error in its mischaracterization of Judge Petrella's dissent as relying "on the rationale that the identification of a bill by a separate number and sponsor, despite the unity of the substantive portions, confers on it an independent status that requires that the bill proceed through each house separately, without any substitution." (Rb5-6; emphasis added)

Neither applicants-appellants nor Judge Petrella ever suggested that the Constitution prohibits substitution pursuant to Rule 15:20. As applicants-appellants noted in their principal brief, "the substitution is constitutionally immaterial." (Ab20) What they do maintain, however, is that if the Assembly does not follow the procedure mandated by the Constitution in considering and passing a bill, the fact that it does follow the procedure provided in its own rules does not insulate the resulting statute from constitutional invalidity. In short, the Assembly was free to substitute the Senate bill for the Assembly bill but was nevertheless bound to comply with Article IV, § IV, ¶ 6 in the timing of S-711's second and third readings in the Assembly before final passage there. Because it failed to do so, the resulting P.L. 1982, c.1 is void.

Finally, it should be noted that the Constitution and the rules of the Legislature recognize repeatedly that a "bill" is a proposed law introduced in one of the two houses of the Legislature. For example, Article IV, § VI, ¶ 1 provides that "[a]ll bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills." If the Constitution contemplated that "identical" Assembly and Senate bills were "the same bill," there would be no way to give effect to any rule which depends upon the house in which a bill originates.

Indeed, even the very rule on which the State and the intervenors rely here recognizes that S-711 and A-605 are different bills. Assembly Rule 15:20 applies only where "a bill originating in the Senate" is passed and delivered to the Assembly for its concurrence, "and a bill identical therewith, originating in this House, is then pending in this House." Senate Rule 124 provides a parallel procedure for bills originating in the Assembly which are passed and sent to the Senate for its concurrence. Both rules not only recognize the independent status of "identical" Senate and Assembly bills, but owe their very existence to the constitutional necessity that a single bill be passed by both houses of the Legislature before it can be presented to the Governor for signature and enactment. Article V, § I, ¶ 14(a). If S-711 and A-605 were

"the same bill" within the meaning of the Constitution, substitution would be unnecessary and superfluous.

In summary, the Constitution affords an independent existence to each bill which originates by introduction in either house of the Legislature. In the present case, the Assembly recognized the independent identities of S-711 and A-605 in affording S-711 three separate and independent readings in the Assembly. There is absolutely no suggestion in the official records of the Assembly that there was any intention or attempt to treat S-711's first reading as A-605's third, as the theory constructed after the fact to sustain P.L. 1982, c.1 contends. Even Rule 15:20 specifically requires two independent readings of the Senate bill in the Assembly before substitution is permitted. Moreover, even if the Assembly had attempted to do what the State and the intervenors now claim, it would have been necessary for the Assembly to pass A-605 and send it to the Senate for passage before the bill could be presented to the Governor. In that event, A-605 rather than S-711 would have been enacted. It is undisputed, however, that the Assembly passed only S-711, and that it did so without an emergency resolution and without allowing one full calendar day to intervene between the second and third Assembly readings of S-711. Under the facts of this case, the Constitution mandated that one of those two courses be followed before S-711

could be read for the second and third times on the same day. Since the Assembly complied with neither of these exclusive constitutional alternatives, the resulting P.L. 1982, c.1 is void.

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II. THE CONSTITUTION ESTABLISHES THE MANDATORY LEGISLATIVE PROCEDURE TO BE FOLLOWED BY THE GENERAL ASSEMBLY, AND P.L. 1982, c.1 MUST BE ADJUDGED INVALID BECAUSE IT WAS PASSED IN VIOLATION OF THAT MANDATORY PROCEDURE

The State and the majority below assert that the Legislature is free to follow or decline to follow the legislative procedure set forth in Article IV, § IV, ¶ 6 upon making the judgment that "the content of a bill remains unchanged before a house of the Legislature for one calendar day" between second and third readings. (Rb9; Aa8) Neither the State, the intervenors nor the majority below has provided the slightest authority for this novel theory of legislative nullification of the organic law of our state.

Forced to concede that Gilbert v. Gladden, 87 N.J. 275 (1981), permits the Legislature procedural discretion only "[w]here the Constitution is silent regarding the particulars of the Legislature [sic] process," (Rb14) the State has attempted unsuccessfully to force the present case into Gilbert's framework:

> Although Art. IV, §4, ¶6 requires that a bill be read three times in each house before passage and that one calendar day intervene between second and third reading, the State Constitution does not define what a "reading" of a bill involves. To fill that void, and in pursuit of its constitutional authority to adopt rules

> governing its own proceedings, the Assembly adopted Rule 15:20, which permits a bill of one house to step into the shoes of an identical bill passed by the other house. Where the bill being substituted has been before the Assembly on second reading for more than one calendar day, the rule permits the substituted bill to proceed immediately to third reading and a final vote.

(Rb14; see Ab23-25)

As a primary matter, Rule 15:20 has nothing to do with the definition of the meaning of "reading." That issue is addressed by Rule 15:1(f), which provides that "[t]he reading by the Clerk of the number, title and committee reference if any, of each bill . . . shall be taken as the introduction and first reading of the bill . . . ." Moreover, it has long been the law that the "three-reading" provision does not require three readings at length, and that reading by title is sufficient. See, e.g., Anderson v. City Council of City of Camden, 58 N.J.L. 515 (Sup. Ct. 1896).

Having set up the straw man of a purported "void" in the Constitution regarding the definition of "reading" --- a question which has no bearing on this case --- the State attempts to fit this case into the Gilbert mold by arguing that Rule 15:20 "fill[s] that void" by permitting "a bill of one house to step into the shoes of an identical bill passed by the other house." (Rb14) The attempt fails.

First, in this case unlike Gilbert the Constitution is not silent on the question of the procedure to be followed by the Legislature. As applicants-appellants have pointed out in their principal brief, the framers of our Constitution specifically dictated in the constitutional provision itself the procedure which the Legislature must follow to effectuate the goals of Article IV, § IV, ¶ 6. See Ab24-25. There can be no dispute that the Assembly failed to follow either of the two exclusive procedural alternatives here.

Second, Rule 15:20 does not permit "a bill of one house to step into the shoes of an identical bill passed by the other house." (Rb14) It provides only that when a passed Senate bill has been received by the Assembly and has been given two readings in its own right in the Assembly, it may be substituted for an Assembly "bill identical therewith" which has received two readings in the Assembly in its own right. After such a substitution, the substituted Senate bill may be read a third time and passed, and in general may "take the usual course of passed bills." The rule thus recognizes the independent identity of the Senate bill in the Assembly by requiring two independent readings of the Senate bill before substitution, and does not purport to shorten or in any way abrogate the time requirements mandated by the Constitution.

In any event, even if the rule could be interpreted to have the nullifying effect on Article IV, § IV, ¶ 6 that the State appears to seek, the Legislature lacks any power to affect the Constitution:

> It is certainly axiomatic, and I take it that it is a principle with which the majority does not disagree, that a rule of the General Assembly can neither eradicate a mandate of the Constitution nor contravene or subvert the Constitution. However, this is exactly the effect of the majority's interpretation construing the Constitution here.

Dissenting opinion of Petrella, J.A.D. (Aa17)

Third, the State's generalized arguments concerning judicial restraint in the invalidation of legislation are largely based on cases involving attacks on the substantive constitutionality of statutes, rather than the more severe standard of review mandated in actions challenging the constitutional validity of "the mechanics of the enactment of the law" under N.J.S.A. 1:7-4. See, e.g., In re Application of McCabe, 81 N.J. 462, 467 (1980) (Ab13) Thus the State's reliance on New Jersey Association on Correction v. Lan, 80 N.J. 199 (1979)(Rb7, 12, 13) is entirely misplaced. That case concerned the issue whether the substance of a particular statute complied with the "single object rule" of Article IV, § VII, ¶ 4, and had nothing to do with the constitutional validity of

the mechanics of its enactment. The isolated quotation extracted by the State here - - - that an "act must be in 'palpable contravention of the constitutional command' to warrant judicial intrusion" (Rb7) - - - comes not from New Jersey Association on Correction but from an excerpt of a 1941 decision of the Court of Errors and Appeals which was quoted by Chief Justice Hughes in his opinion in the later case, and has no bearing on the issues raised here. See Jersey City v. Martin, 126 N.J.L. 353, 363 (E. & A. 1941).

Moreover, this Court must firmly and publicly reject the State's subtle suggestion that it should declare P.L. 1982, c.1 validly enacted because the same procedure has allegedly been used in passing other legislation. First, there is nothing in the record other than the State's unsupported assertion during oral argument at the Appellate Division to support this contention. Second, it is an affront to this Court to suggest that it should or would grant its imprimatur to unconstitutional legislative conduct simply because "things have always been done that way." Finally, the implication of the State's inclusion of P.L. 1981, c. 473 (the judicial salary increase) in its list of legislation which might be invalidated if P.L. 1982, c.1 is voided here is repugnant to the traditions of this Court. If other public laws are challenged in the future, this Court will decide the issues raised

by those cases as they arise. If those laws were validly enacted, this Court will say so; if they were not, this Court will say so. It is inappropriate in the extreme to suggest that this Court should consider, in deciding this case, factors wholly beyond the scope of the matter before it.

In summary, the Constitution specifically provides the exclusive legislative procedure to be followed by the Assembly in its consideration of bills. The record is clear and undisputed that neither of those alternatives was followed here, and this Court therefore has no alternative but to declare P.L. 1982, c.1 invalid under N.J.S.A. 1:7-4, et seq.

CONCLUSION

For the foregoing reasons, applicants-appellants respectfully pray that the Court reverse the order appealed from, adjudge P.L. 1982, c.1 to be void, direct that the Clerk and the Governor take the action required of each of them by N.J.S.A. 1:7-6, and preliminarily and permanently enjoin the Secretary of State from conducting congressional primary or general elections based on the congressional districts created under P.L. 1982, c.1.

Respectfully submitted,

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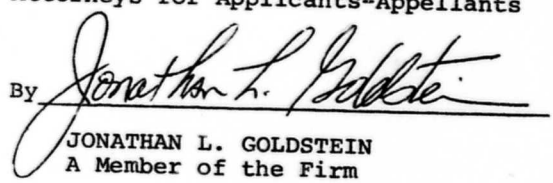
Attorneys for Applicants-Appellants

By 

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Dated: May 10, 1982

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3650-81-T1

Application of EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH

Argued: April 27, 1982 - Decided: APR 30 1982

Before Judges Matthews, Pressler and Petrella.

Jonathan L. Goldstein argued the cause for the petitioners (Hellring, Lindeman, Goldstein & Siegel, attorneys; Bernard Hellring, Robert A. Raymar, Stephen L. Dreyfuss and Mr. Goldstein, of counsel and on the brief).

William Harla, Deputy Attorney General, argued the cause for the State of New Jersey (Irwin I. Kimmelman, Attorney General of New Jersey, attorney).

PER CURIAM

These proceedings were instituted by seven citizens of the State who are all presently members of the House of Representatives, questioning the constitutionality of the enactment procedure employed by the Legislature in the passage of Chapter 1 of the Laws of 1982. The petition is filed under the provisions of N.J.S.A. 1:7-4 which gives

this court jurisdiction in the premises in the first instance. The petition broadly alleges that the law in question is void on the ground that it was not passed by both houses of the Legislature in the manner required by Art. IV, §4, ¶6 of the State Constitution:

> All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading....

The uncontroverted facts, drawn largely from the petition, disclose that as the result of the 1980 decennial census, it became necessary for the New Jersey Legislature to divide the State into new congressional districts on the basis of that census and in accordance with the procedures established by the Constitution and laws of this State. That obligation became incumbent upon the Legislature after notification was given to the Governor that the number of representatives to which this State is entitled has been decreased from 15 to 14. See 2 U.S.C.A. §2A(b).

Thereafter, on January 12, 1982 a congressional redistricting bill, denominated S-711, was introduced in the New Jersey Senate. That bill was advanced to second reading in the Senate on the same date, and on January 18, 1982 was given third reading and thereupon passed by the Senate. The bill as passed was, on January 18, 1982, delivered to the General Assembly.

A congressional redistricting bill, numbered A-605, was introduced in the General Assembly on January 12, 1982 and given first reading there on that date. The bill was given second reading on the evening of January 12, 1982. A-605 was identical in its provisions to those contained in S-711.[1]

On January 18, 1982 S-711 was received in the General Assembly from the Senate with a request that the Assembly concur therein. S-711 was given a first reading in the Assembly upon its receipt on January 18, 1982 and, on the same date, by motion, was advanced to second read-

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[1] In using the word "identical" we refer to the substantive provisions of the bills commencing with the title and enactment clauses. See Rule 15:20 of The Rules of the General Assembly, quoted infra.

ing by special order on a vote of 41 in favor and 34 against. Thereafter, still on January 18, 1982, S-711 was substituted for A-605 in the General Assembly by motion without roll call vote.

S-711 was thereupon immediately given a third reading in the Assembly and passed on January 18, 1982 by a vote of 42 in favor and 34 against.

The bill was thereupon delivered to the Governor who signed it into law.

The substitution of S-711 for A-605 in the General Assembly on January 18, 1982 was made under the provisions of Rule 15:20 of The Rules of the General Assembly:

> When a bill originating in the Senate shall have been delivered to this House, with a message that the Senate has passed the same and requesting the concurrence of this House therein, and a bill identical therewith, originating in this House, is then pending in this House, the Senate Bill may be substituted for such Assembly Bill, on motion of a sponsor of such Assembly Bill, upon or after the second reading of the Assembly Bill and the Senate Bill may then be advanced to, and have, third reading and be passed in substitution for the Assembly Bill and take the usual course of passed bills and the sponsors of the Assembly Bill may, upon the motion of one of them, be added as co-sponsors of the Senate Bill, with the Senator or Senators who were sponsors of the Senate Bill in the Senate and the names of

> such co-sponsors shall be endorsed upon the jacket containing the Senate Bill. The provisions of this Rule are expressly subject to the provisions of Rule 15:12. No Senate bill may be substituted for an Assembly bill unless the Senate bill shall have received second reading in the General Assembly.

It is the petitioners' contention that since the proponents of S-711 knew that they had been able to muster only 41 votes in favor of the motion to advance S-711 to second reading in the Assembly by special order, they also knew there was no way in which 60 affirmative votes, which would have been necessary to hold that S-711 was an emergency measure under the aforementioned constitutional provision, could be obtained. Petitioners contend that the Assembly majority was thus presented with a direct conflict between political expediency and compliance with the mandate of the Constitution. The inauguration of the incoming Governor was to take place on January 19, 1982, and if the Assembly was to comply with the Constitution it could not pass S-711 before January 20, 1982, and therefore would be required to submit it to the new Governor who probably would veto it. Petitioners allege that the only way that the outgoing Governor could receive S-711 to be signed into law was for the Assembly simply to disregard the constitutional mandate and move S-711 to third reading and passage

the same day as its receipt from the Senate.

The gist of petitioners' argument is that the substitution of S-711 for A-605 was constitutionally impermissible. They argue that S-711 could not have been acted on by the Assembly in any way without the intervention of one calendar day.

In exercising our jurisdiction under the statute establishing the procedure here involved, N.J.S.A. 1:7-1 et seq., we emphasize at the outset that our jurisdiction extends only to resolving the question of whether Chapter 1 of the Laws of 1982 was adopted by a procedure in conformity with the constitutional requirement set out in Art. IV, §4, ¶6 of our Constitution. We do not claim to assert, nor could we assert, jurisdiction over the internal procedures of the General Assembly, or the rules of that body which are adopted in accordance with the provisions of Art. IV, §4, ¶3 of the Constitution. Compare Gilbert v. Gladden, 87 N.J. 275 (1981). Our sole quest is to determine whether the statute in arriving in its status as a law reached there by a route condoned by the Constitution.

In his comments on the New Jersey Constitution of

1947, Judge Milmed,[2] referring specifically to the provisions of Art. IV, §4, ¶6, stated:

> To "effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents", the Convention's Committee on the Legislative recommended, and the Convention adopted, a new provision (Article IV, Section IV, Paragraph 6) which has contributed immeasurably to the more orderly conduct of the legislative process. This provision prohibits any bill or joint resolution from being read a third time in either house until after the intenvention of one full calendar day following the day of the second reading. The Committee on the Legislative recognized "that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies, which might require immediate action". To guard against such a contingency the Committee proposed, and the Convention adopted an exception to the one day lay-over clause which permits a bill or joint resolution to proceed forthwith from second to third reading in either house if that house resolves by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that it is an emergency measure.
>
> In proposing the provision requiring a full day's intervention between second and third read-

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[2] "The New Jersey Constitution of 1947," N.J. Const.; N.J.S.A. 91, 97. Judge Milmed was a legal advisor to the 1947 Constitutional Convention, and also personal counsel to Governor Alfred E. Driscoll.

> ing of a bill or joint resolution, the Convention's Committee on the Legislative expressed "confident expecation" that the provision "will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading."

We have no doubt that the constitutional provision here involved was adopted by the framers to insure that legislation would be studied, or at least read, by legislators before it went to third reading and adoption by a house. We do not understand the comment just quoted or, more importantly, the wording of the constitutional provision itself, to demand that any particular rite be followed in the adoption of legislation as long as the content of a bill remains unchanged before a house of the Legislature for one calendar day before third reading and passage. We believe that that is what occurred here.

As noted at the beginning of this opinion, the contents of both S-711 and A-605 are identical, excepting of course the number at the top of the bill and the name of the sponsor which are not part of the enactment but are part of the rite.[3] As a matter of common sense, it is

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[3] The dissent posits questions as to variations in bills which might possibly pass both houses under the procedures questioned here. We deem it totally unnecessary to deal with such "hypothetical horribles" since they do not exist in this case.

apparent that the content of the bill that would eventually become Chapter 1 of the Laws of 1982 was before each house of the Legislature for at least six calendar days before final passage by each house. Such being the case, the inescapable conclusion is that the constitutional condition has been obeyed.

We do not regard a bill as being a piece of paper with a number at the top and a name of a sponsor at its head, or a particular color on its backer. A bill in the legislative sense consists of its content--the words which are to be adopted by the Legislature that ultimately will become law. The number, the name and the color are mere accidents--mere tangible affects adopted for the purpose of easy identification. A bill, on the other hand, represents the effort of both houses of the Legislature to adopt a law. Regardless of where a bill is introduced, it must pass both houses of the Legislature in identical form before it may be entertained by the Governor for signature. Indeed, every bill in whichever house introduced, if it is to become a law of this State, must begin with the injunction: "Be it enacted by the Senate and General Assembly of the State of New Jersey." See Art. IV, §7, ¶6 of our Constitution.

We see nothing in our Constitution that prohibits identical bills from proceeding through both houses of the Legislature.[4] It seems to be a matter of common sense that the house whose bill has not yet been passed should defer to the other house which has passed the identical bill in entertaining the bill which is to become law. As we have noted, the constitutional mandate under Art. IV, §4, ¶6, exists to insure that there be knowledge, at least on the part of the individual legislators, of the content of any bill before it advances to third reading and passage. That is precisely what occurred here. The legislative procedure employed to reach that result is beyond our jurisdiction. We are satisfied, however, that the bill ultimately adopted by the Legislature and submitted to the Governor had its provisions before both houses of the Legislature for a period in excess of the one calendar day required in the Constitution.

In view of the conclusions we have reached as stated in this opinion, the application of petitioners is dismissed.

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[4] Contrary to the import of the dissent, S-711 and A-605 were identical bills.

SUPREME COURT OF NEW JERSEY

DOCKET NO.

APPLICATION OF EDWIN R. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH.	)	Civil Action On Notice of Appeal to the Superior Court, Appellate Division Sat Below: Matthews, Pressler J.J.A.D. and Petrella (dissenting), J.A.D.

BRIEF AND APPENDIX FOR RESPONDENT STATE OF NEW JERSEY

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COUNTERSTATEMENT OF THE CASE

Appellants are seven citizens of the State who are presently members of the United States House of Representatives, and announced candidates for re-election to same in the primary election now set for June 8, 1982. They initiated this matter in the Appellate Division of the Superior Court pursuant to the provisions of N.J.S.A. 1:7-1 et seq. which provide that two or more of the State's citizens may challenge a statute solely on the ground that the mechanics of enactment were not followed; the substantive validity of the law itself is not in issue in such a proceeding. In re Application of McCabe, 81 N.J. 462 (1980).

Appellants asserted that L.1982, ch. 1 is unconstitutional on the ground that it was not adopted by the Legislature in accordance with the procedures for enacting a bill set forth in the State Constitution at Art. IV, §4, ¶6. That provision provides:

> "All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading...."

The enactment of L.1982, ch. 1 was the fulfillment of the Legislature's obligation to create new congressional districts in accordance with the results of the 1980 decennial census. On the basis of that census, the Governor had been notified that the number of Representatives to which this State is entitled was decreased from 15 to 14. See 2 U.S.C.A. §2A(b).

Thereafter, on January 12, 1982 a congressional redistricting bill, numbered Senate Bill 711, was introduced in the State Senate. Also on January 12, 1982, the identical bill was introduced in the Assembly as A-605.

S-711 was advanced to second reading without committee reference in the Senate on January 12, 1982. On January 18, 1982, S-711 was given third reading and passed by the Senate by a vote of 21 to 18 and on that day was delivered to the General Assembly.

Assembly Bill 605, which as noted was also introduced in the General Assembly on January 12, 1982,was given first reading there on that date. The bill was given a second reading without committee reference that same day.

S-711 (Ra1 to Ra4) and A-605 (Ra5 to Ra8) are identical bills except for the number. The titles of each are the same, see N.J. Const. (1947), Art. IV, §7, ¶3; each contains an enactment clause, see N.J. Const. (1947), Art.

IV, §7, ¶6; and the substantive portion of each tracts the other word-for-word. (Compare S-711, Ra1 to Ra4 with A-605, Ra5 to 8). The only differences are ones of form relating solely to internal housekeeping procedures. The Assembly bill was numbered A-605, for purposes of identification, and denominated as sponsored by Assemblyman Baer. The Senate bill was numbered S-711 and sponsored by Senator Feldman.

On January 18, 1982 S-711, having passed the Senate, was received in the General Assembly with a message from the Senate Clerk requesting that the Assembly concur therein (Aa38 to Aa39). S-711 was given a first reading in the Assembly upon its receipt there on January 18, 1982 and on the same date, was advanced to second reading by special motion adopted 41 to 34 (Aa40 to Aa41). Thereafter, at the same meeting on January 18, 1982, the Assembly adopted by voice vote a motion made by Assemblyman Baer, the sponsor of A-605, substituting S-711 for A-605 (Aa42).

The substitution of S-711 for A-605 (which on January 14, 1982 was placed on the Assembly's Board List for consideration at its January 18, 1982 session) (Ra9) in the General Assembly on January 18, 1982 was made under the provisions of Rule 15:20 of The Rules of the General Assembly. That rule, adopted pursuant to the provisions of N.J. Const. (1947), Art. IV, §4, ¶3 which confers in each house the power to "determine the rules of its proceedings", provides:

"When a bill originating in the Senate shall have been delivered to this House, with a message that the Senate has passed the same and requesting the concurrence of this House therein, and a bill identical therewith, originating in this House, is then pending in this House, the Senate Bill may be substituted for such Assembly Bill, on motion of a sponsor of such Assembly Bill, upon or after the second reading of the Assembly Bill and the Senate Bill may then be advanced to, and have, third reading and be passed in substitution for the Assembly Bill and take the usual course of passed bills and the sponsors of the Assembly Bill may, upon the motion of one of them, be added as co-sponsors of the Senate Bill, with the Senator or Senators who were sponsors of the Senate Bill in the Senate and the names of such co-sponsors shall be endorsed upon the jacket containing the Senate Bill. The provisions of this Rule are expressly subject to the provisions of Rule 15:12. No Senate Bill may be substituted for an Assembly Bill unless the Senate Bill shall have received second reading in the General Assembly."

After the substitution, S-711 was immediately given a third reading in the Assembly and passed on January 18, 1982 by a vote of 42 to 34 (Aa43).

The bill was thereupon delivered to the Governor who signed it into law. It was designated by the Secretary of State as L.1982, ch.1. See N.J.S.A. 1:3-1.

Over three months thereafter,* appellants brought a challenge to L.1981, ch.1 in the Appellate Division pursuant

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* Prior to instituting this litigation, appellants had brought a constitutional challenge to S-711 in federal (fnt. cont'd.)

to N.J.S.A. 1:7-1 et seq. They asserted a violation of the terms of N.J. Const., Art. IV, §4, ¶6. They claimed that one full calendar day had not intervened between the second and third reading of L.1982, ch.1 in the Assembly. On April 30, 1982, the Appellate Division issued its opinion upholding the constitutionality of the enactment procedures utilized by the Legislature in adopting L.1981, ch.1 (Aa1 to Aa10). In particular, the court observed:

> "...the contents of both S-711 and A-605 are identical, excepting of course the number at the top of the bill and the name or the sponsor which are not part of the enactment but are part of the rite. As a matter of common sense, it is apparent that the content of the bill that would eventually become Chapter 1 of the Laws of 1982 was before each house of the Legislature for at least six calendar days before final passage by each house. Such being the case, the inescapable conclusion is that the constitutional condition has been obeyed." (Aa8 to Aa9).

The Hon. James J. Petrella, J.A.D., dissented on the rationale that the identification of a bill by a separate number and sponsor, despite the unity of the substantive portions,

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(fnt. cont'd.)

court on the grounds that its population deviations violated the principle of "one man, one vote" established by the federal constitution. Daggett v. Kimmelman, et al. (Civil Action No. 82-297); Forsythe, et al. v. Kean, et al. (Civil Action No. 82-388). The three-judge court (one judge dissenting) held the statute unconstitutional. The United States Supreme Court, however, stayed the judgment of the lower court and permitted the June 8, 1982 congressional primary to be conducted in accordance with S-711. Karcher, et al. v. Daggett, et al. (U.S. Sup. Ct. Docket No. 783).

confers on it an independent status that requires that the bill proceed through each house separately, without any substitution (Aa11 to Aa23).

In this matter, appellants seek to have L.1982, ch.1 declared unconstitutional and to enjoin the Secretary of State from conducting the primary election for congressional districts now set for June 8 pursuant to the provisions of L. 1982, ch.1. If L.1982, ch.1 is declared invalid, this would result in the utilization of the congressional districts created by L.1981, ch.561 (Ra10 to Ra13). That act was repealed upon the adoption of L.1982, ch.1. Id., §3; if the repealer was not properly adopted, it of course necessarily follows that ch.561 remains law.

ARGUMENT

L.1982, CH.1 SHOULD BE UPHELD BECAUSE THE PROCEDURES EMPLOYED BY THE LEGISLATURE IN ADOPTING S-711 WERE IN COMPLIANCE WITH ITS OWN RULES, AND FULLY CONFORMED TO THE REQUIREMENTS ESTABLISHED BY THE STATE CONSTITUTION FOR PASSING A BILL.

At the outset, it is important to note the well-settled law of this State that a court "will not set aside the actions of the Legislature unless the unconstitutionality of what has been done is manifest." In re Application of Fisher, 80 N.J. Super. 523, 531 (App. Div. 1963), aff'd. 43 N.J. 368 (1964); In re Application of McGlynn, 58 N.J. Super. 1, 28 (App. Div. 1959); In re Petition of Attorney General, 98 N.J.L. 586, 590 (Sup. Ct. 1923) The act must be in "palpable contravention of the constitutional command" to warrant judicial intrusion. New Jersey Association on Correction v. Lan, 80 N.J. 199, 212 (1979). In this matter, the procedures employed by the Legislature in adopting the bill that eventually became L.1982, ch.1 fully conformed to the requirements of the Constitution for passing a bill. This is so because the exact substantive text of the bill introduced on January 12, 1982 was on second reading before the Assembly for six days before it was given a third and final reading on January 18, 1982, even though the Constitution imposes only a one-day waiting requirement before passage. When the Assembly substituted S-711 for A-605, it also acted in complete adherence to its own rule providing for the

substitution of identical bills passed by the opposite house, which rule was adopted pursuant to the constitutional provision conferring on each house the power to determine its own rules of proceedings. The use of the substitution procedure then, under the facts of this case, thus fully satisfied the intervening-day requirement imposed by the Constitution. Accordingly, L.1982, ch.1 should be declared by this Court to be a valid legislative enactment, and the congressional primary now scheduled to be held on June 8, 1982, should be permitted to proceed.

The purposes of N.J. Const. (1947), Art. IV, §4, ¶6 are set forth by Judge Milmed in his commentary to the New Jersey Constitution. He wrote:

> "To 'effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents', the Convention's Committee on the Legislative recommended, and the Convention adopted, a new provision (Article IV, Section IV, Paragraph 6) which has contributed immeasurably to the more orderly conduct of the legislative process. This provision prohibits any bill or joint resolution from being read a third time in either house until after the intervention of one full calendar day following the day of the second reading. The Committee on the Legislative recognized 'that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies, which might require immediate action'. To guard against such a contingency the Committee proposed, and the Convention adopted an exception to the one day lay-over clause which permits a bill or joint resolution to proceed forthwith from second to third reading in either house if that house resolves by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that it is an emergency measure.

"In proposing the provision requiring a full day's intervention between second and third reading of a bill or joint resolution, the Convention's Committee on the Legislative expressed 'confident expectation' that the provision 'will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading.'" "The New Jersey Constitution of 1947," N.J. Const. (1947), Vol. 1, pp. 91, 95.

It is thus apparent that the constitutional provision at issue was intended primarily to ensure some degree of legislative deliberation over a bill prior to its final adoption in each house. It can also be fairly assumed that the provision has a second purpose, in addition to informing individual legislators, of giving notice to the public of potential legislative action. What the amendment does not do, as correctly pointed out by the majority opinion below (Aa8), is describe or mandate the particular legislative procedure that must be employed in moving a bill through the Legislature so "long as the content of a bill remains unchanged before a house of the Legislature for one calendar day" between second reading and third and final passage (Aa8).

In this matter, the requirements of Art. IV, §4, ¶6 were completely satisfied by the internal legislative procedures used to bring the congressional redistricting measure before the General Assembly for final consideration. As already noted, A-605 and S-711 are identical pieces of legislation, but for the identifying numbers

assigned to each and the sponsors of the legislation. A-605 was given a second reading in the Assembly on January 12, 1982 and on January 14, 1982 it was calendared for a vote before the Assembly on January 18, 1982 (Ra9). On that day, by a vote of the Assembly, S-711 was substituted for A-605, and, under that number, subsequently passed the Assembly. The undisputed fact is that six days elapsed between the time A-605 was given second reading and the time it was given third reading as a bill labelled S-711 but otherwise the same bill. The purpose of the one-day waiting period of ensuring time for study of the legislation by the members of the Assembly was, plainly, more than satisfied.

In In re Application of McGlynn, 58 N.J. Super. 1 (App. Div. 1959 the court considered a challenge, under the provisions of N.J.S.A. 1:7-1 et seq. to a bill adopted by the Legislature pursuant to N.J. Const. (1947), Art. V, §1, ¶14 which allows the Legislature by a two-thirds vote in each house to override a gubernatorial veto. The court held that the constitutional provision requiring intervention of a full calendar day following second reading of a bill was inapplicabl to a situation where the Legislature reconsiders a bill after a gubernatorial veto. Id. at 16. Although the court noted that the provision relates to bills on initial passage, it is clear that no purpose would have been served by imposing a waiting requirement on a bill already considered by the Legislature and whose members were thus conversant with its terms. And, in United States Gypsum Co. v. Sta

Dept. of Revenue, 110 N.W. 2d 698 (Sup. Ct. Mich. 1961), the court, interpreting constitutional provisions similar to our own, held the requirement of three readings and a waiting period in each house were met where the original version of the bill was before both houses for such a period and was read even though a substantially different substitute version of the bill on the same general subject was subsequently adopted. Here, the General Assembly had six days between second reading and final passage to consider the identical draft proposals contained in A-605 and S-711.

It would elevate form over substance to adopt the unduly constrained and highly technical position urged by appellants. This is apparent when consideration is given to what a bill is. Although referred to in the State Constitution, the term is not defined there. N.J. Const. (1947), Art. IV, §4, ¶6; Art. V, §1, ¶¶14 and 15. However, the Assembly in its rules has defined a "bill" as "a draft of a proposed law." Assembly Rule 22:1. Accord, State ex rel Schwartz v. Bledsoe, 31 So. 2d 457 (Sup. Ct. Fla. 1947). Similarly, the court below defined a bill as follows:

> "We do not regard a bill as being a piece of paper with a number at the top and a name of a sponsor at its head, or a particular color on its backer. A bill in the legislative sense consists of its content -- the words which are to be adopted by the Legislature that ultimately will become law. The number, the name and the color are mere accidents -- mere tangible affects adopted for the purpose of easy identification. A bill, on the other hand, represents the effort of both houses of the Legislature to adopt a law." (Aa9)

The Appellate Division thus recognized that the most important consideration in passing a law is that each house successively adopt the identical substantive draft of a law and that the proposal presented to the Governor for his action be the same as that adopted by a majority vote in each house (Aa9). Thus, as long as the draft law acted on by the General Assembly, Senate and Governor coincide as to title, enacting clause and substantive text, there is a valid law under the requirements of Art. IV, §4, ¶6. See In re Chapter 147 of the Laws of 1946, 134 N.J.L. 529 (Sup. Ct. 1946); In re Jaegle, 83 N.J.L. 54 (Sup. Ct. 1912).

Moreover, even if there was any doubt as to L.1982, ch.1's compliance with the requirements of this constitutional provision (which we submit there should not be), this Court should nonetheless opt for the reasonable interpretation of Art. IV, §4, ¶6 given by the Legislature. This Court must give due deference to the practical construction of the reading requirement in the Constitution adopted by the Legislature in the passage of L.1982, ch.1, and by the Governor who signed it into law. New Jersey Association on Correction v. Lan, 80 N.J. 199 (1979). By way of proffer at oral argument in the Appellate Division, it was submitted that the Legislature has had for many years a rule allowing one house to substitute its bill for an identical bill from the other house. Recent examples of legislation passed in this manner--indistinguishable from the procedure used to adopt L.1982, ch.1--include: L.1981,ch.459,

adopted December 3, 1981, an act establishing an authority for the purpose of building and operating a convention center in Atlantic City, and appropriating $90,000 for that purpose; L.1981, ch. 526, adopted January 11, 1982, an act appropriating $51,000 to the Department of Community Affairs for a Joint Disaster Program with Jersey City and Hoboken; L.1981, ch. 433, adopted January 7, 1982, an act authorizing the imposition of certain taxes by certain municipalities; recent salary increases (all adopted on January 11, 1982) - L.1981, ch. 471 (for the Governor); L.1981, ch. 472 (for the Legislature); L.1981, ch. 473 (for the judiciary); L.1981, ch. 474 (for cabinet officers); L.1981, c. 209, adopted July 13, 1981, an act appropriating $1.5 million to the Department of Corrections for the purchase of trailers to house inmates; L.1981, ch. 156, adopted May 26, 1981, an act appropriating $11,556,835 to the Department of Corrections, Division of Public Welfare, for public assistance programs; L.1981, ch. 159, adopted May 27, 1981, an act appropriating $1,000,000 for the reconstruction of a dam.

Such a practical and contemporaneous construction by another branch of government is entitled to great weight in arriving at a proper interpretation of a constitutional provision. New Jersey Association on Corrections v. Lan, supra, 80 N.J. at 215. Accordingly, in the face of coordinate action by a co-equal branch of government, the judiciary must proceed with caution and due regard for its partners in government. As expressed by Chief Justice Hughes, in New Jersey Association on Corrections v. Lan, supra, 80 N.J. at 218:

confers on it an independent status that requires that the bill proceed through each house separately, without any substitution (Aa11 to Aa23).

In this matter, appellants seek to have L.1982, ch.1 declared unconstitutional and to enjoin the Secretary of State from conducting the primary election for congressional districts now set for June 8 pursuant to the provisions of L. 1982, ch.1. If L.1982, ch.1 is declared invalid, this would result in the utilization of the congressional districts created by L.1981, ch.561 (Ra10 to Ra13). That act was repealed upon the adoption of L.1982, ch.1. Id., §3; if the repealer was not properly adopted, it of course necessarily follows that ch.561 remains law.

> "But where, as here, the constitutional issue must be dealt with, every reasonable intendment runs in favor of constitutionality. Jamouneau v. Harner, 16 N.J. 500, 515 (1954). This because of seemly respect for the act of a co-equal branch of government, as well as for the public interest in the effective operations of government -- both elements invoking a 'broad tolerance' in considering a charge of constitutional evasion or excess." Cf. Clayton v. Kervick, 52 N.J. 138 (1968).

Although Art. IV, §4, ¶6 requires that a bill be read three times in each house before passage and that one calendar day intervene between second and third reading, the State Constitution does not define what a "reading" of a bill involves. To fill that void, and in pursuit of its constitutional authority to adopt rules governing its own proceedings, the Assembly adopted Rule 15:20, which permits a bill of one house to step into the shoes of an identical bill passed by the other house. Where the bill being substituted has been before the Assembly on second reading for more than one calendar day, the rule permits the substituted bill to proceed immediately to third reading and a final vote.

Where the Constitution is silent regarding the particulars of the Legislature process, this Court has thus, understandably, been reluctant to intrude in matters best left to a cooperative effort between the branches affected, i.e. the Legislature and the Executive. Thus, in Gilbert v. Gladden, 87 N.J. 275 (1981), this Court considered a challenge under the "presentment clause" whereby the Legislature only sent passed bills to the Governor if he called

for them. The Court therein refused to involve itself in a process that was committed by the Constitution to the executive and legislative branches by virtue of the presentment clause, N.J. Const. (1947), Art. V. §1, ¶14, and the provision empowering each house to determine its own rules, N.J. Const. (1947), Art. IV, §4, ¶3. It said:

> "In the absence of constitutional or statutory standards, it is not the function of this Court to substitute its judgment for that of the Legislature with respect to the rules it has adopted or the procedures followed giving effect to the constitutionally-declared scheme." Gilbert v. Gladden, supra, 87 N.J. at 282.

Accord, In re Lamb, 67 N.J. Super. 39,59 (App. Div. 1961), aff'd. 34 N.J. 448 (1961). Similarly, the judicial branch has deferred to the Legislature's construction and practical usage that the requirement of three readings imposed by Art. IV, §4, ¶6 is satisfied by reading a bill simply by its title rather than in full. Anderson v. Camden, 58 N.J.L. 515, 518 (Sup. Ct. 1896). Accord, In re Application of Fisher, supra, 80 N.J. Super. at 526.

Accordingly, unless a particular procedure is imposed with specificity on the Legislature by virtue of the Constitution, the Legislature should be accorded necessary flexibility to pass rules, pursuant to its constitutional power to do so, that will enable it to efficiently and expeditiously conduct its legislative business. Assembly Rule 15:20 permitting the substitution of identical bills is in furtherance of these desirable legislative goals, and comports

fully with the terms of Art. IV, §4, ¶6.* The substitution procedure allows a bill to travel simultaneously through each house and avoids the need for duplicative procedures in the other house, having already considered the same version of the bill. Yet, the requirements of the constitutional waiting period are satisfied. It obviates the need to waste legislative time by sending such matters to a conference committee. See Joint Rules 4 and 5. The substitution rule thus results in a more speedy and efficient legislative process and in a manner that complies fully with the Constitution.

Lastly, appellants and Judge Petrella, dissenting, argue that the Legislature should have adopted an emergency resolution by a three-fourths vote of the Assembly if it wanted to act on the substance of S-711. It is not necessary here to respond to the gratuitous and unsupported speculations about the motivations of the legislators who voted for S-711 raised by appellants. It is sufficient to point out that there was no need to resort to the mechanism of an emergency resolution. Such a tack would be appropriate if an identical bill to A-605 had not passed the Senate, or if A-605 had not been on second reading for six days prior to a final vote. Since that was not the case, no emergency was required under existing, longstanding Assembly rules.

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* Judge Petrella expressed his view that the adoption of L.1981, ch.1 violated the Assembly Rule on substitution (Aa12, Aa20 to Aa21). That is not so. S-711 was substituted for A-605 and given a second reading just as the Rule requires. That placed it in the same procedural stance as A-605. It was then given a third reading and passed. In any event, the Legislature is free to suspend its own rules of proceedings. In re Lamb, supra.

In summary, the Constitution requires that one calendar day intervene between the second and third reading of a bill which is but a draft of a proposed law. The purpose of that provision is to ensure some deliberation over proposed bills by legislators in each house. On January 12, 1982 A-605 was given a second reading in the General Assembly. Although labelled as A-605, the substance of that bill was identical, except for the identifying number and initial sponsor, to S-711. The Assembly had six days after second reading to consider the terms of A-605. The substitution rule employed by the Assembly in adopting L.1982, ch.1 was a reasonable practical construction by it and the Governor who signed it into law, of the requirements established by Art. IV, §4, ¶6. Accordingly, L.1982, ch.1 should be declared to be a valid enactment of the Legislature.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Appellate Division.

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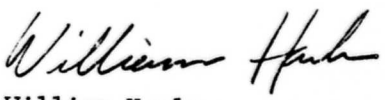

William Harla
Deputy Attorney General

Dated: May 7, 1982

SENATE, No. 711

STATE OF NEW JERSEY

INTRODUCED JANUARY 12, 1982

By Senator FELDMAN

(Without Reference)

AN ACT creating districts for the election of members to the House of Representatives of the United States of America to serve in the 98th Congress and each subsequent Congress, and repealing sections 1 and 2 of P. L. 1966, c. 156 and P. L. 1981, c. 561.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Congressional District Act for the State of New Jersey (1982)."

2. For the purpose of electing members of the House of Representatives of the United States of America from the State of New Jersey to serve in the 98th Congress and each subsequent Congress, the State of New Jersey shall be divided into the following 14 single-member districts:

First. The county of Gloucester and that portion of the county of Camden embracing Audubon, Audubon Park, Barrington, Bellmawr, Berlin, Berlin township, Brooklawn, Camden, Chesilhurst, Clementon, Gibbsboro, Gloucester city, Gloucester township, Haddonfield, Haddon Heights, Hi-Nella, Laurel Springs, Lindenwold, Magnolia, Mount Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Tavistock, Voorhees, Waterford, Winslow, and Woodlynne.

Second. The counties of Salem, Cumberland, Cape May, and Atlantic, that portion of the county of Ocean embracing Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Little Egg Harbor, Long Beach, Ocean, Ship Bottom, Stafford, Surf City, Tuckerton, and that portion of the county of Burlington embracing Bass River, Tabernacle and Washington.

Third. That portion of the county of Monmouth embracing Aberdeen, Allenhurst, Asbury Park, Atlantic Highlands, Avon, Belmar, Bradley Beach, Deal, Eatontown, Englishtown, Fair Haven, Hazlet, Highlands, Interlaken, Keansburg, Keyport, Loch

Arbour, Long Branch, Manalapan, Manasquan, Matawan, Middletown, Monmouth Beach, Neptune city, Neptune township, Oceanport, Ocean, Red Bank, Sea Bright, Sea Girt, South Belmar, Spring Lake, Spring Lake Heights, Union Beach, West Long Branch, that portion of the county of Ocean embracing Bay Head, Brick, Lakewood, Mantoloking, Point Pleasant Beach, Point Pleasant, and that portion of the county of Middlesex embracing Old Bridge.

Fourth. That portion of the county of Burlington embracing Beverly, Bordentown city, Bordentown township, Burlington city, Burlington township, Chesterfield, Cinnaminson, Delanco, Delran, Edgewater Park, Florence, Mansfield, Maple Shade, Palmyra, Pemberton borough, Pemberton township, Riverside, Riverton borough, Springfield, Willingboro, Wrightstown and Fieldsboro, that portion of the county of Camden embracing Merchantville and Pennsauken, that portion of the county of Mercer embracing East Windsor, Ewing, Hamilton, Hightstown, Lawrence, Trenton, Washington and West Windsor, that portion of the county of Middlesex embracing Plainsboro and that portion of the county of Monmouth embracing Allentown, Roosevelt and Upper Freehold.

Fifth. That portion of the county of Bergen embracing Allendale, Closter, Cresskill, Demarest, Harrington Park, Haworth, Ho-ho-kus, Mahwah, Midland Park, Montvale, Northvale, Old Tappan, Oradell, Park Ridge, Ramsey, Ridgewood, River Edge, River Vale, Rockleigh, Saddle River, Upper Saddle River, Waldwick and Wyckoff, that portion of the county of Hunterdon embracing Alexandria, Bethlehem, Bloomsbury, Delaware, East Amwell, Flemington, Franklin, Frenchtown, Hampton, Holland, Kingwood, Lambertville, Milford, Raritan, Stockton, Union, West Amwell and that portion of the county of Mercer embracing Hopewell, Hopewell township and Pennington, that portion of the county of Morris embracing Boonton, Boonton township, Denville, Jefferson, Mine Hill, Montville, Mount Arlington, Mount Olive, Randolph and Roxbury, that portion of the county of Passaic embracing Ringwood and West Milford, that portion of the county of Sussex embracing Branchville, Frankford, Hampton, Lafayette, Montaque, Sandyston, Stillwater, Sussex, Vernon, Walpack and Wantage and that portion of the county of Warren embracing Alpha, Belvidere, Blairstown, Franklin, Greenwich, Hackettstown, Hardwick, Harmony, Hope, Knowlton, Liberty, Lopatcong, Oxford, Pahaquarry, Phillipsburg, Pohatcong, Washington, Washington township and White.

Sixth. That portion of the county of Middlesex embracing Carteret, East Brunswick, Edison, Helmetta, Highland Park, Metuchen, Milltown, New Brunswick, Perth Amboy, Piscataway,

Sayreville, South Amboy, South Plainfield, South River, Spotswood and Woodbridge and that portion of the county of Union embracing Linden, Rahway and Winfield.

Seventh. That portion of the county of Mercer embracing Princeton, Princeton township, that portion of the county of Middlesex embracing Cranbury, Dunellen, Jamesburg, Middlesex, Monroe, North Brunswick and South Brunswick, that portion of the county of Monmouth embracing Freehold, Freehold township, Marlboro and Millstone, that portion of the county of Somerset embracing Bound Brook, Franklin, Manville, Millstone, North Plainfield, Rocky Hill and South Bound Brook and that portion of the county of Union embracing Clark, Cranford, Elizabeth, Fanwood, Garwood, Plainfield, Roselle, Roselle Park, Scotch Plains and Westfield.

Eighth. That portion of the county of Bergen embracing Franklin Lakes, Garfield, Oakland and Wallington, that portion of the county of Morris embracing Butler, Dover, Kinnelon, Lincoln Park, Pequannock, Riverdale, Rockaway, Rockaway township, Victory Gardens and Wharton and that portion of the county of Passaic embracing Bloomingdale, Clifton, Haledon, Hawthorne, North Haledon, Passaic, Paterson, Pompton Lakes, Prospect Park, Wanaque and Wayne.

Ninth. That portion of the county of Bergen embracing Alpine, Bergenfield, Bogota, Carlstadt, Cliffside Park, Dumont, East Rutherford, Edgewater, Elmwood Park, Emerson, Englewood, Englewood Cliffs, Fair Lawn, Fairview, Fort Lee, Glen Rock, Hackensack, Hasbrouck Heights, Hillsdale, Leonia, Lodi, Maywood, Moonachie, New Milford, Norwood, Paramus, Ridgefield Park, Rochelle Park, Rutherford, Saddle Brook, South Hackensack, Teaneck, Tenafly, Teterboro, Washington, Westwood, Woodcliff Lake and Wood-Ridge.

Tenth. That portion of the county of Essex embracing East Orange, Glen Ridge, Irvington, Newark and South Orange, that portion of the county of Union embracing Hillside, and that portion of the county of Hudson embracing Harrison.

Eleventh. That portion of the county of Bergen embracing North Arlington, that portion of the county of Essex embracing Belleville, Bloomfield, Caldwell, Cedar Grove, Essex Fells, Fairfield, Livingston, Lyndhurst, Maplewood, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange, that portion of the county of Hudson, embracing East Newark, Kearny and Secaucus, that portion of the county of Morris embracing East Hanover, Mountain Lakes and Parsippany-Troy Hills, and that portion of the county of Passaic embracing Little Falls, Totowa and West Paterson.

Twelfth. That portion of the county of Essex embracing Millburn, that portion of the county of Hunterdon embracing Califon, Clinton, Clinton township, Glen Gardner, High Bridge, Lebanon, Lebanon township, Readington and Tewksbury, that portion of the county of Morris embracing Chatham, Chatham township, Chester, Chester township, Florham Park, Hanover, Harding, Madison, Mendham, Mendham township, Morris Plains, Morris township, Morristown, Netcong, Passaic and Washington, that portion of the county of Somerset embracing Bedminster, Bernards, Bernardsville, Branchburg, Bridgewater, Far Hills, Green Brook, Hillsborough, Montgomery, Peapack-Gladstone, Raritan, Somerville, Warren and Watchung, that portion of the county of Sussex embracing Andover, Andover township, Byram, Franklin, Fredon, Green, Hamburg, Hardyston, Hopatcong, Newton, Ogdensburg, Sparta and Stanhope, that portion of the county of Union embracing Berkeley Heights, Kenilworth, Mountainside, New Providence, Springfield, Summit and Union township and that portion of the county of Warren embracing Allamuchy, Frelinghuysen, Independence and Mansfield.

Thirteenth. That portion of the county of Burlington embracing Eastampton, Evesham, Hainesport, Lumberton, Medford Lakes, Medford, Moorestown, Mount Holly, Mount Laurel, New Hanover, North Hanover, Shamong, Southampton, Westhampton and Woodland, that portion of the county of Ocean embracing Beachwood, Berkeley, Dover, Island Heights, Jackson, Lacey, Lakehurst, Lavallette, Ocean Gate, Pine Beach, Plumsted, Seaside Heights, Seaside Park, South Toms River and Manchester, that portion of the county of Monmouth embracing Brielle, Colts Neck, Farmingdale, Holmdel, Howell, Little Silver, Rumson, Shrewsbury, Shrewsbury township, Tinton Falls and Wall and that portion of the county of Camden embracing Cherry Hill, Collingswood, Haddon, Lawnside and Oaklyn.

Fourteenth. That portion of the county of Bergen embracing Little Ferry, Palisades Park and Ridgefield and that portion of the county of Hudson embracing Bayonne, Guttenberg, Hoboken, Jersey City, North Bergen, Union city, Weehawken and West New York.

3. Sections 1 and 2 of P. L. 1966, c. 156 (C. 19:46–2 and 19:46–3) and P. L. 1981, c. 561 are repealed.

4. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to create 14 Congressional Districts for use beginning with the 98th Congress.

ASSEMBLY, No. 605

STATE OF NEW JERSEY

INTRODUCED JANUARY 12, 1982

By Assemblyman BAER

(Without Reference)

AN ACT creating districts for the election of members to the House of Representatives of the United States of America to serve in the 98th Congress and each subsequent Congress, and repealing sections 1 and 2 of P. L. 1966, c. 156 and P. L. 1981, c. 561.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Congressional District Act for the State of New Jersey (1982)."

2. For the purpose of electing members of the House of Representatives of the United States of America from the State of New Jersey to serve in the 98th Congress and each subsequent Congress, the State of New Jersey shall be divided into the following 14 single-member districts:

First. The county of Gloucester and that portion of the county of Camden embracing Audubon, Audubon Park, Barrington, Bellmawr, Berlin, Berlin township, Brooklawn, Camden, Chesilhurst, Clementon, Gibbsboro, Gloucester city, Gloucester township, Haddonfield, Haddon Heights, Hi-Nella, Laurel Springs, Lindenwold, Magnolia, Mount Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Tavistock, Voorhees, Waterford, Winslow, and Woodlynne.

Second. The counties of Salem, Cumberland, Cape May, and Atlantic that portion of the county of Ocean embracing Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Little Egg Harbor, Long Beach, Ocean, Ship Bottom, Stafford, Surf City, Tuckerton, and that portion of the county of Burlington embracing Bass River, Tabernacle and Washington.

Third. That portion of the county of Monmouth embracing Aberdeen, Allenhurst, Asbury Park, Atlantic Highlands, Avon, Belmar, Bradley Beach, Deal, Eatontown, Englishtown, Fair Haven, Hazlet, Highlands, Interlaken, Keansburg, Keyport, Loch

ASSEMBLY, No. 605

STATE OF NEW JERSEY

INTRODUCED JANUARY 12, 1982

By Assemblyman BAER

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1. This act shall be known and may be cited as the "Congressional District Act for the State of New Jersey (1982)."

2. For the purpose of electing members of the House of Representatives of the United States of America from the State of New Jersey to serve in the 98th Congress and each subsequent Congress, the State of New Jersey shall be divided into the following 14 single-member districts:

First. The county of Gloucester and that portion of the county of Camden embracing Audubon, Audubon Park, Barrington, Bellmawr, Berlin, Berlin township, Brooklawn, Camden, Chesilhurst, Clementon, Gibbsboro, Gloucester city, Gloucester township, Haddonfield, Haddon Heights, Hi-Nella, Laurel Springs, Lindenwold, Magnolia, Mount Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Tavistock, Voorhees, Waterford, Winslow, and Woodlynne.

Second. The counties of Salem, Cumberland, Cape May, and Atlantic that portion of the county of Ocean embracing Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Little Egg Harbor, Long Beach, Ocean, Ship Bottom, Stafford, Surf City, Tuckerton, and that portion of the county of Burlington embracing Bass River, Tabernacle and Washington.

Third. That portion of the county of Monmouth embracing Aberdeen, Allenhurst, Asbury Park, Atlantic Highlands, Avon, Belmar, Bradley Beach, Deal, Eatontown, Englishtown, Fair Haven, Hazlet, Highlands, Interlaken, Keansburg, Keyport, Loch

Arbour, Long Branch, Manalapan, Manasquan, Matawan, Middletown, Monmouth Beach, Neptune city, Neptune township, Oceanport, Ocean, Red Bank, Sea Bright, Sea Girt, South Belmar, Spring Lake, Spring Lake Heights, Union Beach, West Long Branch, that portion of the county of Ocean embracing Bay Head, Brick, Lakewood, Mantoloking, Point Pleasant Beach, Point Pleasant, and that portion of the county of Middlesex embracing Old Bridge.

Fourth. That portion of the county of Burlington embracing Beverly, Bordentown city, Bordentown township, Burlington city, Burlington township, Chesterfield, Cinnaminson, Delanco, Delran, Edgewater Park, Florence, Mansfield, Maple Shade, Palmyra, Pemberton borough, Pemberton township, Riverside, Riverton borough, Springfield, Willingboro, Wrightstown and Fieldsboro, that portion of the county of Camden embracing Merchantville and Pennsauken, that portion of the county of Mercer embracing East Windsor, Ewing, Hamilton, Hightstown, Lawrence, Trenton, Washington and West Windsor, that portion of the county of Middlesex embracing Plainsboro and that portion of the county of Monmouth embracing Allentown, Roosevelt and Upper Freehold.

Fifth. That portion of the county of Bergen embracing Allendale, Closter, Cresskill, Demarest, Harrington Park, Haworth, Ho-ho-kus, Mahwah, Midland Park, Montvale, Northvale, Old Tappan, Oradell, Park Ridge, Ramsey, Ridgewood, River Edge, River Vale, Rockleigh, Saddle River, Upper Saddle River, Waldwick and Wyckoff, that portion of the county of Hunterdon embracing Alexandria, Bethlehem, Bloomsbury, Delaware, East Amwell, Flemington, Franklin, Frenchtown, Hampton, Holland, Kingwood, Lambertville, Milford, Raritan, Stockton, Union, West Amwell and that portion of the county of Mercer embracing Hopewell, Hopewell township and Pennington, that portion of the county of Morris embracing Boonton, Boonton township, Denville, Jefferson, Mine Hill, Montville, Mount Arlington, Mount Olive, Randolph and Roxbury, that portion of the county of Passaic embracing Ringwood and West Milford, that portion of the county of Sussex embracing Branchville, Frankford, Hampton, Lafayette, Montaque, Sandyston, Stillwater, Sussex, Vernon, Walpack and Wantage and that portion of the county of Warren embracing Alpha, Belvidere, Blairstown, Franklin, Greenwich, Hackettstown, Hardwick, Harmony, Hope, Knowlton, Liberty, Lopatcong, Oxford, Pahaquarry, Phillipsburg, Pohatcong, Washington, Washington township and White.

Sixth. That portion of the county of Middlesex embracing Carteret, East Brunswick, Edison, Helmetta, Highland Park, Metuchen, Milltown, New Brunswick, Perth Amboy, Piscataway,

Sayreville, South Amboy, South Plainfield, South River, Spotswood and Woodbridge and that portion of the county of Union embracing Linden, Rahway and Winfield.

Seventh. That portion of the county of Mercer embracing Princeton, Princeton township, that portion of the county of Middlesex embracing Cranbury, Dunellen, Jamesburg, Middlesex, Monroe, North Brunswick and South Brunswick, that portion of the county of Monmouth embracing Freehold, Freehold township, Mariboro and Millstone, that portion of the county of Somerset embracing Bound Brook, Franklin, Manville, Millstone, North Plainfield, Rocky Hill and South Bound Brook and that portion of the county of Union embracing Clark, Cranford, Elizabeth, Fanwood, Garwood, Plainfield, Roselle, Roselle Park, Scotch Plains and Westfield.

Eighth. That portion of the county of Bergen embracing Franklin Lakes, Garfield, Oakland and Wallington, that portion of the county of Morris embracing Butler, Dover, Kinnelon, Lincoln Park, Pequannock, Riverdale, Rockaway, Rockaway township, Victory Gardens and Wharton and that portion of the county of Passaic embracing Bloomingdale, Clifton, Haledon, Hawthorne, North Haledon, Passaic, Paterson, Pompton Lakes, Prospect Park, Wanaque and Wayne.

Ninth. That portion of the county of Bergen embracing Alpine, Bergenfield, Bogota, Carlstadt, Cliffside Park, Dumont, East Rutherford, Edgewater, Elmwood Park, Emerson, Englewood, Englewood Cliffs, Fair Lawn, Fairview, Fort Lee, Glen Rock, Hackensack, Hasbrouck Heights, Hillsdale, Leonia, Lodi, Maywood, Moonachie, New Milford, Norwood, Paramus, Ridgefield Park, Rochelle Park, Rutherford, Saddle Brook, South Hackensack, Teaneck, Tenafly, Teterboro, Washington, Westwood, Woodcliff Lake and Wood-Ridge.

Tenth. That portion of the county of Essex embracing East Orange, Glen Ridge, Irvington, Newark and South Orange, that portion of the county of Union embracing Hillside, and that portion of the county of Hudson embracing Harrison.

Eleventh. That portion of the county of Bergen embracing North Arlington, that portion of the county of Essex embracing Belleville, Bloomfield, Caldwell, Cedar Grove, Essex Fells, Fairfield, Livingston, Lyndhurst, Maplewood, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange, that portion of the county of Hudson, embracing East Newark, Kearny and Secaucus, that portion of the county of Morris embracing East Hanover, Mountain Lakes and Parsippany-Troy Hills, and that portion of the county of Passaic embracing Little Falls, Totowa and West Paterson.

Twelfth. That portion of the county of Essex embracing Millburn, that portion of the county of Hunterdon embracing Califon, Clinton, Clinton township, Glen Gardner, High Bridge, Lebanon, Lebanon township, Readington and Tewksbury, that portion of the county of Morris embracing Chatham, Chatham township, Chester, Chester township, Florham Park, Hanover, Harding, Madison, Mendham, Mendham township, Morris Plains, Morris township, Morristown, Netcong, Passaic and Washington, that portion of the county of Somerset embracing Bedminster, Bernards, Bernardsville, Branchburg, Bridgewater, Far Hills, Green Brook, Hillsborough, Montgomery, Peapack-Gladstone, Raritan, Somerville, Warren and Watchung, that portion of the county of Sussex embracing Andover, Andover township, Byram, Franklin, Fredon, Green, Hamburg, Hardyston, Hopatcong, Newton, Ogdensburg, Sparta and Stanhope, that portion of the county of Union embracing Berkeley Heights, Kenilworth, Mountainside, New Providence, Springfield, Summit and Union township and that portion of the county of Warren embracing Allamuchy, Frelinghuysen, Independence and Mansfield.

Thirteenth. That portion of the county of Burlington embracing Eastampton, Evesham, Hainesport, Lumberton, Medford Lakes, Medford, Moorestown, Mount Holly, Mount Laurel, New Hanover, North Hanover, Shamong, Southampton, Westhampton and Woodland, that portion of the county of Ocean embracing Beachwood, Berkeley, Dover, Island Heights, Jackson, Lacey, Lakehurst, Lavallette, Ocean Gate, Pine Beach, Plumsted, Seaside Heights, Seaside Park, South Toms River and Manchester, that portion of the county of Monmouth embracing Brielle, Colts Neck, Farmingdale, Holmdel, Howell, Little Silver, Rumson, Shrewsbury, Shrewsbury township, Tinton Falls and Wall and that portion of the county of Camden embracing Cherry Hill, Collingswood, Haddon, Lawnside and Oaklyn.

Fourteenth. That portion of the county of Bergen embracing Little Ferry, Palisades Park and Ridgefield and that portion of the county of Hudson embracing Bayonne, Guttenberg, Hoboken, Jersey City, North Bergen, Union city, Weehawken and West New York.

3. Sections 1 and 2 of P. L. 1966, c. 156 (C. 19:46–2 and 19:46–3) and P. L. 1981, c. 561 are repealed.

4. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to create 14 Congressional Districts for use beginning with the 98th Congress.

New Jersey Legislative Calendar

Office of Legislative Services/Division of Legislative Information and Research

Contact: Legislative Information Service, State House, CN-042, Trenton, N.J. 08625—800-792-8630

Vol. VII. No. 1
Prepared: January 14, 1982

200th Legislature
First Annual Session

FRIDAY, JANUARY 15, 1982

Fire Safety Study Commission 9:30 AM Rm. 223
Discussion of the status of the legislation endorsed and initiated by the Commission in its interim recommendations; status of the Commission's survey of municipalities; subcommittee reports; timetable for completeing the work of the Commission

MONDAY, JANUARY 18, 1982

SENATE SESSION: 4 PM
Board list: S 707, S 708, S 709, S 710, S 711

GENERAL ASSEMBLY SESSION: 12 NOON
Board list: A 600, A 601, A 602, A 603, A 604, A 605

TUESDAY, JANUARY 19, 1982

SENATE SESSION: 11 AM
Board list to be announced.

JOINT SESSION: 11 AM War Memorial Building
Governor's Inauguration

MONDAY, JANUARY 25, 1982

SENATE SESSION
Board list to be announced.

TUESDAY, JANUARY 26, 1982

Commission on Sex Discrimination in the Statutes
Public Hearing: 10 AM Seton Hall Law School
Moot Court Room, Newark

TUESDAY, FEBRUARY 9, 1982

Commission on Sex Discrimination in the Statutes
Public Hearing: 10 AM Rutgers University School of Law, Room 210 Camden

TUESDAY, FEBRUARY 23, 1982

Commission on Sex Discrimination in the Statutes
Public Hearing:
Time and place to be announced

MONDAY, FEBRUARY 1, 1982

SENATE SESSION
Board list to be announced.

MONDAY, FEBRUARY 8, 1982

SENATE SESSION
Board list to be announced.

TUESDAY, FEBRUARY 16, 1982

SENATE SESSION
Board list to be announced.

THURSDAY, FEBRUARY 25, 1982

SENATE SESSION
Board list to be announced.

CHAPTER 561 LAWS OF N. J. 1981
APPROVED 1-12-82

SENATE, No. 3527

STATE OF NEW JERSEY

INTRODUCED DECEMBER 14, 1981

By Senator YATES

(Without Reference)

AN ACT to amend "An act creating districts for the election of members to the House of Representatives of the United States of America to serve in the 98th Congress and each subsequent Congress, and repealing sections 1 and 2 of P. L. 1966, c. 156," approved .....,19.... (P. L. ....., c. .....) (now pending before the Legislature as Senate Bill No. 3518 of 1981).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2 of P. L. ....., c. ....., (C. .....) (now pending before the Legislature as Senate Bill No. 3518 of 1981) is amended to read as follows:

2. For the purpose of electing members of the House of Representatives of the United States of America from the State of New Jersey to serve in the 98th Congress and each subsequent Congress, the State of New Jersey shall be divided into the following 14 single-member districts:

First. The county of Gloucester and that portion of the county of Camden embracing Audubon, Audubon Park, Barrington, Bellmawr, Berlin, Berlin township, Brooklawn, Camden, Chesilhurst, Clementon, Gibbsboro, Gloucester city, Gloucester township, Haddonfield, Haddon Heights, Hi Nella, Laurel Springs, Lindenwold, Magnolia, Mount, Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Tavistock, Voorhees, Waterford, Winslow and Woodlynne.

Second. The counties of Salem, Cumberland, Cape May and Atlantic, that portion of the county of Ocean embracing Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Little Egg Harbor, Long Beach, Ocean, Ship Bottom, Stafford, Surf City, Tuckerton, and that portion of the county of Burlington embracing Bass River, Tabernacle and Washington.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Third. That portion of the county of Monmouth embracing Aberdeen, Allenhurst, Asbury Park, Atlantic Highlands, Avon, Belmar, Bradley Beach, Deal, Eatontown, Englishtown, Fair Haven, Hazlet, Highlands, Interlaken, Keansburg, Keyport, Loch Arbour, Long Branch, Manalapan, Manasquan, Matawan, Middletown, Monmouth Beach, Neptune city, Neptune township, Oceanport, Ocean, Red Bank, Sea Bright, Sea Girt, South Belmar, Spring Lake, Spring Lake Heights, Union Beach, West Long Branch, that portion of the county of Ocean embracing Bay Head, Brick, Lakewood, Mantoloking, Point Pleasant Beach, Point Pleasant, and that portion of the county of Middlesex embracing Old Bridge.

Fourth. That portion of the county of Burlington embracing Beverly, Bordentown city, Bordentown township, Burlington city, Burlington township, Chesterfield, Cinnaminson, Delanco, Delran, Edgewater Park, Florence, Mansfield, Maple Shade, Palmyra, *Pemberton borough, Pemberton township,* Riverside, Riverton borough, *Springfield,* Willingboro, *Wrightstown* and Fieldsboro, that portion of the county of Camden embracing [Collingswood, Haddon,] Merchantville[, Oaklyn] and Pennsauken, that portion of the county of Mercer embracing East Windsor, Ewing, Hamilton, Hightstown, Lawrence, Trenton, Washington and West Windsor, that portion of the county of Middlesex embracing Plainsboro and that portion of the county of Monmouth embracing Allentown, Roosevelt and Upper Freehold.

Fifth. The counties of Hunterdon and Warren, that portion of the county of Sussex not in the twelfth district, that portion of the county of Bergen embracing Allendale, Mahwah, Ramsey, Upper Saddle River and Waldwick, that portion of the county of Mercer embracing Hopewell, Hopewell township, and Pennington, that portion of the county of Morris embracing Chester, Chester township, Harding, Mendham, Mendham township, Passaic and Washington, that portion of the county of Passaic embracing Ringwood and West Milford, and that portion of the county of Somerset embracing Bedminster, Bernards, Bernardsville, Branchburg, Bridgewater, Far Hills, Hillsborough, Millstone, Montgomery, Peapack-Gladstone, Raritan, Rocky Hill, Somerville and Warren.

Sixth. That portion of the county of Middlesex embracing Carteret, East Brunswick, Edison, Helmetta, Highland Park, Metuchen, Milltown, New Brunswick, Perth Amboy, Piscataway, Sayreville, South Amboy, South Plainfield, South River, Spotswood and Woodbridge and that portion of the county of Union embracing Linden, Rahway and Winfield.

Seventh. That portion of the county of Middlesex embracing Cranbury, Dunellen, Jamesburg, Middlesex, Monroe, North Brunswick and South Brunswick, that portion of the county of Mercer embracing Princeton and Princeton township, that portion of the county of Somerset embracing Bound Brook, Franklin, Manville, North Plainfield and South Bound Brook, that portion of the county of Union embracing Clark, Cranford, Elizabeth, Fanwood, Garwood, Plainfield, Roselle, Roselle Park, Scotch Plains and Westfield and that portion of the county of Monmouth embracing Freehold, Freehold township, Marlboro and Millstone.

Eighth. That portion of the county of Bergen embracing Elmwood Park, Fair Lawn, Garfield, Paramus and Wallington, that portion of the county of Morris embracing Butler, Lincoln Park, Pequannock and Riverdale and that portion of the county of Passaic embracing Bloomingdale, Clifton, Haledon, Hawthorne, North Haledon, Passaic, Paterson, Pompton Lakes, Prospect Park, Wanaque and Wayne.

Ninth. That portion of the county of Bergen embracing Alpine, Bergenfield, Bogota, Cliffside Park, Closter, Creskill, Demarest, Dumont, Edgewater, Emerson, Englewood, Englewood Cliffs, Fairview, Fort Lee, Franklin Lakes, Glen Rock, Hackensack, Harrington Park, Haworth, Hillsdale, Ho-ho-kus, Leonia, Maywood, Midland Park, Montvale, New Milford, Northvale, Norwood, Old Tappan, Oradell, Palisades Park, Park Ridge, Ridgefield Park, Ridgewood, River Edge, River Vale, Rochelle Park, Rockleigh, Saddle River, Teaneck, Tenafly, Washington township, Westwood, Woodcliff Lake, Wyckoff and Oakland.

Tenth. That portion of the county of Essex embracing East Orange, Glen Ridge, Irvington, Newark, South Orange and Harrison and that portion of the county of Union embracing Hillside.

Eleventh. That portion of the county of Bergen embracing Carlstadt, East Rutherford, Hasbrouck Heights, Lodi, Lyndhurst, Moonachie, North Arlington, Rutherford, Saddle Brook, South Hackensack, Teterboro and Wood-Ridge, that portion of the county of Essex embracing Orange, Belleville, Bloomfield, Caldwell, Cedar Grove, Essex Fells, Fairfield, Maplewood, Montclair, North Caldwell, Nutley, Roseland, Verona, West Caldwell and West Orange, that portion of the county of Hudson embracing Kearny and East Newark, that portion of the county of Morris embracing East Hanover and that portion of the county of Passaic embracing Little Falls, Totowa and West Paterson.

Twelfth. That portion of the county of Essex embracing Livingston and Millburn, that portion of the county of Morris embracing

Boonton, Boonton township, Chatham, Chatham township, Denville, Dover, Florham Park, Hanover, Jefferson, Kinnelon, Madison, Mine Hill, Montville, Morris Plains, Morris township, Morristown, Mountain Lakes, Mount Arlington, Mount Olive, Netcong, Parsippany-Troy Hills, Randolph, Rockaway, Rockaway township, Roxbury, Victory Gardens and Wharton, that portion of the county of Somerset embracing Green Brook and Watchung, that portion of the county of Sussex embracing Hopatcong and that portion of the county of Union embracing Berkeley Heights, Kenilworth, Mountainside, New Providence, Springfield, Summit and Union township.

Thirteenth. That portion of the county of Burlington embracing Eastampton, Evesham, Hainesport, Lumberton, Medford Lakes, Medford, Moorestown, Mount Holly, Mount Laurel, New Hanover, North Hanover, [Pemberton borough, Pemberton township,] Shamong, Southampton, [Springfield,] Westhampton[,] *and* Woodland [and Wrightstown], that portion of the county of Ocean embracing Beachwood, Berkeley, Dover, Island Heights, Jackson, Lacey, Lakehurst, Lavallette, Ocean Gate, Pine Beach, Plumsted, Seaside Heights, Seaside Park, South Toms River and Manchester, that portion of the county of Monmouth embracing Brielle, Colts Neck, Farmingdale, Holmdel, Howell, Little Silver, Rumson, Shrewsbury, Shrewsbury township, Tinton Falls and Wall and that portion of the county of Camden embracing Cherry Hill, *Collingswood, Haddon,* [and] Lawnside *and Oaklyn.*

Fourteenth. That portion of the county of Hudson embracing Bayonne, Guttenberg, Hoboken, Jersey City, North Bergen, Secaucus, Union City, Weehawken and West New York and that portion of the county of Bergen embracing Little Ferry and Ridgefield.

2. This act shall take effect immediately.

STATEMENT

This bill readjusts the fourth and thirteenth Congressional Districts.

SUPREME COURT OF NEW JERSEY

DOCKET NO.

Civil Action

APPLICATION OF EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, and CHRISTOPHER H. SMITH	On Notice of Appeal to the Superior Court, Appellate Division Sat Below: Matthews, Pressler, J.J.A.D. and Patrella (dissenting), J.A.D.

BRIEF FOR RESPONDENT/INTERVENORS ALAN J. KARCHER SPEAKER OF THE GENERAL ASSEMBLY; THE GENERAL ASSEMBLY; CARMEN A. ORECHIO, PRESIDENT OF THE SENATE; AND THE SENATE

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Leon J. Sokol
Robert A. Farkas

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COUNTERSTATEMENT OF THE CASE

Appellants, present members of the United States House of Representatives and citizens of the State of New Jersey contend that P.L. 1982, c.1 is void pursuant to N.J.S.A. 1:7-4 on the basis that the enactment process was violative of Art.IV, §4, par.6 of the New Jersey Constitution which in pertinent part states:

> "All bills . . . shall be read three times in each house before final passage. No bill . . . shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading . . ."

The enactment of P.L. 1982, c.1 resulted from the Legislature's responsibility to create new congressional districts in accordance with the results of the 1980 decennial census. On the basis of that census, the State had been notified that the number of Representatives to which the State is entitled was decreased from fifteen to fourteen.

P.L. 1982, c.1, the congressional redistricting law, was known as S-711 when introduced in the New Jersey Senate on January 12, 1982. The bill was given a second reading in the Senate on the same day and on January 18, 1982, was given a third reading in the Senate, passed by the Senate, and delivered to the General Assembly. An identical congressional redistricting bill to S-711, known as A-605, was introduced in

the New Jersey General Assembly on January 12, 1982 and was given both a first reading and a second reading in the General Assembly on that date. On January 18, 1982, S-711 was received in the General Assembly from the Senate after being passed by the Senate with a request that the General Assembly concur therein.

S-711 and A-605 are identical bills in all material respects. The titles of each are the same, see N.J.Const.(1947), Art. IV, §7, par. 3; each contains an enactment clause, See N.J. Const. (1947), Art. IV, §7 par. 6; and the substantive portionof each parallels the other word for word. The only differences are in form relating to internal procedures. The assembly bill was number A-605 for identification purposes and was sponsored by Assemblyman Baer. The Senate was number S-711 and sponsored by Senator Feldman.

S-711 was given a first reading in the General Assembly upon its receipt on January 18, 1982, and on the same date, was advanced to second reading by a special motion adopted 41-34. Thereafter, at the same session, on January 18, 1982, the General Assembly adopted by voice vote a motion made by Assemblyman Baer, to sponsor A-605, substituting S-711 for A-605.

The substitution of S-711 for A-605 in the General Assembly on January 18, 1982, was accomplished under the provisions of Rule 15:20 of The Rules of the General Assembly. That Rule adopted pursuant to the provisions of N.J. Const. (1947), Art. IV, §4, par. 3 which confers in each house the power to determine the Rules of its proceedings, provides:

> "When a bill originating in the Senate shall have been delivered to this House, with a message that the Senate has passed the same and requesting the concurrence of this House therein, and a bill identical therewith, originating in this House, is then pending in this House, the Senate Bill may be substituted for such Assembly Bill, on motion of a sponsor of such Assembly Bill, upon or after the second reading of the Assembly Bill and the Senate Bill may then be advanced to, and have, third reading and be passed in substitution for the Assembly Bill and take the usual course of passed bills and the sponsors of the Assembly Bill may, upon the motion of one of them, be added as co-sponsors of the Senate Bill, with the Senator or Senators who were sponsors of the Senate Bill in the Senate and the names of such co-sponsors whall be endorsed upon the jacket containing the Senate Bill. The provisions of this Rule are expressly subject to the provisions of Rule 15:12. No Senate Bill may be substituted for an Assembly Bill unless the Senate Bill shall have received second reading in the General Assembly."

Upon substitution, S-711 was immediately given a third reading by the General Assembly and passed on January 18, 1982 by a vote of 42-34. The bill, delivered

ARGUMENT

THE ENACTMENT OF P.L. 1982, c.1 CONFORMED TO THE REQUIREMENTS OF THE STATE CONSTITUTION FOR PASSING A BILL AND SHOULD ACCORDINGLY BE UPHELD

Initially it should be noted that it is settled in this State that a court "will not set aside the actions of the Legislature unless the unconstitutionality of what has been done is manifest." In re Application of Fisher, 80 N.J. Super 523, 531 (App. Div. 1963) aff'd. 43 N.J. 368 (1964); In re Application of McGlynn, 58 N.J. Super. 1, 28 (App. Div. 1959). The enactment process employed by the Legislature respecting P.L.1982, c.1 fully conformed to the requirements for passing a bill.

The provisions of the New Jersey Constitution requiring that all bills, prior to becoming law, be read three times in each house before final passage and that a full day intervene between the second and third readings were not violated. Without question the Senate passage clearly complied with the Constitution. However, the appellants, complaining about the processin the General Assembly, fail to fully comprehend the purpose of these requirements and the enactment mechanism.

The obvious two-fold purpose of these constitutional requirements are to make certain that ample opportunity exist for the legislators, as representatives of the citizens of New Jersey, to consider a proposed bill and to permit the public notice of pending legislation. Both requirements were fully complied with respecting these purposes upon review of the enactment procedure in the General Assembly concerning P.L. 1982, c.1.

The purpose of N.J. Const. (1947), Art. IV, §4, par.6 were set forth by Judge Milmed when he wrote in his commentary to the New Jersey Constitution:

> "To 'effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents', the Convention's Committee on the Legislative recommended, and the Convention adopted, a new provision (Article IV, Section IV, Paragraph 6) which has contributed immeasurably to the more orderly conduct of the legislative process. This provision prohibits any bill or joint resolution from being read a third time in either house until after the intervention of one full calendar day following the day of the second reading. The Committee on the Legislative recognized 'that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies, which might require immediate action'. To guard against such a contingency the Committee proposed, and the Convention adopted an exception to the one day lay-over clause which permits a bill or

joint resolution to proceed forthwith from second to third reading in either house if that house resolves by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that it is an emergency measure.

"In proposing the provision requiring a full day's intervention between second and third reading of a bill or joint resolution, the Convention's Committee on the Legislative expressed 'confident expectation' that the provision 'will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading.'" "The New Jersey Constitution of 1947," N.J. Const. (1947), Vol. 1, pp. 91, 97.

Clearly, this constitutional provision was adopted to insure that legislation be appropriately reviewed prior to its final adoption in each house. However, the actual method or procedure to accomplish this mandate is not specified. Instead, it is left to the Legislature to formulate an appropriate mechanism consistent with constitutional requirement that the content of a bill remain unchanged before a house of the Legislature for one calendar day before third reading and passage.

Respecting P.L. 1982, c.1, the requirements of Art. IV, §4, 6 were completely satisfied by the internal procedures utilized in bringing the matter before the General Assembly for final consideration. As previously noted, A-605 and S-711 were identical except for the identifying numbers assigned to each and the sponsers which significantly are not part of the enactment but are part of the rite.

When the Constitution mandates "All bills. . . shall be read three times in each house before final passage" it is simply requiring that the passed bill, in no particular or specified form, be read three times. Therefore, it is immaterial whether it be known as A-605 or S-711 as long as it is the identical bill. A-605 was given its first and second reading in the General Assembly on January 12, 1982. On January 18, 1982, by a vote of the General Assembly, pursuant to Rule 15:20 , S-711 was substituted for A-605. Thereupon, the same bill then identified as substituted S-711 received its third reading-six days after its second reading. Thus, the bill which was ultimately adopted by the Legislature and submitted to the Governor had its provisions before both houses of the Legislature for a period in excess of the one calendar day requirement of the Constitution.

In United States Gypsum Company v. State Department of Revenue, 110 N.W. 2nd 698 (Supreme Court Michigan 1961), in interpreting constitutional provisions similar to our own, the court determined that the requirement of three readings and the waiting period in each house were met wherein the original version of the bill was before both houses for such a period and was read even though a substantially different substitute version of the bill on the same general subject was subsequently adopted. The court concluded that the substituted version was "germane" to the original bill and that its major purposes were all within the original objectives of the bill first introduced. Here, the General assembly had six days between the second reading and the final passage to consider the identical draft proposals contained in S-711 and A-605.

Appellants position would require the Court to adopt a position raising form over substance to a highly technical degree. The State Constitution does not define the term Bill. N.J. Const. (1947) Art. 4, §4, par. 6; Art. 5, §1, par. 14 and 15. However, the General Assembly in its Rules has defined a Bill as "a draft of a proposed law". Assembly Rule 22:1. The Appellate Division in its majority opinion similarly defined a Bill as follows:

"We do not regard a bill as being a piece of paper with a number at the top and a name of a sponsor at its head, or a particular color on its backer. A bill in the legislative sence consists of its content--the words which are to be adopted by the Legislature that ultimately will become law. The number, the name and the color are mereaccidents--mere tangible affects adopted for the purpose of easy identification. A bill, on the other hand, represents the effort of both houses of the Legislature to adopt a law."

Thus, the most important consideration in passing a law is that both the Senate and General Assembly adopt by a majority vote in each house the identical substantive draft of a law and that it then be presented to the Governor for his action. Therefore, whenever a Bill acted on by the Senate, General Assembly and Governor coincide as to title, enacting clause and substantive text, a valid law results under the requirements of Art. IV, §IV, par. 6. See In re Chapter 147 of the laws of 1946, 134, N.J.L. 529 (Sup. Ct. 1946).

Furthermore, this Court must give due defference to the practical construction of the reading requirement in the Constitution adopted by the Legislature in the passage of P.L. 1982, c.1 and by the Governor who signed it into law. New Jersey Association on Correction v. Lan, 80 N.J. 199 (1979).

The Rules of the General Assembly and Senate allowing the substitution of a Bill for an identical Bill from the other house has been utilized for many years and is frequently invoked to speed the passage of bills during the legislative session. For example, 16 Bills in the last 15 months were enacted in a manner identical to P.L. 1982, c.1, that is, substituted in either the Senate or General Assembly and received a third reading on the same day. P.L. 1981, c.107 (Public Broadcasting duties re gubernatorial election issues); P.L. 1981, c.62 (Leasing of lands for oyster farming in Delaware Bay); P.L. 1981, c.459 (Atlantic City Convention Authority, creation and duties); P.L. 1981, c.526 (Appropriation for Jersey City/ Hoboken joint disaster service program); P.L. 1981, c.433 (Authorization for imposition of certain taxes by large municipalities); P.L. 1981, c.528 (Exemption of certain rehabilitated public building projects from public hearing requirements under State Building Authority Law); P.L. 1981, c.118 (Provision for N.J. bred races and awards); P.L. 1981, c.156 (Appropriation to Department of Human Services for economic assistance); P.L. 1981, c.158 (Appropriation for dam construction); P.L. 1981, c.182 (Exclusion of lottery rules from legislative oversight) P.L. 1981, c.209 (Appropriation

for housing of inmates); P.L. 1981, c.556 (Increase on interest rate of delinquent disability benefits contributions); P.L. 1981, c.448 (Rivision to legislative printing law); P.L. 1981, c.470 (Contributory Judicial Retirement System); P.L. 1981, c.471 (Increase of gubernatorial salary); P.L. 1981, c.472 (Increase of Legislative salaries); P.L. 1981, c.473 (Increase of judicial salaries); P.L. 1981, c.474 (Increase of executive department heads' salaries.

Considering the practical and coordinate action by the two co-equal branches of government must proceed with caution and due regard. As expressed by Chief Justice Hughes, in New Jersey Association on Correction v. Lan, 80 N.J. 199 (1979) Id. at 218

> "But where, as here, the constitutional issue must be dealt with, every reasonable intendment runs in favor of constitutionality. Jamouneau v. Harner, 16 N.J. 500, 515 (1954). This because of seemly respect for the act of co-equal branch of government, as well as for the public interest in the effective operations of government -- both elements invoking a 'broad tolerance' in considering a charge of constitutional evasive or excess." Bulman v. McCrane, 64 N.J. 105, 113 (1973). Cf. Clayton v. Kervick, 52 N.J. 138(1968).

Where the Constitutionis silent regarding the particulars of the Legislature process, this Court has thus, understandably, been reluctant to intrude in matters best left to a cooperative effort between the branches affected, i.e., the Legislature and the Executive. Thus, in Gilbert v. Gladden, 87 N.J. 275 (1981), this Court considered a challenge under the "presentment clause"

whereby the Legislature only sent passed bills to the Governor if he called for them. The Court therein refused to involve itself in a process that was committed by the Constitution to the Executive and legislative branches by virtue of the presentment clause, N.J. Const. (1947), Art. V, §1, par. 14, and the provision empowering each house to determine its own rules, N.J. Const.(1947), Art. IV, §4, par. 3. It said:

> "In the absence of constitutional or statutory standards, it is not the function of this Court to substitute its judgment for that of the Legislature with respect to the rules it has adopted or the procedures followed giving effect to the constitutionally-declared scheme." Gilbert v. Gladden, Supra, 87 N.J. at 282.

In summary, the constitution mandates that one calendar day intervened between the second and third reading of a bill which is nothing more that a draft of a proposed law. The purpose of that provision is to ensure some deliberation of proposed bills by Legislators in each house. On January 12, 1982, A-605 was given a second reading in the General Assembly. Although identified as A-605, the substance of that bill was identical except for the identifying number and initial sponsor to S-711. The General Assembly had six days after second reading to consider the terms of A-605. The substitition Rule employed by the General Assembly in adopting P.L. 1982, c.1 was a reasonable

and practical construction by it and by the Governor who signed it into law, of the requirements of Art. IV, §4, par 6. Accordingly, P.L. 1982, c.1 should be declared to be a valid and enactment of the Legislature.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Appellate Division.

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NEW FOLDER BEGINS