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August 3, 2020

Heather Joy Baker, Clerk
Supreme Court of New Jersey
R.J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: New Jersey Republican State Committee
a/k/a the NJGOP v. Murphy
Docket No. 084731

Civil Action

On Certification from Superior
Court of New Jersey, Law Division
Docket No. MER-L-1263-20

Letter in Opposition to Brief of Amici Liberty
and Prosperity 1776, Inc. and Michael E. Smith_____

Dear Ms. Baker:

Please accept this letter brief on behalf of Defendant,
Governor Philip D. Murphy, in opposition to the amicus brief filed
by Liberty and Prosperity 1776, Inc. and Michael E. Smith ("Liberty
Amici").



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PRELIMINARY STATEMENT

In its brief in response to Plaintiffs, the State laid out why it has the authority to borrow monies to meet the fiscal emergency caused by COVID-19, and why it can use proceeds of those bonds to address the revenue deficiencies it confronts. Amici's brief, offers a view of constitutional history that cannot rebut or overcome the State's comprehensive recitation; focuses on issues that have no bearing on the result in this case and raises issues well beyond the scope of issues that the parties themselves have raised. The Liberty Amici's brief thus has no impact on the disposition of this case, and it provides no basis to invalidate the New Jersey COVID-19 Emergency Bond Act. Instead, as the State already explained in detail, the elected branches have acted reasonably to address an unprecedented fiscal emergency, and their choice should not be overturned by this Court.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

The Liberty Amici's legal challenge to the State's issuance of GO Bonds in response to the fiscal emergency that the pandemic caused started back in June, one month before the Act was even signed into law. Specifically, the Liberty Amici sued the Governor and State Treasurer challenging the Emergency GO Bond

¹ Because they are closely related, the procedural and factual history are combined for efficiency and the Court's convenience.

Bill - A-4175 - that the Legislature had introduced, but not yet voted upon. See Compl., Liberty and Prosperity 1776, Inc. v. Murphy, MER-L-1089-20 (Law Div. Jun. 16, 2020). DAL001-09².

The State promptly filed a motion to dismiss. See Mot. to Dismiss, Liberty and Prosperity 1776, Inc. v. Murphy, MER-L-1089-20 (Law Div. Jun. 23, 2020). Then, as the Honorable Mary C. Jacobson, A.J.S.C. explained, "without taking leave of court" or securing the State's consent, Liberty "filed an amended complaint with a new count in the midst of the Court's consideration of the motion to dismiss." T29:16-29. DAL024. Judge Jacobson found that doing so was "procedurally . . . inconsistent with the court rules and the plaintiff has never sought to get the Court to relax the court rules regarding proper pleading procedure." Id. at 29:20-23. DAL024. The proposed Amended Complaint sought a declaration that the State had no authority to enter into a Memorandum of Agreement ("MOA") with the Communication Workers of America ("CWA") regarding furloughs and layoffs. See Proposed Am. Compl., Liberty and Prosperity 1776, Inc. v. Murphy, MER-L-1089-20 (Law Div. Jun. 29, 2020). DAL049-65.

² "DAL" refers to the State's appendix in support of its opposition to the Liberty Amici's brief. "Da" refers to the State's appendix in the main case. "Lab" refers to the Liberty Amici's brief. "Db" refers to the State's July 31, 2020 brief. "T" refers to the attached Transcript of the July 16, 2020 oral argument for Superior Court docket no. MER-L-1089-20. See DAL010-34.

At oral argument on July 16, 2020, Judge Jacobson dismissed the entire Complaint - including the proposed amendment - without prejudice. See Order for Dismissal, Liberty and Prosperity 1776, Inc. v. Murphy, MER-L-1089-20 (Law Div. July 16, 2020). DAL035. Specifically, Judge Jacobson dismissed Count I, which challenged A-4175, because "It would make absolutely no sense at all for the Court to look at this Assembly Bill that never became law to determine whether it violated the Constitution or not." T34:13-15. DAL027. She dismissed Count II, which alleged that the State was "spending in excess of monies that it has," T37:12 (DAL028), as "speculative," T38:24 (DAL029). Finally, Judge Jacobson dismissed Count III - the CWA count - "in part because of the procedural irregularity" of attempting to amend the Complaint without leave of court or defendants' consent. T42:6-7. DAL031. But the court also found that the proposed Amended Complaint "as written did not set forth a cause of action in Count 3." T45:13-14. DAL032. The court looked to Futterman v. Bd. of Review, 421 N.J. Super. 281 (App. Div. 2011), finding that the MOA in that case was "very similar to what happened here" because it arose during a "fiscal crisis in New Jersey" that resulted in "an order issued for the furlough that prohibited layoffs to CWA members" for "multiple years." T45:17-46:5. DAL032. The court also found "no cause of action" because under CWA v. Florio, 130 N.J. 439 (1992), "discretion" "about staffing executive agencies"

"rest[ed] in the Governor" so that "the judiciary should not get involved" in furlough and layoff decisions. T46:10-16. DAL033.

Separately, the same day as Judge Jacobson's decision, the Legislature passed and the Governor signed into law the Emergency GO Bond Act. See L. 2020, c. 60.

After the Act was passed, Amici filed another, similar complaint, arguing that the Act is unconstitutional, that the State is spending money it does not have, and that the CWA MOA is unenforceable. See Compl., Liberty and Prosperity 1776, Inc. v. Murphy, MER-L-1284-20 (Law Div. Jul. 20, 2020). DAL037-48. The State has not yet filed an Answer or Motion to Dismiss in response to this latest Complaint. The Liberty Amici subsequently successfully moved to participate as Amici in the NJGOP v. Murphy suit pending before this Court.

ARGUMENT

POINT I

AMICI'S BRIEF OFFERS LITTLE ADDITIONAL ANALYSIS TO SUPPORT PLAINTIFFS' POSITION.

Most of the Liberty Amici's 19-page brief bears little on the resolution of this case.

First, although Point I of Amici's brief, see Lab6-8, seeks to present a version of constitutional history that differs from the State's, Amici do not actually make an argument. To the extent that Amici is arguing that General Obligation bonds cannot

be issued during an emergency without voter approval, the State amply addressed and rebutted this point in its merits brief. See Db42-52. Amici offer nothing to overcome that analysis.

Second, Amici's extensive discussion of contract bonds, Ab8-13, is irrelevant, because as the State explained in its merits brief, the Act concerns General Obligation bonds. See Act at § 5. As explained in detail, the differences between contract bonds and General Obligation bonds are of constitutional import, given the text and structure of the Debt Limitation Clause, and the history and practice that bear on its meaning. See Db78-82.

Third, the Liberty Amici's claim that bonds issued under the Act would be secured by a "MANDATORY STATE PROPERTY TAX," Ab8, is simply incorrect. Preliminarily, there is no *State* property tax in New Jersey - only Local Property Tax ("LPT"). Further, the GO Bonds will not be secured in the first instance with LPT, but rather with Sales and Use Tax ("SUT"), and then with LPT to the extent that SUT is insufficient. See Act at § 22. Finally, every General Obligation Bond the State issues has this feature, because the State pledges its faith and credit to secure GO Bonds. See Kanef Cert. at ¶ 10³. Da160. There is nothing unusual, and certainly nothing constitutionally suspect, about it.

³ The "Kanef Cert." refers to the Certification of Michael B. Kanef, the Director of the Office of Public Finance, that the State submitted in support of its merits brief.

POINT II

**AMICI'S CWA ARGUMENT DOES NOT BELONG IN THIS
CASE BECAUSE IT HAS NOT BEEN RAISED BY THE
PARTIES.**

Amici raise the issue of whether the State's MOA with CWA regarding furloughs and layoffs is enforceable. Ab18-19. This issue is the subject of distinct litigation before the Superior Court, and this Court should not address it here.

First, the Court should disregard this issue because it is beyond the scope of this case. "[A]s a general rule, the Court 'does not consider arguments that have not been asserted by a party, and are raised for the first time by an amicus curiae.'" State in Interest of A.A., 240 N.J. 341, 359 n.1 (2020) (quoting State v. J.R., 237 N.J. 393, 421 (2017)); see also Fed. Pac. Elec. Co. v. N.J. Dept. of Env'tl. Prot., 334 N.J. Super. 323 (App. Div. 2000) (citing Bethlehem Twp. Bd. of Educ. v. Bethlehem Twp. Educ. Ass'n, 91 N.J. 38, 48-49, (1982); Saul v. Midlantic Nat'l Bank/S., 240 N.J. Super. 62, 81 (App. Div. 1990)). If an amicus raises a new issue, a court "will not consider it." Saul, 240 N.J. Super. at 81.

Second, Amici are already litigating the enforceability of the MOA before Judge Jacobson. See Compl., Liberty and Prosperity 1776, Inc. v. Murphy, MER-L-1284-20 (Law Div. Jul. 20, 2020). DAL037-48. It is not the issue on which this Court granted

direct certification, and it should instead be resolved in due course in the pending case before Judge Jacobson.

Third, Amici's argument lacks merit. As this Court has held, the "Constitution commits the authority and the duty to run the Executive Branch to the Governor." CWA v. Florio, 130 N.J. 439, 464 (1992). "For better or for worse, decisions on how" to "staff executive agencies are for the Governor to make," and coordinate branches "may not dictate whom he may, or may not, lay off." Ibid. Finally, during a previous economic downturn, the Appellate Division enforced an MOA between the Governor and a union that - like here - provided for furloughs and prohibited layoffs for CWA members for a period spanning multiple fiscal years. See Futterman, 421 N.J. Super. at 284.

In short, the Liberty Amici are seeking to inject into this case a new issue, that they are already litigating below, and the premise of which courts at all levels have already rejected. See T45:13-46:16 (DAL016) (Judge Jacobson referecing CWA v. Florio and Futterman). The Liberty Amicishould not be permitted to do so.

POINT III

EQUITABLE ESTOPPEL IS UNWARRANTED AND WHOLLY
INAPPROPRIATE IN THIS CASE.

"Equitable estoppel is rarely invoked against a governmental entity, particularly when estoppel would interfere with essential governmental functions." O'Malley v. Dep't of Energy, 109 N.J. 309, 316 (1987). Here, the Liberty Amici claim that the State is estopped from enforcing the Act because defense counsel purportedly stated at oral argument in a different case that the State expected to receive "'more than sufficient'" funds to pay expenses through September 30, 2020. Ab16. This is not the "rare[]" circumstance that would warrant applying equitable estoppel against the State.

First, and notably, the Liberty Amici do not quote from the transcript or even point to a relevant page thereof. There is good reason for this omission: the State's counsel did not actually utter the purported incriminating phrase, "more than sufficient," as Amici claim. Rather, the State's counsel stated accurately:

Count 2 should be dismissed because it is premised on the false notion that the State is spending in excess of anticipated revenues, but the very report from the Treasurer that plaintiffs cite in their amended complaint identified the steps that the Governor and the Treasurer took in response to the COVID induced revenue declines, transferring \$421 million from the rainy day fund to the general fund, placing \$1.2 billion in reserve, cutting spending across programs, and recommending that \$2.2 billion in discretionary payments be

deferred or eliminated. Further, acting in large part on these recommendations, the Legislature passed a Supplemental Appropriations Act for extended FY20 which had an opening undesignated fund balance of \$704 million on July 1st and an anticipated ending undesignated fund balance of \$957 million on September 30, and that's L-2020 [sic], Chapter 43. The extended FY20 budget is not only balanced, it has a surplus of approximately \$1 billion. The Court should dismiss Count 2.

[T7:10-8:4 (DAL013-14)].

Second, as explained in depth in the State's merits brief, see Db8-25, and in the Certification of the State Treasurer in support of that brief, see Muoio Cert. at ¶¶ 93-96 (Da020)⁴, the fact that the State will have a positive balance on September 30 does not mean that the State has "more than sufficient" funds. Rather, this anticipated ending undesignated fund balance could "disappear in a flash," especially given the significant uncertainty relating to COVID-19's spread in the State, and the risk of possible spikes in the Fall. Db20; Muoio Cert. at ¶ 69, 95, 116 (Da015).

Third, Amici's attempt to use equitable estoppel to strike a statute cannot be squared with the strong presumption in favor of upholding legislation. It is an extraordinarily high standard to strike a statute on constitutional grounds. See Db41-

⁴ The "Muoio Cert." refers to the Certification of State Treasurer Elizabeth M. Muoio that the State submitted in support of its merits brief.

42. Yet here, Amici ask the Court to find a statute unenforceable on less than constitutional grounds. The Court should decline this novel and disturbing invitation.

CONCLUSION

For these reasons, the Court should disregard Amici's filing and find for the State.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Jean P. Reilly_____

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N.J. Attorney I.D. No. 021081997
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**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

LIBERTY AND PROSPERITY 1776, INC.
a Non-Profit Corporation of New Jersey
and **MICHAEL E. SMITH**, a
citizen and taxpayer of New Jersey

MERCER COUNTY

Docket No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND IN LIEU OF
PREROGATIVE WRIT**

Plaintiff

vs.

**STATE OF NEW JERSEY, and
PHILIP D. MURPHY, in his official
Capacity as Governor of State of
New Jersey, and
ELIZABETH MAHER MUOIO, in
her official capacity as Treasurer of
STATE OF NEW JERSEY**

Defendant(s)

LIBERTY AND PROSPERITY 1776 INC., a Non-Profit Corporation of New Jersey with principal offices located at 453 Shore Road, in Somers Point, New Jersey 08244, and MICHAEL E. SMITH, a resident and taxpayer of New Jersey, residing at 2006 Sycamore Lane, in Mays Landing, New Jersey, all in Atlantic County, by way of complaint in lieu of prerogative writ and for declaratory judgment, say:

FIRST COUNT

1. Plaintiff LIBERTY AND PROSPERITY 1776 INC. (hereinafter referred to as "LIBERTY" is a Non-Profit Corporation of STATE OF NEW JERSEY (hereinafter referred to as NEW JERSEY).

2. PHILIP D. MURPHY (hereinafter referred to as “THE GOVERNOR) is the Governor of NEW JERSEY.
3. ELIZABETH MAHER MUOIO (hereinafter referred to as “STATE TREASURER” is Treasurer of NEW JERSEY
4. NEW JERSEY is a government established by a written constitution which defines and limits its powers.
5. On June 4, 2020, 52 of the 80 members of the General Assembly of NEW JERSEY voted to approve “Assembly Bill No. 4175”, also known as the “New Jersey COVID-19 Emergency Bond Act” hereinafter referred to as the “BOND BILL”.
6. On June 4, 2020, the BOND BILL was received in the Senate of NEW JERSEY, and referred to its Budget and Appropriations Committee.
7. At various and diverse occasions, THE GOVERNOR publicly voiced his support for the BOND BILL, and indicated he would sign it if approved by the STATE SENATE.
8. The General Assembly, in approving the BOND BILL found and declared the following facts effective as of May 28, 2020, the date said bill was introduced and referred to the Assembly Budget Committee.
 - a. On March 16, 2020, the GOVERNOR issued Executive Order 104 which *inter alia* ordered that all K-12 schools be closed (with limited exceptions), that all universities and colleges in the State cease in-person instruction, that all casinos, racetracks, in-person sports wagering, gyms and fitness centers and entertainment centers be closed, and that all non-

essential businesses cease operations from 8pm to 5am, and when open adhere to limited occupancy restrictions, and that all restaurants and bars close except for delivery and take-out services.

- b. On March 19, the GOVERNOR issued Executive Order No. 106 which among other things ordered that no lessee, tenant, homeowner or other person be removed from a residential property by foreclosure or eviction, and that enforcement of all judgments for possession, warrants for removal, and writs of possession be stayed while said order remained in effect, unless the court hearing the matter determines that enforcement was necessary “in the interests of justice”.
- c. On March 21, 2020, the GOVERNOR issued Executive Order No. 108, which superseded Executive Order 104, and ordered for the most part that all New Jersey residents remain home or at their place of residence except for certain very limited exceptions, and that all non-essential retail businesses be closed to the public.
- d. On March 23, 2020, the GOVERNOR issued Executive Order No. 109 suspending all elective surgeries as of March 27, 2020.
- e. On March 25, 2020, the GOVERNOR issued Executive Order No. 110 which ordered all child care centers to close, except those certified to care for the children of “essential persons”.
- f. NEW JERSEY since May 28, 2020 expected precipitous declines in revenues in Fiscal Year 2020 and Fiscal Year 2021, which include significant reductions in gross income tax revenues, corporation business

tax revenues, and sales and use tax revenues to the required business shutdowns; motor fuels taxes due to mandated “stay-at-home orders; casino-related taxes due to casino closures; and lottery sales which have already started to decline.”

- g. NEW JERSEY since May 28, 2020 expected that it will need to significantly revise the estimated revenues and projected appropriations for Fiscal Years 2020 and 21 contained in the GOVERNOR’s Budget Message for Fiscal Year 2021 on February 25, 2020.

- 9. The Legislature did NOT find or declare any facts indicating that the GOVERNOR had taken any measures to reduce spending in response to said estimated precipitous declines in revenue.

- 10. After finding and declaring said facts, the BOND BILL authorized and directed that the following action by NEW JERSEY:

- (a) Bonds of NEW JERSEY are authorized in the aggregate principal amount of \$5 billion.
- (b) In addition to said bonds, the GOVERNOR or STATE TREASURER with the consent of the GOVERNOR is authorized to borrow from the federal government for the benefit of NEW JERSEY “in such amounts and on such terms as the federal government sets forth in or pursuant to any federal stimulus law”.

i.

- (c) In addition to said bonds, the GOVERNOR or STATE TREASURER with the consent of the GOVERNOR is authorized to borrow from the federal government for the benefit of NEW JERSEY “in such amounts and on such terms as the federal government sets forth in or pursuant to any federal stimulus law” for the purpose of “providing financial assistance to local government units. . . .”

- (d) Bonds issued in accordance with the provisions of this act shall be the direct obligation of NEW JERSEY, and the faith and credit of NEW JERSEY are pledged for the payment of the interest and redemption

premium, if any, thereon when due, and for the payment of the principal thereof at maturity.

- (e) Bonds . . . shall mature. . . not later than the 35th year from the date of issue.
- (f) Should the State Treasurer, by December 31 of any year, deem it necessary because of the insufficiency of funds collected from the sources of revenues as provided in this act, to meet the interest and principal payment for the year after the ensuing year, then the STATE TREASURER shall certify to the Director of the Division of Budget and Accounting in the Department of the Treasury the amount necessary to be raised by taxation for those purposes. The Director shall, on or before March 1 following calculate the amount in dollars to be assessed, levied, and collected in each county as set forth. . . The director shall certify the amount to the county board of taxation and treasurer of each county. The county board of taxation shall include the proper amount in the current tax levy of the several taxing districts of the county in proportion to the ratables as ascertained for the current year.
- (g) The last paragraph of the BOND BILL states that said bill shall take effect immediately upon passage. It does NOT provide for submission to the people at a general election as required by Article VIII, Section II of the New Jersey State Constitution.

11. The BOND BILL does not recite any facts showing that said sum of \$5

billion together with any unspecified funds to be borrowed from the federal government “pursuant to any stimulus law” would “meet an emergency caused by disaster or act of God”.

WHEREFORE, Plaintiffs demand judgment declaring that the BOND BILL is null and void on its face, for failing to provide for submission to the people at a general election, and failing to state that said law shall not take effect until it is approved by a majority of the legally qualified voters of NEW JERSEY voting thereon.

SECOND COUNT

1. All allegations contained in the First Count are repeated and deemed incorporated herein in lieu of repetition.
2. Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution states in part:

“All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. . . No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.”
3. On or about June 30, 2019, NEW JERSEY adopted a yearly budget appropriating \$38.7 billion to be spent during the Fiscal Year ending June 30, 2020, and anticipating the receipt of tax and other revenues in an equal amount.
4. Defendants knew or should have known between March 16, 2020 and March 25, 2020, that the GOVERNOR’S executive orders shutting down every “non-essential” business in New Jersey was certain to cause “precipitous declines” in revenues in Fiscal Year 2020 and Fiscal Year 2021.
5. The GOVERNOR and the Legislature have ample time and means to reduce spending to match the above described reductions in state revenues.
6. On or about April 30, 2020, the GOVERNOR publicly stated that NEW JERSEY needed \$20 billion to \$30 billion in assistance from the Federal government to “keep firefighters, teachers, police, EMS, on the payroll serving the communities in their hour of need”.

7. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that NEW JERSEY expected \$2.7 billion in revenue losses for the 2020 Fiscal Year over what was projected in late February of 2020. However, this was only \$1.8 billion less than the amount projected in the 2020 Fiscal Year budget adopted on June 30, 2019.
8. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that they had not yet begun the process of making any reductions in the number of state government employees on payroll or in their salaries or benefits.
9. It appears from said public statements that both the GOVERNOR and the STATE TREASURER have failed to cut state government spending to match their own estimates of the decline NEW JERSEY'S anticipated tax revenues. As a result, it appears that Defendants are knowingly spending money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period" in violation of Article VIII Section II of the New Jersey State Constitution.
10. By knowingly spending money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period", Defendants are creating in Fiscal Year 2020 "a debt, debts, liability or liabilities of the State, which together with any previous debts or liabilities" exceeds one percent of the \$38.7 billion appropriated in the budget appropriation law for this fiscal year. This is in

clear and direct violation of Article VIII Section II of the New Jersey State Constitution.

WHEREFORE Plaintiffs demand judgment enjoining and restraining Defendants from spending any moneys in either Fiscal Year 2020 or Fiscal Year 2021 which exceed the amount reasonably expected to be received by the State during those years, as certified by an appropriate official of New Jersey.

Dated: June 16, 2020



SETH GROSSMAN,
Attorney for Plaintiffs

Complaint-prerogwrit-liberty-smith-2020-0615

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**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

LIBERTY AND PROSPERITY 1776, INC.
a Non-Profit Corporation of New Jersey
and **MICHAEL E. SMITH**, a
citizen and taxpayer of New Jersey

MERCER COUNTY

**CERTIFICATION OF NO OTHER
ACTIONS**

Plaintiff

vs.

STATE OF NEW JERSEY, et als.

Defendant(s)

SETH GROSSMAN, of full age, hereby certifies:

I am the attorney for Plaintiff, and I have personal knowledge of the facts set forth in this certification.

The matter in controversy is NOT the subject of any other action pending in any court, is NOT the subject of any arbitration proceeding, and no other actions or arbitrations pertaining to the matter in controversy are contemplated.

I am not aware of any other person who should be joined in this action pursuant to Rule 4:28, or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 16, 2020



SETH GROSSMAN

SG/pre-complaint-prerogwrit-liberty-smith-2020-0615

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-1089-20
A.D. #

LIBERTY & PROSPERITY)
1776, INC., et al.,)
) TRANSCRIPT
Plaintiff,)
) OF
v.)
) MOTION
STATE OF NEW JERSEY,)
et al.,)
)
Defendant.)

Place: Mercer County
(Heard via Zoom)

Date: July 16, 2020

BEFORE:

THE HON. MARY C. JACOBSON, A.J.S.C.

TRANSCRIPT ORDERED BY:

JEAN P. REILLY, ESQ. (Office of the Attorney General)

TELEPHONIC APPEARANCES:

SETH GROSSMAN, ESQ. (The Law Offices of Seth Grossman)
Attorney for the Plaintiff

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I N D E X

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1 THE COURT: Hello, everyone, this is Judge
2 Jacobson. Today is July 16th, 2020. I am sitting
3 remotely in the Superior Court of Mercer County Law
4 Division. This is an oral argument on a motion to
5 dismiss brought by defendant. I'm being assisted on
6 the call by my staff. My assistant Erika Rodriguez
7 helped to arrange the call. My court clerk Jeffrey
8 Starr is recording the call. Jeff, can you confirm
9 that the argument is being recorded on the CourtSmart
10 System?

11 COURT CLERK: Yes, Judge, we are on the
12 record.

13 THE COURT: I'm also being assisted by my law
14 clerk, Christopher Hamersky, and also our summer intern
15 Aquillah Bradley is on the call as well. Since this is
16 an argument by phone, it's important that each attorney
17 provide their name before they speak. Even if I say
18 your name, it's important for you to confirm the person
19 who's speaking and that's just to ensure that a proper
20 transcript can be made if necessary in the future. I
21 would also ask you because of the limitations of the
22 phone system not to interrupt each other, because that
23 also makes it very difficult to get a good transcript
24 if necessary. I will give each side ample opportunity
25 to speak and so there should be no need for

1 interruptions. Sometimes I will try to interrupt you
2 and your argument if I want to ask a question, but
3 that's my prerogative.

4 In any event the case on motion for this
5 morning is Liberty & Prosperity 1776, Inc. and Michael
6 Smith versus The State of New Jersey, Philip Murphy in
7 his official capacity as Governor of the State of New
8 Jersey, Elizabeth Maher Muoio, in her official capacity
9 as Treasurer of the State of New Jersey and
10 Communication Workers of America, a nonprofit labor
11 organization. It's Docket Number Mer-L-1089-20. If I
12 could have the appearances of counsel, and that will
13 start with counsel for the plaintiff.

14 MR. GROSSMAN: I'm Seth Grossman, the
15 attorney for the plaintiff.

16 THE COURT: Okay. And counsel for the
17 defendants.

18 MS. REILLY: Good morning, Your Honor,
19 Assistant Attorney General Jean Reilly for all the
20 State defendants. Also on the phone for the State
21 today is Deputy Attorney General Jamie Zug.

22 THE COURT: Okay. Thank you very much. This
23 is a motion to dismiss the complaint brought by the
24 State. There's been somewhat, you know, little bit
25 unusual procedural history in that after the State

1 moved to dismiss the complaint in opposition, the
2 plaintiff filed an amended complaint and I know that
3 part of the State's motion now as reflected in the
4 reply brief seeks to prevent that amendment on
5 procedural grounds and in the alternative on
6 substantive grounds. But in any event, we'll get right
7 to the arguments and turn to Assistant Attorney General
8 Reilly.

9 MS. REILLY: Thank you, Your Honor. This is
10 Assistant Attorney General Reilly, and I'll be brief.
11 With the Court's permission, I'll address the counts in
12 order.

13 THE COURT: Go on.

14 MS. REILLY: Thank you. Count 1. Count 1
15 should be dismissed because the entire count is
16 predicated on an Assembly Bill that was significantly
17 amended by the Senate in its Bill S-2697. It is this
18 substitute Senate Bill that the Senate and the Assembly
19 are voting on today. The amendments in the Senate Bill
20 are substantive.

21 First, the Senate Bill tax bond authorization
22 at \$9.9 billion versus the Assembly Bill, which
23 authorized \$5 billion in bonds sold to the public and
24 private markets and an additional \$9 billion in
25 borrowing from the Federal Government.

1 Second, the Senate Bill limits borrowing to
2 two fiscal periods extended FY-20 and shortened FY-21
3 verus the Assembly Bill which permitted borrowing over
4 an indefinite period.

5 Third, the Senate Bill sets up a series of
6 what I call break stocks before borrowing can actually
7 occur. Specifically, the Executive Branch must issue a
8 report justifying the amounts of the bond issuance and
9 explaining what the proceeds will be used for. Then a
10 newly created select legislative commission must
11 approve the bond issuance, then the State can begin the
12 process of issuing bonds. The Assembly Bill would have
13 allowed the Governor to just begin issuing bonds in his
14 sole discretion immediately after the bill was enacted.

15 Fourth, the Senate Bill also sets up a
16 different message for how the bond's proceeds may be
17 expended. Some may be transferred to the general fund
18 to make up for revenue deficits, but the rest will be
19 appropriated out of the newly created COVID-19 Fund.
20 On the other hand the Assembly Bill allowed all the
21 proceeds to be immediately transferred to the general
22 fund.

23 Fifth, the Senate Bill also eliminates
24 borrowing for TRANS, that's T-R-A-N-S and it stands for
25 Tax Revenue Anticipation Notes and eliminates State

1 borrowing from the Federal Government on behalf of
2 municipalities versus the Assembly Bill which allowed
3 these types of debts.

4 Your Honor, the State cannot competently
5 respond to a count that is premised on a superceded
6 bill. A bill that permits borrowing of a different
7 amount and authorizes different types of borrowing,
8 after a different process and for different purposes.
9 The Court should therefore dismiss Count 1.

10 Count 2. Count 2 should be dismissed because
11 it is premised on the false notion that the State is
12 spending in excess of anticipated revenues, but the
13 very report from the Treasurer that plaintiffs cite in
14 their amended complaint identified the steps that the
15 Governor and the Treasurer took in response to the
16 COVID induced revenue declines, transferring \$421
17 million from the rainy day fund to the general fund,
18 placing \$1.2 billion in reserve, cutting spending
19 across programs, and recommending that \$2.2 billion in
20 discretionary payments be deferred or eliminated.

21 Further, acting in large part on these
22 recommendations, the Legislature passed a Supplemental
23 Appropriations Act for extended FY20 which had an
24 opening undesignated fund balance of \$704 million on
25 July 1st and an anticipated ending undesignated fund

1 balance of \$957 million on September 30, and that's L-
 2 2020, Chapter 43. The extended FY20 budget is not only
 3 balanced, it has a surplus of approximately \$1 billion.
 4 The Court should dismiss Count 2.

5 Count 3. The Court should dismiss Count 3
 6 for multiple reasons. First, Count 3, Paragraphs 8 to
 7 19 are premised on the Treasurer's spending plan for
 8 extended FY20 which never had the force of law because
 9 it was a mere recommendation and which now has been
 10 superseded by the Supplemental Appropriation Act for
 11 extended FY20.

12 Second, plaintiffs claim in Paragraphs 20 and
 13 29 of Count 3 that the Governor and Treasurer have not
 14 offered any spending plan yet for shortened FY21 is not
 15 right, and per statute the COVID-19 Fiscal Mitigation
 16 Act the Governor has until August 25 to submit his FY21
 17 budget message.

18 Third, plaintiff's deferral claim in
 19 Paragraph 14 is based on the false premise that the
 20 State's, quote, statutory and contractual obligations
 21 are debts, end quote, which the State must pay. But in
 22 Camden v. Byrne and Burgos the Supreme Court clarified
 23 that statutory and contractual promises are not
 24 enforceable debts for purposes of the debt limitation
 25 clause, but rather remain within the discretion of the

1 Legislature to pay.

2 Fourth, with regard to plaintiff's claim that
 3 the Governor lacks authority over furloughs and layoffs
 4 of State employees, the underlying collective
 5 negotiations agreement that the memorandum modifies
 6 itself illustrates that layoffs are a proper subject of
 7 negotiations. And the Supreme Court held in CWA v.
 8 Florio, that quote, the Governor has direct and
 9 extensive control over the staffing of each department
 10 of the executive branch. Those fundamental principles
 11 are firmly established in our Constitutional Law, end
 12 quote.

13 Finally, the memorandum that the Appellate
 14 Division enforced in Futterman is identical in all
 15 relevant respects to the one at issue here. For all of
 16 these reasons Count 3 failed to state a claim upon
 17 which relief may be granted and the Court should
 18 therefore dismiss the entire complaint. Unless the
 19 Court has any questions the State will rest, but
 20 respectfully ask for time for rebuttal.

21 THE COURT: I'll provide the time for
 22 rebuttal, Ms. Reilly. Thank you. Mr. Grossman, we'll
 23 hear from you in reply.

24 MR. GROSSMAN: Yes, this is Seth Grossman.
 25 First a preliminary question of the Court and I've been

1 asked this by several people, is this a, this hearing
2 now open to the public? Is there a way in the public
3 can readily obtain, you know, obviously they're not on
4 the conference call, but is there a mechanism for the
5 public on such a matter of public importance to hear
6 the arguments and have access to the proceedings?

7 THE COURT: Yes. There's a form that, I
8 guess, my court clerk Jeff can provide that information
9 to you, where any member of the public can ask for and
10 now it's an electronic copy of the proceedings and, so
11 that is available once they provide the information on
12 the form. I don't think there's any charge for the
13 electronic copy. It used to be that we would have to
14 burn a CD and send out a CD, but once the COVID crisis
15 struck they have provided for electronic copies. I
16 would just ask, Jeff, is that correct?

17 COURT CLERK: Yes, Judge, to the best of my
18 knowledge that is correct.

19 THE COURT: And if we would just place on the
20 record the e-mail address to request the electronic
21 copy of the proceeding.

22 COURT CLERK: Okay. The e-mail address is
23 mertranscript.mailbox@njcourts.gov.

24 THE COURT: And even though it says
25 transcript, I mean, to have a transcript prepared is

1 expensive, but they, we have a staff member who reviews
2 that mailbox and can send the form for simply the
3 electronic copy. I don't know, I didn't inquire of my
4 staff why the argument is not on Zoom. If arguments
5 are on the Zoom platform if that can be live streamed.
6 But I mean, I'm not quite sure why this one is not, but
7 in the future that's an option for live streaming. But
8 in lieu of that the electronic copy of the argument can
9 be obtained and it is free of charge now, Jeff, isn't
10 that correct?

11 COURT CLERK: Yes, Judge, to the best of my
12 knowledge yes.

13 THE COURT: Yes, okay. All right, Mr.
14 Grossman, if you would --

15 MR. GROSSMAN: This is Seth Grossman, what
16 was the last -- after mailbox@njcourts, what was the
17 last, comes after the last dot? Is it .com or .gov or?

18 COURT CLERK: Dot gov, g-o-v.

19 MR. GROSSMAN: Okay, thank you. All right.
20 This is Seth Grossman again. As far as your argument
21 that the first count, the defenses in normal times I
22 would agree with the arguments of Ms. Reilly, but two
23 things about this make this not normal times. Because
24 the second count was specifically alleging that the
25 State Defendants are doing something that has never

1 happened before in the history of New Jersey. The New
2 Jersey Constitution requires a balanced budget and
3 refers to a balanced budget year. Because of the,
4 supposedly, because of the crisis we have this crazy
5 situation where we have a three month budget year
6 followed by another nine month budget year. So this
7 has never happened before so it's difficult to rely on
8 precedence.

9 And so what plaintiffs are alleging is that
10 the three month budget year, basically in July, August
11 and September of 2020, is not balanced at all. It's a
12 state budget which not only is spending more than its
13 taking in, but deferring obligations into October to
14 guarantee that the nine month budget is also going to
15 be an unbalanced budget, which is completely consistent
16 with the public comments made by the Governor since
17 March, that there is a \$9 to \$10 billion shortfall that
18 must be covered either by borrowing or by some gift of
19 the federal government. And this is not an emergency
20 or not a crisis because it's projected shortfall over a
21 period of 18 months at least.

22 So the real question is can the State create
23 a crisis to spend months, if not more than a year to
24 prepare a crisis and then claim it's an emergency to
25 meet a disaster or act of God, so that's the one issue.

1 So what plaintiffs are alleging in validating in the
2 bond statute is that the remedy to the Court over the
3 failure to make balance budgets for this extraordinary
4 three month budget year followed by a nine month budget
5 year. So we see the first count as a remedy to deal
6 with the second count, as to opposition to a
7 freestanding bond.

8 Now the fact that the bond, the Assembly
9 Bill has been substantially modified, yes, it has and
10 we don't know the final result of that legislation but
11 is imminent, and I believe the proper or the fairest
12 thing for the Court to do is not to dismiss the
13 complaint but to give the plaintiffs reasonable time
14 such as two weeks, or 10 days to file an amended
15 complaint to take the new final legislation into
16 consideration. Because it would be obvious if we wait
17 till, you know, the final legislation is passed, then
18 we have to start the process all over again, meanwhile
19 money is being spent in excess of what the State is
20 taking in and the defendants are creating the State
21 emergency which they then want to hang their hats on to
22 justify borrowing this enormous amount of money without
23 a vote of the people.

24 So the plaintiff's argument on the first
25 count are: number one, to allow the first count to

1 stand recognizing that again that this is setting forth
2 a remedy for the relief sought in the second count; and
3 number two, exercising the Court's discretion for sound
4 management practice in efficiency of the courts and for
5 the convenience of the parties to allow that defect to
6 be remedied by an amendment as opposed to a dismissal
7 and a refiling.

8 Number two, on the second count, this is
9 where plaintiffs allege that the State spending money
10 it doesn't have. And of course the defendants in their
11 briefs said well how could they possibly spend money
12 they don't have. Well that's why we are also,
13 plaintiffs also asked for a management conference,
14 should this motion be denied, to provide for some very,
15 very quick and limited discovery. I believe it's well
16 known that the State has a rolling line of credit, at
17 least it did during previous debt cases heard, I
18 believe, before this Court, in the Steve Lonegan cases
19 and the McGreevey cases, where it was developed that
20 the State had a line of credit.

21 So it's very, very possible for the State to
22 be spending money right now that will be paid back with
23 a line of credit, so that's a possibility. Of course
24 we don't know without any discovery and at this stage
25 for the Court to dismiss a case at a time when I

1 believe the Court must presume the allegations to be
2 true, and to deny and discovery would be an
3 unreasonable thing to do. But then again there's
4 another obvious way in which the State is spending
5 money it doesn't have and that goes back to Count 3,
6 the deal it made with the CWA, the 40,000 State
7 workers.

8 This was not a normal collective bargaining
9 agreement in any normal sense of the word, because it
10 was specifically designed based on the public
11 statements made by the Governor, and based on the union
12 and its official website, where they call it the best
13 no layoff deal in the country. What it effectively
14 does is, in exchange for a 10 day layoff during the
15 month of July, when all of the furloughed workers --
16 not layoffs I mean furloughs -- 10 days of furlough
17 during July, at a time when each of the furloughed
18 workers would qualify for federal supplemental stimulus
19 unemployment on top of State unemployment. In exchange
20 for that the State agrees not to have any layoffs for
21 the next 18 months, at a time when the State is
22 admitting that the only way it can make payroll
23 basically is to get massive borrowing or a massive gift
24 from the federal government.

25 This is not in the ordinary course of

1 business. This is something that appears to be
2 deferring an obligation to guarantee the crisis or
3 emergency where borrowing a massive amount of money is
4 the only option. And this is exactly why that
5 constitutional provision was adopted. It may be that's
6 the wisest or best choice for the State to make.

7 But when the Constitution, when this
8 provision went into our Constitution in 1844 after the
9 disastrous economic collapse known as the Panic of
10 1837, it was designed to say if this is the financial
11 situation that the State government wishes to create,
12 it must be done with the consent of the people in
13 election. So we are not, the plaintiffs are not asking
14 for, that this not be done, plaintiffs are asking that
15 if it is to be done it needs the consent of the people
16 because I believe \$9 billion is probably more money
17 than all the debt from all the referendums piled up
18 during the past 20 years, to combine probably way more
19 than that. So this is a very, very serious step.

20 And of course because unlike the debt of the
21 authorities, of the Transportation Authority, of the
22 higher education Authorities, this is sovereign debt.
23 I don't know the new legislation but I would imagine it
24 also includes the mandatory State property tax
25 surcharge, if there are not sufficient funds to pay

1 this debt, as with the automatic increase, the tolls,
2 and gas taxes for the Transportation Authority. So
3 this is a very, very serious thing. Something that I
4 believe the Constitution, you know, gives the People
5 the right to consent before the State officials choose
6 to go down this road, because again this legislation
7 calls for 35 years of debt, when the elected officials
8 are going to be done in 2 to 6 years. But the debt
9 will live on and that's exactly why the Constitution
10 was designed to protect tax payers from allowing
11 politicians for limited terms to incur debts that will
12 be here for years and years after they are gone.

13 And as far as the third count, I'd just be
14 repeating the argument that, yes, the cases about
15 normal collective bargaining agreements do not apply to
16 this particular case because this was not a good faith
17 bargaining agreement. This was an agreement that
18 basically says that the people who bear the hardship
19 and loss of income from the shutdown of nonessential
20 businesses, they lose their income. But if you're
21 nonessential member of the CWA working for the State
22 you not only do not lose any income, you get your
23 regular two percent raises and business is as usual and
24 then for the next 35 years most of that debt will be
25 paid back by taxes on the people who got clobbered, who

1 had to make the sacrifice. So there's something
2 fundamentally unfair, and again I'm not asking the
3 Court to decide what's fair and what's not fair. I'm
4 asking the Court, or plaintiffs are asking the Court to
5 enforce the Constitution, which says that if this is
6 the decision the State is to be made, it must be
7 approved by the voters in a referendum election.

8 So that's my response to the motion to
9 dismiss and of course should the Court deny that motion
10 I wish to be heard on an expedited discovery schedule,
11 so that the proper amendments to conform to the current
12 status as obviously events have been changing very,
13 very quickly since the complaint was filed mid June.
14 To have an opportunity for the pleadings to reflect the
15 new reality and for the discovery for the, you know,
16 the basically eight interrogatory questions which I
17 attached to my, you know, opposition for that very
18 reason that the State be ordered to respond to those
19 interrogatories in a very -- and supply the documents
20 in a very shortened time frame, so that the Court could
21 resolve these issues before the taxpayers are
22 obligated, based on money being spent that isn't there.

23 The Court could be aware that because
24 basically the State Defendants have balanced the budget
25 for the month of July with those furloughs, that there

1 is not really irreparable damage taking place now. But
2 irreparable damage will take place on August 1st when,
3 based on the public statements, based on past practice,
4 based on the numbers themselves, of obligations being
5 deferred rather than cut, that to delay litigation by
6 forcing refileing, putting us into the end of August and
7 into September, that I believe would cause irreparable
8 harm. And that's why I believe the court should use as
9 it's remedy, allowing the first count to survive with a
10 short period of time for an amendment and for rapid
11 discovery.

12 I apologize if I repeated myself, but that's
13 the argument for plaintiffs in opposition to this
14 motion,

15 THE COURT: Okay. I thank you very much, Mr.
16 Grossman. We'll go back to Ms. Reilly for any
17 rebuttal.

18 MS. REILLY: Thank you, Your Honor. This is
19 AAG Reilly. Where to begin? First, I'd like to point
20 out concessions that Mr. Grossman made when addressing
21 Count 1. He said in normal times I would agree with
22 Ms. Reilly and then he also said Count 1 just sets
23 forth a remedy and he said, doing what has never
24 occurred before with a shortened fiscal year and a long
25 fiscal year. Actually it has occurred before. In 1918

1 there was a change of the State fiscal year to comport
 2 at the time with a different federal fiscal year. And
 3 the framers of the 1947 Constitutional Convention saw
 4 the benefit of the State being able to change the
 5 fiscal year pretty much at the whim, at the whim of the
 6 Legislature, so the appropriations clause actually
 7 permits a change in fiscal year and allows the
 8 Legislature to make a, quote, necessary provision, end
 9 quote, in order to do that.

10 With regard to plaintiff's claim that the
 11 State is creating the fiscal crisis during a pandemic,
 12 I will just say that to the extent that plaintiffs are
 13 challenging FY21 matters, spending plans for the
 14 shortened FY21, that claim is not right for all the
 15 reasons stated State's initial brief, and we have an
 16 extremely volatile situation here. We're still
 17 tallying revenues from the income and corporate
 18 business taxes that were not due until July 15th when
 19 the 2019 tax payment deadline was extended under the
 20 COVID-19 Fiscal Mitigation Act.

21 There's a very fluid situation with regard to
 22 the federal government. There are questions about how
 23 the federal relief fund the State has already received
 24 may be spent, and there's talk of a new federal
 25 stimulus package. And we, frankly, no one knows what's

1 going to happen with COVID-19 itself in the fall and
 2 the winter. We cannot predict further what
 3 unemployment rates will be or the extent to which the
 4 economy will recover or not. If ever there were a,
 5 quote, state of facts that are future, contingent and
 6 uncertain this is it. And under the COVID Fiscal
 7 Mitigation Act, the Governor has until August 25th to
 8 submit his proposed budget.

9 With regard to the deferral of payment Camden
 10 v. Byrne and Burgos addressed that. The payments that
 11 are deferred can be deferred further, they could be
 12 paid or they can be eliminated all together. That
 13 stands as a discretion of the Legislature.

14 And with regard to the claim that somehow the
 15 Supplemental Appropriations Act for the expended FY20
 16 is not balanced, the Legislature passed a Supplemental
 17 Appropriates Act that shows an ending undesignated fund
 18 balance of nearly \$1 million and the Governor certified
 19 as to those revenues. Both branches of government
 20 performed their duty under the appropriations clause
 21 and there is -- look at Lance v. McGreevey and Camden
 22 v. Whitman and other cases where folks attempted to
 23 challenge an Appropriations Act that had been
 24 appropriately passed by the Legislature and certified
 25 by the Governor and they were all found to be, you

1 know, not able to do so.

2 With regard to the MOA, I know there are no
3 conspiracy theories here. If you look the MOA here
4 between the Governor and TWA is almost identical to the
5 MOA that was enforced in Futterman. You have in
6 Futterman the Court saying that the MOA with the State
7 was to address the impact of, quote, an unforeseen and
8 unprecedented, end quote, reduction in State revenues
9 because by, quote, the current economic crisis, which
10 at the time was the Great Recession. You had the
11 parties acknowledging that the MOA would, quote,
12 facilitate the accomplishment of vital government
13 policies and objectives including the avoidance of
14 layoffs, the delivery of needed public services and the
15 achievement of substantial budgetary savings.

16 You have in Futterman the State pledging not
17 to lay off any bargaining unit employees before January
18 1st, 2011 and this was a 2009 MOA. And in exchange you
19 have the CWA Union agreeing to defer a scheduled
20 across-the-board raise until the first full pay period
21 in January 2011. Additionally, the MOA in Futterman
22 required each bargaining unit employee to take 10
23 unpaid furlough days before a set date. And then you
24 have the Court saying, quote, because the agreement was
25 freely and voluntarily negotiated by her union,

1 Futterman was bound by it, regardless of whether she
2 personally approved of its terms, end quote.

3 The decision whether or not to lay off
4 employees is a political one for the Governor and not
5 for the plaintiffs to make. Even if the Governor did
6 have such evil power and dark motive that plaintiffs
7 ascribe to him to want to create a fiscal crisis,
8 preserving the jobs of approximately 20,000 CWA
9 employees would not be a way to achieve the desired
10 result. Indeed by leaving governmental services and
11 programs without staff to run them in the middle of a
12 pandemic, and by exacerbating unemployment numbers and
13 the collateral problems unemployment causes plaintiff's
14 desired layoffs might well increase necessary
15 expenditures and further reduce anticipated revenues.

16 As for the idea that, the notion that Count
17 1, with which plaintiff agrees with me in normal times
18 should be dismissed, and which plaintiff says sets
19 forth the remedy, as for the notion that instead of
20 being dismissed and refiled there should just be an
21 opportunity for amendment, the Court objects to that
22 Your Honor. Count 1 should be dismissed and the
23 plaintiffs made to wait to file a new complaint until
24 the many, many others, who have announced their
25 intention to sue filed their complaints, namely once

1 the legislation has passed the law and the Governor has
2 signed it.

3 Plaintiffs should not be rewarded for
4 flouting the rules either because they didn't know them
5 or by design and prematurely filing suit. They
6 shouldn't be rewarded and get the political benefit of
7 being the named plaintiff in a high-profile case when
8 everyone filed at the proper time, namely once the bill
9 is enacted into law. Then the cases can be
10 consolidated, a briefing schedule set and the State can
11 file an omnibus motion to dismiss instead of responding
12 piecemeal to various complaints on different schedules.
13 I think that's it, Your Honor.

14 THE COURT: Okay. Thank you very much, Ms.
15 Reilly.

16 MR. GROSSMAN: Seth Grossman here.

17 THE COURT: Yes?

18 MR. GROSSMAN: Possible to just briefly make
19 two points?

20 THE COURT: Yes, go ahead.

21 MR. GROSSMAN: Okay. This is Seth Grossman.
22 First of all, something that -- I don't know what
23 happened in 1918, however, I do know that the Court
24 really needs to scrutinize this three month, July,
25 August September 2020 budget, because it's a three

1 month budget. You know, every error in a budget or
2 every shortfall in a budget gets multiplied four times.
3 So that's what the impact does. So I think it's very
4 important that if the Court is going to make any
5 decision to dismiss, that the plaintiff should be able
6 to get the information in the interrogatory, you know,
7 because the facts, the publicly announced facts by the
8 Governor and defendants keeps changing

9 Now first they had a plan that said, okay,
10 this is what will balance the budget -- I'm talking
11 about the May 22nd recommendation of the State
12 Treasurer, said if we make these recommendations, we
13 can have the budget covered with \$1 billion to spare.
14 And then suddenly on June it's publicly announced that,
15 oh, no, we can balance the budget unless we have these
16 furloughs by 40,000 employees. So that's why in the
17 interrogatories we want the copies of the memos to see,
18 well how much money is saved by these furloughs. What
19 impact did it have on the budget. Is there a line of
20 credit? Is money being spent today that is going to be
21 paid back in anticipation of something in the next
22 budget year, something prohibited by the Constitution.

23 So, you know, that's the hardship of the
24 20,000 -- this is something that we also never had.
25 The Supreme Court in its decision in the previous CWA

1 case talking about the hardship of the 20,000 State
 2 employees, of them being out of work and here we have
 3 tens if not hundreds of thousands of private taxpaying,
 4 private businesses and employees being out of work, so
 5 there's no money coming into paid this. This has to be
 6 taken into consideration. But of course without
 7 knowing what those numbers are, plaintiff's being left
 8 to just, you know, rely on news reports and public
 9 documents as they come out.

10 I believe the discovery process is needed,
 11 you know, to flesh out these allegations, which are
 12 made in good faith. And there's a lot of
 13 corroboration. I mean, here the plaintiffs brought
 14 this early saying that the State was going to borrow
 15 \$9.9 billion dollars, because that's what the Governor
 16 had been publicly stating since March and wouldn't you
 17 know it the latest Senate bill says \$9.9 billion
 18 dollars. All the numbers are consistent with, that are
 19 coming out, are consistent with what plaintiffs allege
 20 before we had access to all these documents.

21 So I believe that we should have a
 22 documentary foundation before the court makes a ruling
 23 and not for the taxpayers, who have limited funds to
 24 pay the additional filing fee and to prepare the
 25 paperwork and most important the delay if it turns out

1 that the plaintiffs are correct and that commitments
 2 are being made in violation of the Constitution to
 3 minimize the damage by allowing this to come to light,
 4 you know, before the end of July when the furloughs
 5 stop saving the State the money.

6 MS. REILLY: Your Honor, if I might, this is
 7 AAG Reilly?

8 THE COURT: Yes, Ms. Reilly.

9 MS. REILLY: As for plaintiff's notion that
 10 he should be allowed to scrutinize a budget that has
 11 been passed by the Legislature in the exercise of its
 12 plenary and exclusive power under the appropriations
 13 clause and has been certified as to revenues by the
 14 Governor under his exclusive and plenary power under
 15 the appropriations clause one sixth, more than one
 16 sixth of the way into the extended budget year flouts
 17 the Constitution.

18 The framers placed no limitation, procedural,
 19 substantive or political on the Governor's exercise of
 20 his certification power. In fact, it was the State's
 21 experience during the Great Depression that motivated
 22 the drafters of the then proposed 1944 Constitution to
 23 repose the power of revenue certification in a single
 24 individual. Folks were trying to respond to -- how do
 25 we help the municipalities during the depression and

1 the Legislature could not get an answer as to how much
2 was available. And in the proposed 1944 Constitution
3 they said this is crazy. Every time the Legislature
4 sought to get -- everyone had a different opinion as to
5 revenues and they said let's just do it in the State
6 comptroller and he'll be the one to certify revenues.

7 And then in the 1947 Constitution they kept
8 that idea of a single person certifying revenues but
9 they transferred it to the Governor because the
10 Governor has the line item veto power and the two work
11 together, the revenue certification and the line-item
12 veto power. And as for Mr. Grossman's claiming that
13 they should get information from interrogatories before
14 they amend their complaint and before the State answers
15 or files a dispositive motion is just flatly against
16 all rules. That's it, Your Honor.

17 THE COURT: Okay. Thank you, Ms. Reilly and
18 thank you, Mr. Grossman, as well for the arguments and
19 the written work. This matter comes before the Court
20 on defendant's motion to dismiss plaintiff's complaint
21 under Rule 4:6-2 and it's been a bit of an evolution in
22 terms of the claims made plaintiff against the backdrop
23 of what has also evolved on the State level between the
24 Governor and the Legislature, since the complaint was
25 filed.

1 So at the moment there is a somewhat
2 different factual background than what was pled in the
3 plaintiff's complaint. But what I have before me is
4 the motion to dismiss the plaintiff's complaint as it's
5 been written and filed. And the aim of the complaint
6 appears to, well, the aim of the complaint was to
7 declare a bill pending in the New Jersey Legislature to
8 prevent, you know, to challenge it as, in violation of
9 the New Jersey Constitution when it wasn't law yet. So
10 from the get-go it was a very unusual complaint, which
11 was challenged on the basis of lack of ripeness by the
12 defendant. And also when the complaint was simply
13 Counts 1 and 2, there was the claim by the defendants
14 that there was an allegation to allege sufficient facts
15 to sustain its claims.

16 And then without taking leave of court, or of
17 the consent of the defendants, the plaintiff filed an
18 amended complaint with a new count in the midst of the
19 Court's consideration of the motion to dismiss. And
20 that procedurally is inconsistent with the court rules
21 and the plaintiff has never sought to get the Court to
22 relax the court rules regarding proper pleading
23 procedure. And those things are certainly of import as
24 the Court goes to analyze the names in this case.

25 The purported amended complaint added a

1 Count 3 that it that went off in a somewhat different
2 direction than the earlier counts, but also was related
3 to the concern of the plaintiff that the State is
4 spending money that it doesn't have. That's sort of
5 the theme of this and that under the Constitutional
6 provisions regarding the debt limitation clause and the
7 balance budget clause, the Court would have stepped in
8 and prevent actions by the Legislature and the Governor
9 that the plaintiff alleges are violative of those State
10 Constitutional provisions.

11 In any event, there are two plaintiffs,
12 Liberty & Prosperity 1776, it's a nonprofit corporation
13 incorporated in the State of New Jersey and also
14 plaintiff Michael E. Smith is a citizen and taxpayer of
15 New Jersey. The standing of the parties has not been
16 challenged by the State and New Jersey has a long
17 tradition of taxpayers standing and of course we don't
18 have the case of controversy requirement of the Federal
19 Constitution, but we're talking about justiciability in
20 terms of ripeness and not in terms of lack of standing.

21 But the case really arises out of the
22 financial repercussions on the State of New Jersey from
23 the global pandemic caused by the Severe Acute
24 Respiratory Syndrome Coronavirus known as COVID-19.
25 It's well known to the Court and to all parties here by

1 virtue of certainly the Governor's executive orders and
2 certainly news reports that we're in a global pandemic
3 with very serious outbreaks in the United States and
4 specifically in New Jersey and the greater tri-state
5 area of New Jersey, New York and Connecticut becoming
6 widespread in March 2020. You know, in this country
7 there are well over 100,000 deaths. I think it's over
8 100, and certainly over 120,000 deaths that have
9 already occurred and, also, probably close to 15,000 if
10 not more than 15,000 in the State of New Jersey.

11 But in response to the growing number of
12 infecteds Governor Murphy implemented a series of
13 executive orders starting back in March to limit the
14 public's exposure and minimize the risk of exposure to
15 the virus and to minimize the risk of infection. And
16 there have been a whole series of executive orders over
17 these last few months starting in March and continuing
18 up to the present time. And among the things that were
19 directed by the orders for the closure of nonessential
20 businesses, limitation of hours for certain businesses
21 that were allowed to remain open and a stay-at-home
22 order for citizens except in limited circumstances.
23 And these restrictions to protect the public health
24 limited economic activity in order to limit the risk of
25 infection and, so they had had an impact on the State's

1 economy and on the State's budgetary process. It's the
2 State's budgetary process that is really the aim of,
3 focus of the plaintiff's complaint.

4 And the State is anticipating precipitous
5 decline in revenue for both 2020 and 21 fiscal years
6 due to jobs in various tax revenues, the income tax,
7 the corporate tax, sales taxes, fuel taxes, casino
8 lottery revenues and other streams of income that have
9 been affected by the executive order measure. And this
10 complaint was directed at Assembly Bill 84175, which
11 was passed by the New Jersey Assembly on June 4, 2020,
12 and called the New Jersey COVID-19 Emergency Bond bill,
13 and it authorized the issuance of \$5 billion in bonds
14 of the State of New Jersey that is deemed a direct
15 obligation of the State and pledged the full faith and
16 credit of the State for the payment of interest and
17 redemption premium.

18 And the bill provided that the Governor and
19 the State Treasurer would be authorized to borrow funds
20 from the federal government if made available by
21 federal stimulus law and various other provisions. As
22 the counsel for the State has pointed out the Assembly
23 Bill, that's the focus of this, certainly Count 1 of
24 this complaint, is now not being considered by the
25 Legislature. There has been a substitute Bill S-2697

1 and there are, as counsel related, which you can find
2 clearly in a comparison between S-2697 and Assembly
3 Bill 4175, there are many differences between the two
4 bills and they are, you know, substantial.

5 There is a difference in the cap on the bond
6 authorization, there are certain limits on borrowing,
7 there's a whole procedure regarding a report from the
8 executive branch and the creation of a select
9 legislative commission to approve any borrowings and
10 there are number of other differences, and many of
11 which have been pointed out by Ms. Reilly. So there's
12 a very different backdrop at this point, although
13 frankly the bill, the Senate Bill in question, at least
14 as of when we started this argument has not been
15 adopted. I think it was scheduled for votes today in
16 the Legislature. But even if it's adopted by the
17 Legislature it will also have to be approved by the
18 Governor. And at least that piece, as far as we know,
19 as far as the record in this case, it's still not a law
20 of the State of New Jersey. But even if it were,
21 that's not what this complaint is about. This
22 complaint is about a bill that never became law and
23 apparently looks like it never will become law.

24 And so the plaintiffs want the right now to
25 have some time to see what happens and to amend the

1 complaint, at least terms of Count 1. But the, you
2 know, the Court has reviewed the, you know, the
3 ripeness of case law that has been provided by the
4 State and looked at those questions of ripeness itself
5 and ripeness is an important concept in New Jersey as
6 well as on the federal level, even though New Jersey's
7 Constitution doesn't have the case or controversy
8 requirement. The Courts in New Jersey have adopted the
9 ripeness doctrine because it's the aim of it is to
10 avoid premature adjudication of conceptual or future
11 conflicts.

12 It would make absolutely no sense at all for
13 the Court to look at this Assembly Bill that never
14 became law to determine whether it violated the
15 Constitution or not. I mean, it would be a waste of
16 everyone's time. And, so, you know, there are cases in
17 New Jersey that instruct of the Courts if matters are
18 unripe, but are future, contingent and uncertain the
19 Court should deny the claim or dismiss it as unripe.
20 Well among the cases to say that is Independent Realty
21 Company v. Township of North Bergen, 376 N.J. Super.
22 295 (App. Div. 2005). Also the Plotnick v. DeLuccia,
23 434 N.J. Super. 597 (Chan. Div. 2013).

24 So even though, when a Court looks at a
25 motion to dismiss and you're applying the standards

1 that both the parties agree is the appropriate one,
2 which is set forth in Printing Mart-Morristown v. Sharp
3 Electronics Corp., 116 N.J. 739 (1989). You look to
4 see if there's a fundamental cause of action, but it's
5 also up to a Court to dismiss the complaint if it fails
6 to articulate a legal basis entitling plaintiffs to
7 relief. And among the cases to say that is Sickles v.
8 Carbot Corp., 379 N.J. Super. 100 (App. Div. 2005).

9 Since this entire complaint in Count 1 is
10 directed to an Assembly Bill that, as I said, has never
11 become law and apparently will not become law, it
12 doesn't make sense to do anything other than to dismiss
13 that count. But I can dismiss that without prejudice
14 and so once there is a ripe claim, that is something
15 that the plaintiff certainly can file on once we know
16 what the law is. And to relax the need for ripeness in
17 these circumstances, to me is simply not appropriate.
18 There's Count 1, as I mentioned, would be futile and is
19 now been -- hasn't been superseded by law because as
20 far as I know the Senate bill has not been adopted by
21 both houses of the Legislature, but it certainly's been
22 superseded in terms of what's even before the
23 Legislature at this point in time. So the Court will
24 grant the application of the defendant to dismiss Count
25 1 as premature and unripe.

1 And I just would note for the purpose of the
2 record that plaintiff's counsel did not oppose the
3 ripeness argument with any case law that supported
4 maintaining Count 1 and has made an argument today that
5 under normal times he would agree with the dismissal of
6 Count 1. But that the fact that there's been shortened
7 fiscal -- well an extension of the Fiscal Year 2020
8 until September 30th somehow should convince the Court
9 to allow the claim to go forward regarding a bill that
10 never became law. But the Court can't accept that. I
11 think it's a much more reasonable in terms of how
12 litigation is managed to insist that unripe claims are
13 dismissed and that if the plaintiff is going to pursue
14 similar claims that they be framed with what the law
15 eventually is.

16 And so there, when you have an unusual
17 situation like a pandemic there are certain times when
18 you will have to take extraordinary action as a Court,
19 but I don't think that the pandemic, and the shortened
20 fiscal year is any justification for abandoning court
21 rules that give Courts the blueprint for how you
22 proceed in terms of just justiciability. We're in a
23 very volatile situation and particularly in light of
24 the current taxes being due yesterday, July 15th, and
25 so much of plaintiff's complaint is completely

1 speculative. And the budget process for Fiscal Year
2 2021 has been extended and that including the August
3 25th date for the Governor to provide a report to the
4 Legislature and that makes Count 2 of plaintiff's
5 complaint also, I mean, speculative.

6 And plaintiffs seem to take the position that
7 they can allege a violation of the Constitution without
8 facts or case law that support a cause of action. And
9 I want to be careful here because I don't want to make
10 any ruling on the merit of Count 2. But simply to say
11 that it does not provide the factual justification for
12 the State spending in excess of monies that it has.
13 Particularly when looked at the situation as reflected
14 by the current circumstances on the supplemental bill
15 for Fiscal Year 20 and the current fiscal situation in
16 terms of that supplemental bill and the next three
17 months. There simply are, there really are no facts in
18 Count 2. There's certainly allegations, but there are
19 not facts, and that's different than -- facts and
20 allegations are different when it comes to applying
21 whether or not the plaintiffs have stated a claim upon
22 which relief can be granted.

23 The Count 2 makes certain claims in terms of
24 the allegation that the State is spending money that it
25 doesn't have, but they are just that, they are just

1 allegations. And, you know, the plaintiff is saying
2 well give me discovery, but that's not the standard on
3 a motion to dismiss. You know, New Jersey is a fact
4 state, complaint state, rather than simply notice
5 pleading and you have to provide sufficient facts on
6 which your cause of action is based.

7 And the, you know, the second count has
8 statements made by the Governor, statements made by the
9 Treasurer and then it's, you know, Paragraph 9 says, it
10 appears from public statements that the State has
11 failed to cut government spending to match their own
12 estimates and, you know, it again it makes these very
13 serious constitutional claims on the basis of no hard
14 facts. And then says, well we're entitled to discovery
15 but, you know, the rule is that you're not entitled to
16 discovery on a motion to dismiss. You have to be able
17 to show on the face of the complaint that it states a
18 cause of action.

19 And the Court is not bound to take
20 allegations as true facts. Yes, you have to accept the
21 facts as true, but not conclusory allegations about the
22 alleged violations of a balance budget provision and
23 the debt limitation clause provision. And so the Count
24 2 itself is also speculative and inadequately supported
25 by facts. There's no right to discovery at this point.

1 It's up to plaintiffs to provide the facts essential
2 for the claims.

3 And also, also important to the Court was
4 with the arguments made by the State in the motion to
5 dismiss that actually bore on the legal claims, there
6 was no citation of authority whatsoever by plaintiff to
7 support the legal validity of its claim, just sort of
8 throwing up some statements made by the Governor and
9 Treasurer and then claiming that they violated the
10 State Constitution without any, you know, any case law
11 support, when the State provided a significant case law
12 support in regard to -- in its opposition and in
13 support of its -- not as opposition, in support of its
14 motion to dismiss and then also it goes into the, to
15 the reply brief.

16 So I mean the complaint is really based on
17 inferences from public statements rather than the facts
18 needed to support a, you know, a cause of action or the
19 very serious constitutional causes of action that were
20 alleged with very significant relief thought on the
21 basis of insufficient facts, essentially trying to, you
22 know, to stop certain processes of government based
23 upon what appears to be mere allegations. And to the
24 extent that Count 2 incorporates Count 1 based on a
25 bill that never became law and, so speculative and

1 unripe to the extent that Count 2 depends on the
2 allegations in Count 1.

3 In terms of New Jersey being a fact rather
4 than a notice pleading jurisdiction, the Court relies
5 on Nostrame v. Santiago, 420 N.J. Super. 427 (App. Div.
6 2011). And even in Printing Mart, 116 N.J. 768,
7 there's the observation it's not enough for plaintiff
8 to assert that any essential facts the Court may find
9 lacking can be dredged up and discovery. As I said,
10 that's not the rule in New Jersey. And so the
11 plaintiff's effort to get discovery is not something
12 that's appropriate unless the complaint is, you know,
13 survives. Always from the executive branch however
14 there's the Open Public Records Act and, so documents
15 can certainly be sought under that in a separate
16 request. You don't have to rely on discovery for that,
17 at least in terms of the executive branch, there is a
18 legislative branch exception in OPRA.

19 As far as Count 3 is concerned, the Court's
20 very concerned about the procedural irregularity and
21 so, I mean, we have a situation here where a lawsuit
22 was filed seeking relief against a bill that apparently
23 is never going to be enacted and also making
24 speculation, with speculation on, based upon certain
25 public comments from State officials where comments

1 were just lifted and not provided any factual support
2 in terms of what they, what claims of plaintiff are in
3 regard to the executive branch spending more money than
4 it has available.

5 But, so then in opposition for the motion to
6 dismiss, plaintiff files an amended complaint
7 inconsistent with the rules and in terms of this whole
8 fairness, I think it's extremely important when you're
9 dealing with Constitutional claim of great significant,
10 the balance budget provision and the debt limitation
11 clause, to make sure that court rules are enforced and
12 are not bent to allow some sort of a free for all, as
13 circumstances change, not to require plaintiff's to
14 meet the requirements of the rule. I mean there's
15 nothing to prevent the plaintiff for making the
16 appropriate motion to amend the complaint, asking that
17 it be heard at the same time as the motion to dismiss.
18 And, you know, motion to dismiss are considered
19 responsive pleadings. One of the cases does say that.
20 It's Town of Harrison Board of Ed v. Netchert, 439 N.J.
21 Super 164, a Law Division case from 2014.

22 But so essentially there was the whole motion
23 was changed with the amended complaint coming in and
24 then we have the reply brief that came in from the
25 defendants and that was really the opportunity that the

1 State had to point out the procedural irregularity.
2 But they also dismissed, thought to have Count 3
3 dismissed as for failure to state a claim upon which
4 relief can be granted.

5 And the Court will be dismissing Count 3, an
6 entire complaint without prejudice. For Count 3, in
7 part because of the procedural irregularity. And
8 particularly since plaintiff's counsel may very well
9 wish to file a new complaint whenever the law is
10 adopted and there may be similar claims based upon the
11 actual law itself assuming that the Senate Bill or some
12 facsimile of it does become law. I think it's
13 important to send a signal to counsel that the Court
14 expects the court rules to be adhered to, again,
15 because of the import of the kinds of claims that are
16 being asserted here.

17 Plaintiff's counsel seems to suggest that the
18 import of the claims should require relaxation over the
19 court rules. But the Court feels quite differently
20 that when you're making such, you know, very
21 significant allegations in the context too of the
22 extraordinary times we were in that it's important to
23 follow the court rules or seek relaxation, which the
24 Court could do. You know, just because there is likely
25 to be a subsequent complaint filed the Court will get

1 into some extent the aspect of the motion now to
2 dismiss Count 3 for failure to state a claim upon which
3 relief is granted. I have to say, I had some, I had
4 some trouble trying to figure out exactly what was
5 happening in Count 3 because it seems to go in a number
6 of different directions.

7 First of all, there was a challenge to a
8 spending plan that was put forth by the State
9 Treasurer, but as with the Assembly Bill, a plan does
10 not have the force of law. And so it was, there's no
11 cause of action to challenge a plan that doesn't have
12 the force of law. It's been superceded by the
13 Supplemental Appropriations Act and there was, as I
14 mentioned circumstances are evolving, but when you have
15 a complaint that's filed when circumstances are
16 evolving to the Court it makes more sense to look at it
17 and see if there is a valid claim at the base upon the
18 allegations in that complaint.

19 And if there are no claims because of certain
20 claims being speculative or having been superceded by
21 subsequent action, it's better to dismiss the claim and
22 not to do what Mr. Grossman is urging just to give them
23 another chance to amend it because, frankly, it would
24 be pretty much a total replacement. There may be
25 similar themes. I don't mean to say that the concerns

1 that are raised are not important. The debt limitation
2 clause, the balance budget clause, these things are
3 extremely fundamental to the New Jersey Government
4 process.

5 But it makes no sense for the Court to allow
6 that complaint to exist until every one of the counts
7 gets brought up to date. I just don't see that as --
8 and judicially appropriate or economical in any sense
9 and from the judicial economy as for one thing. And we
10 also, as I mentioned, now have a situation where
11 there's a Supplemental Appropriation Act and in terms
12 of any of the -- so that superceded the plan, so that
13 Count 3 that abate in that sense. And in terms of
14 Fiscal Year 2021, that is unripe as well. I mean, we
15 don't have the Governor making his recommendations for
16 the Legislature until August 25th.

17 And just to note, in terms of the claims, I
18 mentioned earlier that plaintiff, in the opportunity to
19 oppose the motion to dismiss, did not explain how they
20 had a cause of action in relation to the precedence
21 that the State puts forth. So I don't want to make a,
22 you know, a legal finding on the claims that, in regard
23 to the debt clause about the, you know, the chart that
24 plaintiff included in Count 3 of the amended complaint
25 alleging that these were all debts of the State.

1 But I can say, in terms of the motion to
2 dismiss standard that when there was no case law
3 support in regard to the State claims that the amounts
4 of money for different uses that were listed in Count 3
5 would not be debts of the State under Camden v. Bryne,
6 and the Burgos case, there was nothing put forth by
7 plaintiff to oppose that. So I mean, in terms of
8 establishing your cause of action, the Court looks at
9 the facts and then also looks to see what case law is
10 cited to see if a valid cause of action has arisen.
11 And so the absence of any contrary case law for the
12 Court to look at contributed to the Court's finding
13 that the complaint as written did not set forth a cause
14 of action in Count 3.

15 In terms of the furlough, that's pretty much
16 the furlough then the memorandum of understanding,
17 that's pretty much the same thing again. I mean, the
18 State has cited particularly that the Futterman case to
19 try to get the citations for that, Futterman v. Board
20 of Review, 421 N.J. Super. 281 (App. Div. 2011). The
21 circumstances in Futterman, in terms of the actual
22 claim that was filed is different than this, but in the
23 course of reviewing it, the Court looked at -- the
24 Appellate Division looked at the memorandum of
25 understanding that is very similar to what happened

1 here. That memorandum of understanding in Futterman
2 came up as a result of the recession. There was a
3 fiscal crisis in New Jersey and there was an order
4 issued for the furlough that prohibited layoffs to CWA
5 members for a few withstanding multiple years.

6 And so again we have a situation where the
7 plaintiff has come in and said look, Judge, there's no
8 cause of action here, look at these cases and there was
9 no effort to distinguish them, no effort to say the
10 cases don't, you know, don't apply. There's no cause
11 of action here. And also the State had relied on CWA
12 v. Florio, 130 N.J. 439 (1992) about staffing executive
13 agencies and that the discretion to do that resting in
14 the Governor for which coordinate branches including
15 the judiciary should not get involved in that type of
16 decision. So we have a situation where, in terms of
17 the cause of action brought by plaintiff to invalidate
18 the memorandum of understanding, there was nothing that
19 suggested, there was no substantive case law that they
20 provided to support the claim when the State had
21 provided significant case law.

22 So for all those reasons, the Court will
23 grant the State's motion to dismiss the complaint. I
24 will dismiss it though without prejudice, certainly in
25 light of the developments or anticipated developments

1 with the Senate Bill. Maybe it's already happened,
2 maybe it will happen later today. Maybe the Governor
3 will approve it. But all that remains to be seen and
4 as I said, I think for, you know, just in terms of
5 going forward to allow a complaint, extremely flawed
6 complaint that is out of date, unsupported by
7 sufficient facts and without case law basis in light of
8 the claims raised by the defendant, to allow that to
9 continue to be amended at some point when the
10 amendments would have to be almost a wholesale
11 rewriting of very significant parts of the complaint,
12 the Court finds that it's much more appropriate and in
13 the interest of justice to dismiss this complaint. And
14 to require any further a challenge by the plaintiff to
15 be brought through either an amended complaint that
16 they would seek to bring by virtue of a motion to
17 reinstate the case, that was an amended complaint, or
18 the filing of a new case.

19 I just had been advised by my law clerk that
20 the Senate has passed the Bill, so at least one piece
21 of that has been accomplished, so I'm sure that counsel
22 for both parties will be watching to see what else
23 happens and we may see you in the future, but the Court
24 will issue an order dismissing the complaint without
25 prejudice.

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MR. GROSSMAN: Thank you, Your Honor, Seth Grossman speaking and I apologize. I somehow missed that Harrison case and I did not realize that a motion to dismiss was a pleading, so my apologies to the Court and counsel for that omission.

THE COURT: Yes. Okay. All right. Thank you, Mr. Grossman and we'll get out the order and then as I said, we may see you again in a few weeks.)

MR. GROSSMAN: Thank you.

THE COURT: Thank you. Thank you all very much. Bye-bye.

* * * * *

C E R T I F I C A T I O N

I, ANNEMARIE DeANGELO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CD, play back number 11:01:10 to 12:23:38, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

/s/ Annemarie DeAngelo

ANNEMARIE DeANGELO AOC # 636

J&J COURT TRANSCRIBERS, INC. DATE: July 23, 2020

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LIBERTY & PROSPERITY 1776, INC.	:	SUPERIOR COURT OF NEW JERSEY
a non-profit corporation of	:	LAW DIVISION
New Jersey, and	:	MERCER COUNTY
MICHAEL E. SMITH, a citizen	:	DOCKET NO. MER-L-001089-20
and taxpayer of New Jersey,	:	
	:	
Plaintiffs	:	<u>Civil Action</u>
	:	
vs.	:	ORDER GRANTING DEFENDANTS'
	:	MOTION TO DISMISS
	:	
STATE OF NEW JERSEY, and	:	
PHILIP D. MURPHY, in his	:	
official capacity as Governor	:	
of the State of New Jersey, and	:	
ELIZABETH MAHER MUOIO, in her	:	
Official capacity as Treasurer	:	
of the State of New Jersey,	:	
	:	
Defendants	:	

THIS MATTER having been brought before the Court by GURBIR S. GREWAL, Attorney General of New Jersey (Assistant Attorney General Jean P. Reilly, appearing); upon Notice to Liberty & Prosperity 1776, Inc. and Michael Smith, (the Plaintiffs), by and through their counsel Seth Grossman, Esquire; and the court having reviewed

the written submissions of the parties and having heard oral argument on July 16, 2020, and for good cause having been shown for the reasons set forth on the record:

IT IS on this 16th day of July, 2020

ORDERED that:

1. Plaintiff's Complaint is hereby dismissed without prejudice pursuant to Rule 4:6-2.

s/Hon. Mary C. Jacobson, A.J.S.C.

In accordance with the statement required pursuant to R. 1:6-2(a), this motion was

Opposed

Unopposed

SETH GROSSMAN
Attorney ID#: 013331975
Attorneys at Law
453 Shore Road
Somers Point, NJ 08244
Tel. 609-927-7333
Attorney for Plaintiffs

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

LIBERTY AND PROSPERITY 1776, INC.
a Non-Profit Corporation of New Jersey
and **MICHAEL E. SMITH**, a
citizen and taxpayer of New Jersey

MERCER COUNTY

Docket No. **MER-L-**

**COMPLAINT FOR DECLARATORY
JUDGMENT AND IN LIEU OF
PREROGATIVE WRIT**

Plaintiff

vs.

**STATE OF NEW JERSEY, and
PHILIP D. MURPHY, in his official
Capacity as Governor of State of
New Jersey,
ELIZABETH MAHER MUOIO, in
her official capacity as Treasurer of
STATE OF NEW JERSEY, and
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, a non-profit
labor organization**

Defendant(s)

LIBERTY AND PROSPERITY 1776 INC., a Non-Profit Corporation of New Jersey with principal offices located at 453 Shore Road, in Somers Point, New Jersey 08244, and MICHAEL E. SMITH, a resident and taxpayer of New Jersey, residing at 2006 Sycamore Lane, in Mays Landing, New Jersey, all in Atlantic County, by way of complaint in lieu of prerogative writ and for declaratory judgment, say:

FIRST COUNT

1. Plaintiff LIBERTY AND PROSPERITY 1776 INC. (hereinafter referred to as "LIBERTY" is a Non-Profit Corporation of STATE OF NEW JERSEY (hereinafter referred to as NEW JERSEY).

2. PHILIP D. MURPHY (hereinafter referred to as "GOVERNOR") is the Governor of NEW JERSEY.
3. ELIZABETH MAHER MUOIO (hereinafter referred to as "STATE TREASURER") is Treasurer of NEW JERSEY
4. NEW JERSEY (hereinafter referred to as "STATE") is a government established by a written constitution which defines and limits its powers.
5. COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (hereinafter referred to as "CWA") is a labor organization doing business in New Jersey.
6. On or about, July 16, 2020, Defendant STATE purported to adopt a Law entitled the "New Jersey COVID-19 Emergency Bond Act". Said Law is also known as P.L. 2020, c. 60. Prior to adoption, said Law was known as Assembly Bill 4175 and Senate Bill 2697. Said Law is also known as "An Act authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the aggregate principal amount of up to \$9,900,000,000 for the purpose of responding to the fiscal exigencies caused by the COVID-19 Pandemic, authorizing the Governor to apply for and receive federal stimulus loans for the benefit of the State; authorizing the issuance of refunding bonds; and providing the ways and means to pay and discharge the principal of and interest on the bonds".

Said Law is hereinafter referred to as the "\$9.9 BILLION BORROWING LAW".

7. The \$9.9 BILLION BORROWING LAW purports to authorize and direct the Defendant STATE to issue bonds

"either to the federal government pursuant to any stimulus law. . . or at a public or private sale. . . in the aggregate principal amount of up to \$2,700,000,000 billion for the period that began July 1, 2019 and ends September 30, 2020, and in the aggregate principal amount of up to \$7,200,000,000 billion for the period that begins October 1, 2020 and ends

June 30, 2021, for a total combined aggregate principal amount of up to \$9,900,000,000.

8. The \$9.9 BILLION BORROWING LAW states that this borrowing is authorized “to address the State’s financial problems that have arisen as a consequence of the COVID-19 Pandemic”.
9. The \$9.9 BILLION BORROWING LAW provides that said bonds shall mature not later than the 35th year from the date of their issue.
10. The \$9.9 BILLION BORROWING LAW provides that
“If at any time, funds necessary to meet the interest, redemption premium, if any, and any principal payments on outstanding bonds are insufficient or not available, there shall be assessed, levied, and collected annually in each of the municipalities of the counties of this State, a tax on the real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to meet the interest on all outstanding bonds issued hereunder and on the bonds proposed to be issued under this act”.
11. The \$9.9 BILLION BORROWING LAW purports to take effect immediately, and does not provide for submission to the people for approval, pursuant to Article VIII, Section II of the New Jersey State Constitution.
12. Article VIII, Section II, Paragraph 3 (hereinafter referred to as the “Debt Limitation Provision) of the New Jersey State Constitution states:
“The Legislature shall not, in any manner, create in any fiscal year. . . debts. . . or liabilities of the State. . . unless. . . authorized by a law. . . Except as hereinafter provided, no such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. . . This paragraph shall not. . . apply to the creation of any debts or liabilities. . . to meet an emergency caused by disaster or act of God.”
13. Defendants will not and do not intend to use or apply the debts and liabilities sought to be created by the \$9.9 BILLION BORROWING LAW to “meet an emergency caused by disaster or act of God”.

14. Defendants at all time had, and continue to have many options to raise revenues and/or reduce expenditures reasonably and sufficiently to meet the needs of the government and people without borrowing all or part of the above described \$9.9 Billion prior to the next General Election on November 3, 2020 when the people of New Jersey can give or withhold their consent as is their right under the New Jersey State Constitution.

WHEREFORE, Plaintiffs demand judgment:

A. Declaring that the \$9.9 BILLION BORROWING LAW be and is null and void in whole or in part until such time as it is submitted to and approved by the people at a general election pursuant to Article VIII, Section II of the New Jersey Constitution, and approved by a majority of the legally qualified voters of the State voting thereon.

B. For such other and further relief as the court finds just and appropriate.

C. For costs.

SECOND COUNT

1. All allegations contained in the First Count are repeated and deemed incorporated herein in lieu of repetition.
2. Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution states in part:

“All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. . . . No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.”

3. On or about June 30, 2019, NEW JERSEY adopted a yearly budget appropriating \$38.7 billion to be spent during the Fiscal Year ending June 30, 2020, and anticipating the receipt of tax and other revenues in an equal amount.
4. Defendants knew or should have known between March 16, 2020 and March 25, 2020, that the GOVERNOR'S executive orders shutting down every "non-essential" business in New Jersey was certain to cause "precipitous declines" in revenues in Fiscal Year 2020 and Fiscal Year 2021.
5. The GOVERNOR and the Legislature have ample time and means to reduce spending to match the above described reductions in state revenues or raise taxes so that state government operates with a balanced budget until the General Election on November 3, 2020.
6. On or about April 30, 2020, the GOVERNOR publicly stated that NEW JERSEY needed \$20 billion to \$30 billion in assistance from the Federal government to "keep firefighters, teachers, police, EMS, on the payroll serving the communities in their hour of need".
7. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that NEW JERSEY expected \$2.7 billion in revenue losses for the 2020 Fiscal Year over what was projected in late February of 2020. However, this was only \$1.8 billion less than the amount projected in the 2020 Fiscal Year budget adopted on June 30, 2019.
8. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that they had not yet begun the process of making any

reductions in the number of state government employees on payroll or in their salaries or benefits.

9. It appears from said public statements that both the GOVERNOR and the STATE TREASURER have failed to cut state government spending to match their own estimates of the decline NEW JERSEY'S anticipated tax revenues. As a result, it appears that Defendants are knowingly spending money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period" in violation of Article VIII Section II of the New Jersey State Constitution.
10. If Defendants knowingly spent money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period", said Defendants are creating in July, August, and September of extended Fiscal Year 2020 "a debt, debts, liability or liabilities of the State, which together with any previous debts or liabilities" exceeds one percent of the \$38.7 billion appropriated in the budget appropriation law for this fiscal year. This would be a clear and direct violation of Article VIII Section II of the New Jersey State Constitution.
11. On April 13, 2020, Defendant STATE enacted P.L. 2020, c.19 entitled "The COVID-19 Fiscal Mitigation Act", hereinafter referred to as "2020 BUDGET EXTENSION ACT".
12. The 2020 BUDGET EXTENSION ACT added three months to the 2020 Budget Year, and eliminated those three months from the 2021 State Budget Year that would normally run from July 1, 2020 to June 30, 2021.

13. Section 3a of the 2020 BUDGET EXTENSION ACT extended the 2020 Budget Year by delaying the end of that “Year” from June 30, 2020 to September 30, 2020.
14. Section 3a of the 2020 BUDGET EXTENSION ACT created a new, shortened 2021 Budget “Year” that is to run nine months from October 1, 2020 to June 30, 2021.
15. Section 3b of the 2020 BUDGET EXTENSION ACT provided that
“any additional spending required to support the operations of the State from July 1, 2020 through September 30, 2020, shall be made through the enactment of a general law that amends or provides for a supplemental appropriation to P.L. 2019 c150. (that is the original 12 month 2020 Budget)”
16. On June 30, 2020, Defendant STATE enacted P.L. 2020, c43 a general law that amended the 12 month 2020 Budget by authorizing additional spending required to support the operations of the State for July, August, and September, 2020. That general law is entitled “An Act to Amend and Supplement ‘An Act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 2020 and regulating the disbursement thereof’. It is hereinafter referred to as THE “JULY, AUGUST & SEPTEMBER, 2020 BUDGET ACT”.
17. Defendants STATE, STATE TREASURER, and GOVERNOR certified and represented that the JULY, AUGUST & SEPTEMBER 2020 BUDGET ACT was a balanced budget, that complied with the New Jersey State Constitution, and did not create any debts or liabilities beyond the extended 2020 Budget Year ending September 30, 2020.

18. On July 16, 2020, Defendants represented to the Presiding Judge of the Superior Court, Law Division in Mercer County at a hearing in a previous action entitled Liberty and Prosperity 1776, Inc. et als. vs. State of New Jersey, et als. Docket No. MER-L-1089-20 that the JULY AUGUST & SEPTEMBER 2020 BUDGET ACT was a balanced budget that did not create debts or liabilities beyond September 30, 2020.

WHEREFORE Plaintiffs demand judgment

- A. Enjoining and restraining Defendants from spending any moneys in either Fiscal Year 2020 or Fiscal Year 2021 which exceed the amount reasonably expected to be received by the State during those years, as certified by an appropriate official of New Jersey.
- B. For such other and further relief the court finds just and appropriate under the circumstances.
- C. For costs.

THIRD COUNT

1. CWA is a national labor union that represents 700,000 workers in the United States, Canada, and Puerto Rico. This includes 300,000 telephone and cable TV services workers, 140,000 public, health care, and education workers, 50,000 flight attendants, 45,000 manufacturing and industrial workers, and “over 34,000 media workers at wire services, newspapers, magazines, labor information services, broadcast news, public service, and dot com companies.

2. CWA at all times relevant to this complaint is and was the “majority representative” and “exclusive representative” of roughly 40,000 employees of defendant STATE pursuant to N.J.S.A. 34:13A-5.3, et. seq.
3. On or about June 2, 2020, Defendant CWA and STATE engaged in negotiations “to reduce STATE’s salary costs during this economic crisis”.
4. On or about June 23, 2020, Defendant STATE reached an agreement with Defendant CWA to modify terms of the 2019-2023 collective bargaining agreement made by said parties. The terms of that agreement were reduced to a written eight page Memorandum of Agreement (hereinafter referred to as “MOA”) and made subject to ratification by the members of CWA.
5. Shortly after June 23, 2020, the MOA was ratified by sufficient members of the CWA.
6. The MOA includes the following terms:
 - a. The 2% across-the-board increase to annual base salaries scheduled to begin on July 1, 2020 will be deferred and paid the first full pay period after December 1, 2021.
 - b. The 2% across-the-board increase to annual base salaries scheduled to begin after April 1, 2022 and June 1, 2022 is deferred to July 1, 2022.
 - c. Approximately 25,000 employees will take ten unpaid furlough days between June 29, 2020 and July 31, 2020 for a total of 250,000 unpaid furlough days.
 - d. The State would pay all pension and retirement pension benefits for unpaid furlough days.
 - e. “In consideration for the substantial personnel savings achieved through the raise deferral ad furlough programs. . . the State agrees that there shall be no layoffs of bargaining unit employees through December 31, 2021.”

7. On June 25, 2020, CWA posted on its official website and E-newsletter that this “No Layoff Agreement” is the “best in the country” and allows workers to collect “enhanced unemployment benefits under the CARES Act” during their furloughs.

8. Defendants GOVERNOR, STATE TREASURER, and/or STATE knew or should have known at the time they agreed to the terms of the MOA that the STATE would not receive sufficient revenue from taxes and other sources to meet the STATE’s obligations to fully employ all employees covered or protected by the MOA until December 31, 2021.

9. Defendants GOVERNOR, STATE TREASURER, and/or STATE knew or should have known at the time they agreed to the terms of the MOA that the STATE could not and would not meet its obligations to pay the salaries and benefits of all state employees and/or CWA members covered and protected by said MOA without layoffs until December 31, 2021 unless it borrowed some or all of the funds to be borrowed pursuant to the \$9.9 BILLION BORROWING LAW.

10. The MOA is NOT enforceable if the STATE does not have sufficient revenue to pay the salaries and benefits of the State Employees and/or CWA Members described in the MOA.

11. If Defendant STATE is unable to meet its obligations to its employees covered and protected by the MOA without money borrowed through the \$9.9 BILLION BORROWING LAW, then said MOA creates “debts” and “liabilities” of Defendant STATE in a future budget year.

12. The MOA was not submitted to the people for approval pursuant to Article VIII, Section II of the New Jersey State Constitution.

13. The MOA is not enforceable unless or until it is submitted to the people for approval at a general election, and approved by a majority of the legally qualified voters of the State voting thereon.

14. Neither the CWA nor any of its members or employees of Defendant STATE have any legally enforceable right to compel Defendant State to raise taxes, borrow or appropriate funds to comply with the terms of the MOA.

15. Borrowing funds, or creating debts or liabilities to meet the STATE's obligations under the MOA does NOT constitute "an emergency caused by disaster or act of God".

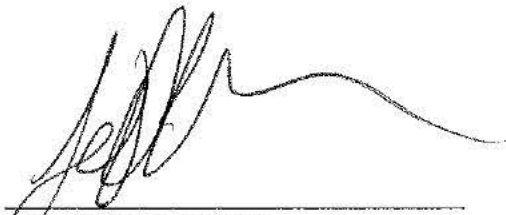
WHEREFORE Plaintiffs Demand Judgment:

A. Declaring that the MOA or Memorandum of Agreement made by and between Defendant STATE OF NEW JERSEY and Defendant COMMUNICATIONS WORKERS OF AMERICA on or about June 23, 2020 is NOT an enforceable contract or legally enforceable agreement unless Defendants have sufficient revenue to meet its obligations without borrowing.

B. For such other and further relief as the court may find just and appropriate under the circumstances.

C. For costs.

Dated: July 11, 2020



SETH GROSSMAN,
Attorney for Plaintiffs

pre-complaint-prerogwrit-liberty-bond-cwa-2020-0720

SETH GROSSMAN
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Somers Point, NJ 08244
Tel. 609-927-7333
Attorney for Plaintiffs

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

LIBERTY AND PROSPERITY 1776, INC.
a Non-Profit Corporation of New Jersey
and **MICHAEL E. SMITH**, a
citizen and taxpayer of New Jersey

MERCER COUNTY

**CERTIFICATION OF OTHER
ACTIONS**

Plaintiff

vs.

STATE OF NEW JERSEY, et als.

Defendant(s)

SETH GROSSMAN, of full age, hereby certifies:

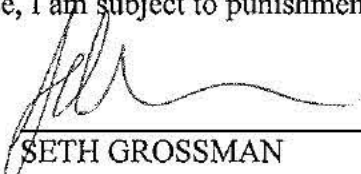
I am the attorney for Plaintiff, and I have personal knowledge of the facts set forth in this certification.

To the best of my knowledge, the matter in controversy is the subject of another action pending in the Superior Court of New Jersey in Mercer County entitled "New Jersey Republican State Committee, etc. vs. Philip D. Murphy, etc., Docket No. MER-L-1263-20, certified for review by the Supreme Court of New Jersey, as M-1291 September Term 2019 084731. To the best of my knowledge, there is no other action pending in any court, and this matter in controversy is NOT the subject of any arbitration proceeding, and no other actions or arbitrations pertaining to the matter in controversy are contemplated.

I am not aware of any other person who should be joined in this action pursuant to Rule 4:28, or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 11, 2020



SETH GROSSMAN

SG/pre-complaint-prerogwrit-liberty-bond-cwa-2020-0720

SETH GROSSMAN
Attorney ID#: 013331975
Attorneys at Law
453 Shore Road
Somers Point, NJ 08244
Tel. 609-927-7333
Attorney for Plaintiffs

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION**

LIBERTY AND PROSPERITY 1776, INC.
a Non-Profit Corporation of New Jersey
and **MICHAEL E. SMITH**, a
citizen and taxpayer of New Jersey

MERCER COUNTY

Docket No. MER-L-1089-20
**AMENDED
COMPLAINT FOR DECLARATORY
JUDGMENT AND IN LIEU OF
PREROGATIVE WRIT**

Plaintiff

vs.

**STATE OF NEW JERSEY, and
PHILIP D. MURPHY, in his official
Capacity as Governor of State of
New Jersey,
ELIZABETH MAHER MUOIO, in
her official capacity as Treasurer of
STATE OF NEW JERSEY, and
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, a non-profit
labor organization**

Defendant(s)

LIBERTY AND PROSPERITY 1776 INC., a Non-Profit Corporation of New Jersey with principal offices located at 453 Shore Road, in Somers Point, New Jersey 08244, and MICHAEL E. SMITH, a resident and taxpayer of New Jersey, residing at 2006 Sycamore Lane, in Mays Landing, New Jersey, all in Atlantic County, by way of complaint in lieu of prerogative writ and for declaratory judgment, say:

FIRST COUNT

1. Plaintiff LIBERTY AND PROSPERITY 1776 INC. (hereinafter referred to as "LIBERTY" is a Non-Profit Corporation of STATE OF NEW JERSEY (hereinafter referred to as NEW JERSEY).

2. PHILIP D. MURPHY (hereinafter referred to as “GOVERNOR”) is the Governor of NEW JERSEY.
3. ELIZABETH MAHER MUOIO (hereinafter referred to as “STATE TREASURER”) is Treasurer of NEW JERSEY
4. NEW JERSEY (hereinafter referred to as “STATE”) is a government established by a written constitution which defines and limits its powers.
 - 4a. COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (hereinafter referred to as “CWA”) is a labor organization doing business in New Jersey.
5. On June 4, 2020, 52 of the 80 members of the General Assembly of NEW JERSEY voted to approve “Assembly Bill No. 4175”, also known as the “New Jersey COVID-19 Emergency Bond Act” hereinafter referred to as the “BOND BILL”.
6. On June 4, 2020, the BOND BILL was received in the Senate of NEW JERSEY, and referred to its Budget and Appropriations Committee.
7. At various and diverse occasions, GOVERNOR publicly voiced his support for the BOND BILL, and indicated he would sign it if approved by the STATE SENATE.
8. The General Assembly, in approving the BOND BILL found and declared the following facts effective as of May 28, 2020, the date said bill was introduced and referred to the Assembly Budget Committee.
 - a. On March 16, 2020, the GOVERNOR issued Executive Order 104 which *inter alia* ordered that all K-12 schools be closed (with limited

exceptions), that all universities and colleges in the State cease in-person instruction, that all casinos, racetracks, in-person sports wagering, gyms and fitness centers and entertainment centers be closed, and that all non-essential businesses cease operations from 8pm to 5am, and when open adhere to limited occupancy restrictions, and that all restaurants and bars close except for delivery and take-out services.

- b. On March 19, the GOVERNOR issued Executive Order No. 106 which among other things ordered that no lessee, tenant, homeowner or other person be removed from a residential property by foreclosure or eviction, and that enforcement of all judgments for possession, warrants for removal, and writs of possession be stayed while said order remained in effect, unless the court hearing the matter determines that enforcement was necessary “in the interests of justice”.
- c. On March 21, 2020, the GOVERNOR issued Executive Order No. 108, which superseded Executive Order 104, and ordered for the most part that all New Jersey residents remain home or at their place of residence except for certain very limited exceptions, and that all non-essential retail businesses be closed to the public.
- d. On March 23, 2020, the GOVERNOR issued Executive Order No. 109 suspending all elective surgeries as of March 27, 2020.
- e. On March 25, 2020, the GOVERNOR issued Executive Order No. 110 which ordered all child care centers to close, except those certified to care for the children of “essential persons”.

- f. NEW JERSEY since May 28, 2020 expected precipitous declines in revenues in Fiscal Year 2020 and Fiscal Year 2021, which include significant reductions in gross income tax revenues, corporation business tax revenues, and sales and use tax revenues to the required business shutdowns; motor fuels taxes due to mandated “stay-at-home orders; casino-related taxes due to casino closures; and lottery sales which have already started to decline.”
 - g. NEW JERSEY since May 28, 2020 expected that it will need to significantly revise the estimated revenues and projected appropriations for Fiscal Years 2020 and 21 contained in the GOVERNOR’s Budget Message for Fiscal Year 2021 on February 25, 2020.
9. The Legislature did NOT find or declare any facts indicating that the GOVERNOR had taken any measures to reduce spending to compensate for the precipitous declines in revenue
10. After finding and declaring said facts, the BOND BILL authorized and directed that the following action by NEW JERSEY:
- (a) Bonds of NEW JERSEY are authorized in the aggregate principal amount of \$5 billion.
 - (b) In addition to said bonds, the GOVERNOR or STATE TREASURER with the consent of the GOVERNOR is authorized to borrow from the federal government for the benefit of NEW JERSEY “in such amounts and on such terms as the federal government sets forth in or pursuant to any federal stimulus law”.
 - (c) In addition to said bonds, the GOVERNOR or STATE TREASURER with the consent of the GOVERNOR is authorized to borrow from the federal government for the benefit of NEW JERSEY “in such amounts and on such terms as the federal government sets forth in or pursuant

to any federal stimulus law” for the purpose of “providing financial assistance to local government units. . . “

- (d) Bonds issued in accordance with the provisions of this act shall be the direct obligation of NEW JERSEY, and the faith and credit of NEW JERSEY are pledged for the payment of the interest and redemption premium, if any, thereon when due, and for the payment of the principal thereof at maturity.
- (e) Bonds . . . shall mature. . . not later than the 35th year from the date of issue.
- (f) Should the State Treasurer, by December 31 of any year, deem it necessary because of the insufficiency of funds collected from the sources of revenues as provided in this act, to meet the interest and principal payment for the year after the ensuing year, then the STATE TREASURER shall certify to the Director of the Division of Budget and Accounting in the Department of the Treasury the amount necessary to be raised by taxation for those purposes. The Director shall, on or before March 1 following calculate the amount in dollars to be assessed, levied, and collected in each county as set forth. . . The director shall certify the amount to the county board of taxation and treasurer of each county. The county board of taxation shall include the proper amount in the current tax levy of the several taxing districts of the county in proportion to the ratables as ascertained for the current year.
- (g) The last paragraph of the BOND BILL states that said bill shall take effect immediately upon passage. It does NOT provide for submission to the people at a general election as required by Article VIII, Section II of the New Jersey State Constitution.

11. Article VIII, Section II, Paragraph 3 (hereinafter referred to as the “Debt

Limitation Provision) of the New Jersey State Constitution states:

“The Legislature shall not, in any manner, create in any fiscal year. . . debts. . . or liabilities of the State. . . unless. . . authorized by a law. . . Except as hereinafter provided, no such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. . . This paragraph shall not. . . apply to the creation of any debts or liabilities. . . to meet an emergency caused by disaster or act of God.”

12. The BOND BILL does not recite any facts showing that said sum of \$5 billion together with any unspecified funds to be borrowed from the federal government “pursuant to any stimulus law” would “meet an emergency caused by disaster or act of God”.

WHEREFORE, Plaintiffs demand judgment declaring that the BOND BILL is null and void on its face, for failing to provide for submission to the people at a general election, and failing to state that said law shall not take effect until it is approved by a majority of the legally qualified voters of NEW JERSEY voting thereon.

SECOND COUNT

1. All allegations contained in the First Count are repeated and deemed incorporated herein in lieu of repetition.
2. Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution states in part:

“All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. . . No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.”

3. On or about June 30, 2019, NEW JERSEY adopted a yearly budget appropriating \$38.7 billion to be spent during the Fiscal Year ending June 30, 2020, and anticipating the receipt of tax and other revenues in an equal amount.

4. Defendants knew or should have known between March 16, 2020 and March 25, 2020, that the GOVERNOR'S executive orders shutting down every "non-essential" business in New Jersey was certain to cause "precipitous declines" in revenues in Fiscal Year 2020 and Fiscal Year 2021.
5. The GOVERNOR and the Legislature have ample time and means to reduce spending to match the above described reductions in state revenues.
6. On or about April 30, 2020, the GOVERNOR publicly stated that NEW JERSEY needed \$20 billion to \$30 billion in assistance from the Federal government to "keep firefighters, teachers, police, EMS, on the payroll serving the communities in their hour of need".
7. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that NEW JERSEY expected \$2.7 billion in revenue losses for the 2020 Fiscal Year over what was projected in late February of 2020. However, this was only \$1.8 billion less than the amount projected in the 2020 Fiscal Year budget adopted on June 30, 2019.
8. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that they had not yet begun the process of making any reductions in the number of state government employees on payroll or in their salaries or benefits.
9. It appears from said public statements that both the GOVERNOR and the STATE TREASURER have failed to cut state government spending to match their own estimates of the decline NEW JERSEY'S anticipated tax revenues. As a result, it appears that Defendants are knowingly spending money in

excess of “the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period” in violation of Article VIII Section II of the New Jersey State Constitution.

10. By knowingly spending money in excess of “the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period”, Defendants are creating in Fiscal Year 2020 “a debt, debts, liability or liabilities of the State, which together with any previous debts or liabilities” exceeds one percent of the \$38.7 billion appropriated in the budget appropriation law for this fiscal year. This is in clear and direct violation of Article VIII Section II of the New Jersey State Constitution.

WHEREFORE Plaintiffs demand judgment enjoining and restraining Defendants from spending any moneys in either Fiscal Year 2020 or Fiscal Year 2021 which exceed the amount reasonably expected to be received by the State during those years, as certified by an appropriate official of New Jersey.

THIRD COUNT

1. All allegations set forth in the First Count and Second Count are repeated and deemed incorporated herein, as if set forth in full.
2. On March 23, 2020, Defendant State of New Jersey published a “Voluntary Disclosure” stating that:

“The State expects precipitous declines in revenues in Fiscal Year 2020 and Fiscal Year 2021 which include significant reductions in gross income tax revenues, corporate business tax revenues, and sales tax revenues due to required business shutdowns, motor fuels taxes due to Executive Order No. 107 (i.e. stay-at-home orders), casino related taxes due to casino closures, and lotter sales, which have already started to decline. . .

“It is possible that the State may encounter future increases in the State’s actuarially recommended contributions to the State’s pension plans to the extent that the valuation of pension plans is affected by the deterioration in value in the investment markets. . .”

3. On April 14, 2020, Defendant STATE adopted PL 2020, c. 19, known as “The COVID-19 Fiscal Mitigation Act”, and hereinafter referred to as the “Mitigation Act”.

4. Section 3 of the “Mitigation Act” provided *inter alia* that:

a. “the State fiscal year scheduled to end on June 30, 2020 shall end on September 30, 2020, and the subsequent State fiscal year shall begin on October 1, 2020 and end on June 30, 2021. . . (A)ny additional spending required to support the operations of the State from July 1, 2020 through September 30, 2020 shall be made through the enactment of a general law that amends or provides for a supplemental appropriation to P.L. 2019c. 150 (2019-2020 State Budget)

5. Paragraph 5 of the “Mitigation Act” further provided *inter alia* that Defendant State Treasurer prepare a report with:

“(1) “an update on State revenue collections through the first nine months of State Fiscal Year 2020 and a revised forecast of revenue projections for the remainder of the current fiscal year”,
and (ii) “a detailed plan of spending from State, federal, and all other governmental funds for the continuation of essential government operations during the remainder of State Fiscal Year 2020”.

6. On April 16, 2020, Defendant GOVERNOR publicly stated that he saw “no other way around” having Defendant STATE borrow as much as \$9 billion from the U.S. Federal Reserve under its “first-ever move into the municipal bond market”. He also said he had a plan to avoid seeking voter approval “under emergency or act of God provisions” of the New Jersey state Constitution.

7. On May 6, 2020, Defendant GOVERNOR publicly stated that the U.S. Treasury Department gave Defendant State of New Jersey “more flexibility” in spending

roughly \$2.4 billion received or to be received from the Federal Government under the federal “Coronavirus Aid, Relief, and Economic Security (CARES) Act.

8. On May 22, 2020, Defendant State Treasurer issued the report required by Paragraph 5 of the April 14, 2020 Mitigation Act. That report had the title “Report on the Financial Condition of the State Budget for Fiscal Years 2020 and 2021” and is hereinafter referred to as the “Treasurer’s Report and Spending Plan”. It is posted online at: <https://state.nj.us/treasury/omb/publications/NJ-Financial-Condition.pdf>

9. Said Treasurer’s Report and Spending Plan estimated that Defendant State of New Jersey would receive \$2.732 billion less in revenues than what STATE estimated it would receive when it adopted its budget for Fiscal Year 2020 (July 1, 2019 to June 30, 2020) and \$7.207 billion less for Fiscal Year 2021 (July 1, 2020 to June 30, 2021). (Table at bottom of Page 7)

10. The Treasurer’s Report and Spending Plan at Page 8 stated:

“The estimated budget revenue shortfalls for FY 2020 and FY 2021 equal approximately \$9.939 billion combined”.

11. The pro rata portion of the \$7.207 billion shortfall for Fiscal Year 2021 for each quarter, including the three month extended period of Fiscal Year 2020 (July, August, and September of 2020) is \$1.81 billion.

12. The Treasurer’s Report and Spending Plan stated that Defendant STATE made up part of the \$2.732 billion shortfall for the “traditional” 12 month 2020 budget year by applying a \$1.5 billion surplus which including \$732 billion from a budgeted “Rainy Day Fund”. That left a shortfall of approximately \$1.232 billion remaining for the 12 month period ending June 30, 2020.

13. The Treasurer’s Report and Spending Plan stated that Defendant State made up for the remaining shortfall through various measures including:

“Cancelling and reserving of pre-encumbrances will result in deferral or elimination of planned department spending. . . Deferral of other planned FY 2020 spending, including the pension contribution related to offset certain lottery shortfalls; the proposed lead infrastructure program in DEP (\$80 million) and the deferral of Economic Redevelopment & Growth (ERG) grants (\$49 million)”. (Page 15)

14. It appears that some of this “planned department spending” for Fiscal Year 2020 “deferred” to Fiscal Year 2021 are mandatory statutory and contractual obligations which must be paid. Deferring such obligations past the end of the fiscal year creates “debts. . . or liabilities of the State”. This is not permitted by Article VIII, Section II of the New Jersey Constitution unless approved by voters at a general election.

15. The Treasurers Report and Spending Plan for July, August, and September 2020, the added three months of Fiscal Year 2020 stated:

“The Governor’s proposed supplemental budget for July 1 to September 30 defers and cuts essential spending in order to fulfill the constitutional obligation to maintain a balanced budget. The supplemental budget includes its allocable share of solutions totaling \$4.0 billion”. (Page 18)

16. Copies of those 93 line items are attached hereto as Attachment A. The following line items appear to be deferrals of mandatory statutory and contractual obligations which must be paid. Deferring them to Fiscal Year 2021 therefore creates “debts. . . or liabilities of the State” and therefore requires voter approval. Those items include:

Year 3 of K-12 School Aid Formula:	\$336,496,000
NJ Transit: Increase over FY20 General Fund Subsidy:	\$132,000,000
Lead Infrastructure:	\$ 80,000,000
Special Education and Transportation Collaboration:	\$ 26,000,000
Repayment of Municipal Contribution to Mass Transit Fac:	\$ 3,000,000
Defer September Pension Payment to October:	\$950,860,000
Defer September 22 School Aid Payment to October:	\$467,000,000
Defer September CMPTRA/ETR Payments to October:	\$354,883,000
Defer Extraordinary Special Education Aid Payment to October:	\$250,000,000

Senior Freeze:	\$219,700,000
Homestead Benefit Program:	\$138,100,000
Defer NJ Transit Base Subsidy to October:	\$114,367,000
Clean Energy Fund Uncommitted Balances:	\$ 86,000,000
Affordable Housing Trust Fund Uncommitted Balances:	\$ 60,000,000
Defer Transitional Aid Based on Timing of Payments:	\$ 28,641,000
Defer Nonpublic Security Aid Payment to October:	\$ 22,600,000
Other Miscellaneous Deferrals Based on Spending Programs:	\$260,350,000

TOTAL APPARENT DEFERRALS: \$3,507,393
TOTAL APPARENT BUDGET CUTS: \$521,808

17. The total amount of true budget cuts proposed by Defendant State Treasurer in her Treasurer’s Report and Spending Plan were not sufficient to make up for the \$1.81 billion revenue shortfall for July, August, and September of 2020. They are not sufficient to balance the budget for the extended Fiscal Year 2020.

18. The Treasurer’s Report and Spending Plan estimated a \$7.207 billion shortfall of STATE revenue during the 12 month period between July 1, 2020 and June 30, 2021. The shortfall for the modified 9 month Fiscal Year of 2021 is approximately \$5.41 billion.

19. Defendants STATE OF NEW JERSEY, GOVERNOR, and STATE TREASURER plan “defer” approximately \$3 billion of mandatory statutory or contractual spending from the extended Fiscal Year 2020 ending September 30, 2020 to the next modified Fiscal Year 2021 beginning October 1, 2020.

20. If Defendants STATE OF NEW JERSEY, GOVERNOR and STATE TREASURER are permitted to do that, they will begin Fiscal Year 2021 with a structural deficit of approximately \$8.1 billion that can be covered with new spending cuts or tax increases in just nine months--or nearly a billion dollars a month!

21. CWA is a national labor union that represents 700,000 workers in the United States, Canada, and Puerto Rico. This includes 300,000 telephone and cable TV services workers, 140,000 public, health care, and education workers, 50,000 flight attendants, 45,000 manufacturing and industrial workers, and “over 34,000 media workers at wire services, newspapers, magazines, labor information services, broadcast news, public service, and dot com companies. (www.cwa-union.org/about/cwa-overview)

22. CWA describes itself as a highly political “progressive” organization that “is working to build a movement of progressive organizations to win progressive changes”. It also describes itself as a founder of “The Democracy Initiative” of 75 “progressive” organizations.

23. During the 2020 election cycle CWA dues paid for \$2,472,822 of political contributions, \$934,000 of lobbying (2019), and \$128,755 for “outside spending”. OpenSecrets.org reported of \$686,181 of CWA political contributions to political campaigns for federal office in 2020, \$666,181, or 97.65% went to Democrats. These contributions were not paid directly by CWA but through its locals and affiliates.

24. At all times relevant to this complaint, Defendant CWA was the collective bargaining agent for approximately half of some 40,000 employees of Defendant STATE.

25. On or about June 2, 2020, Defendant CWA and STATE engaged in negotiations “to reduce STATE’s salary costs during this economic crisis”.

26. On or about June 23, 2020, Defendant STATE reached an agreement with Defendant CWA to modify terms of the 2019-2023 collective bargaining agreement made by said parties. The terms of that agreement were reduced to a written eight page Memorandum

of Agreement (hereinafter referred to as “MOA”) and made subject to ratification by the members of CWA.

27. The MOA included the following terms:

a. The 2% across-the-board increase to annual base salaries scheduled to begin on July 1, 2020 will be deferred and paid the first full pay period after December 1, 2021.

b. The 2% across-the-board increase to annual base salaries scheduled to begin after April 1, 2022 and June 1, 2022 is deferred to July 1, 2022.

c. Approximately 25,000 employees will take ten unpaid furlough days between June 29, 2020 and July 31, 2020 for a total of 250,000 unpaid furlough days.

d. The State would pay all pension and retirement pension benefits for unpaid furlough days.

e. “In consideration for the substantial personnel savings achieved through the raise deferral and furlough programs. . . the State agrees that there shall be no layoffs of bargaining unit employees through December 31, 2021.”

28. On June 25, 2020, CWA posted on its official website and E-newsletter that this “No Layoff Agreement” is the “best in the country” and allows workers to collect “enhanced unemployment benefits under the CARES Act” during their furloughs.

29. This “No Layoff Agreement” MOA is part of Defendant GOVERNOR’s plan to not only create a \$9 billion budget “emergency” shortfall on September 30, 2020, but to also make sure that Defendant STATE has no option other than to borrow approximately \$9 billion without voter approval, in violation of Article VIII, Section II of the New Jersey State Constitution.

WHEREFORE Plaintiffs Demand Judgment:


A. Enjoining and Restraining Defendants STATE OF NEW JERSEY, PHILIP D. MURPHY, and ELIZABETH MAHER MUOIO from spending any state funds, or making any commitments to spend any state funds during extended Fiscal Year 2020 without first objectively determining that Defendant STATE OF NEW JERSEY will receive sufficient revenue to provide the necessary funds to satisfy those commitments before September 30, 2020.

B. For Declaratory Judgment determining that the Legislature may not create debts or liabilities between now and September 30, 2020 without voter approval, merely because revenues received between July 1, 2019 and June 30, 2020 were \$2.732 billion less than originally expected in June of 2019, or because the revenues it now expects to receive between July 1, 2020 and June 30, 2020 are \$7,207 billion less than what it originally expected in June of 2019.

C. For Declaratory Judgment determining that Defendant STATE OF NEW JERSEY has no authority to agree with and represent to Defendant COMMUNICATIONS WORKERS OF AMERICA AFL-CIO that “there shall be no layoffs of bargaining unit employees through December 31, 2021.

D. For such other and further relief as the court may find just and appropriate under the circumstances.

Dated: June 29, 2020



SETH GROSSMAN,
Attorney for Plaintiffs

pre-complaint-prerogwrit-liberty-bond-amend-2020-0627

ATTACHMENT A 1 of 2

Extended FY Budget Plan

The Governor's proposed supplemental budget for July 1 to September 30 defers and cuts essential spending in order to fulfill the constitutional obligation to maintain a balanced budget. The supplemental budget includes its allocable share of solutions totaling \$4.0 billion, including the elimination of \$849.7 million that the Governor proposed in late February:

Extended FY2020 Solutions		
(In Thousands)		
Department	Item	Amount
Governor's Proposals Eliminated		
Education	Year 3 of K-12 School Aid Formula	\$336,496
NJ Transit	Increase over FY20 General Fund Subsidy	\$132,000
Environmental Protection	Lead Infrastructure	\$80,000
Education	S2 Stabilization	\$50,000
Higher Education	Garden State Guarantee	\$50,000
Children & Families	Childrens System of Care Rate Increase	\$45,000
Education	Special Education & Transportation Collaboration	\$26,000
Education	Preschool Expansion - New Districts	\$25,000
Corrections	Hep C Testing and Treatment	\$21,547
Education	Nonpublic Security Aid - Per Pupil from \$150 to \$200	\$6,500
DHS - Mental Health	Psychiatrist Residencies and Justice Involved Mental Health Pilot	\$6,250
Community Affairs	Hudson County Reentry Pilot Program	\$6,000
Environmental Protection	NJ Infrastructure Bank	\$6,000
Community Affairs	Weequahic Park Senior Building	\$5,000
Community Affairs	Recreational Improvement Grants	\$5,000
Treasury	E-911 Grants	\$5,000
Community Affairs	Open Space PILOT Funding	\$3,517
DHS - Addiction Services	New Bridge Medical Center	\$3,000
Community Affairs	Repayment of Municipal Contribution to Mass Transit Facility	\$3,000
Community Affairs	Neighborhood Preservation	\$2,500
Law & Public Safety	Nonprofit Security Grant Program	\$2,050
Community Affairs	Prevention of Homelessness	\$2,500
Interdepartmental	Permitting Modernization	\$2,500
Environmental Protection	Harmful Algal Blooms	\$2,000
Treasury	Commission on Science and Technology	\$2,000
State	Business Marketing Initiative	\$2,000
Interdepartmental	9/11 Empty Sky Memorial	\$2,000
State	Primary Care Practitioner Loan Program	\$1,500
Health	Childhood Lead Outreach	\$1,500
Human Services	Office of Healthcare Affordability	\$1,500
Labor	Wage and Hour - Growth	\$1,000
Treasury	NJTV	\$1,000
University Hospital	Newark Emergency Medical Services	\$1,000
OSHE	State Policy Lab	\$1,000
Transportation	Pedestrian Safety Grants	\$1,000
Education	KEYS Academy	\$1,000

ATTACHMENT A 2 of 2

Medicaid	Increase Reimbursement for Midwife Care	\$1,000
Community Affairs	Newark Mayor's Brick City Peace Collective	\$750
DHS - Mental Health	Seton Hall Great Minds Campaign	\$500
Education	Restorative Justice In Education P.L.2019 c.412	\$500
Community Affairs	Hudson County Housing First Pilot Program	\$500
Community Affairs	Volunteer Income Tax Preparation Assistance	\$500
DHS - Mental Health	Rabbinical College Mental Health Initiative	\$300
Health	Implicit Bias Training	\$250
Education	Advanced Placement Fee Waiver	\$200
Community Affairs	Addressing Racial Bias Initiative	\$200
Community Affairs	Anti-Discrimination Training	\$200
Community Affairs	Wealth Disparity Taskforce	\$200
Community Affairs	Newark Public Library	\$200
Interdepartmental	Delaware River Basin Commission	\$200
State	NJ Historical Commission - Celebration of America	\$200
DHS - Mental Health	New Beginning Behavioral Health	\$195
Labor	Unity Community Center - Youth Development Training	\$150
Education	Jobs for New Jersey's Graduates	\$100
Education	Amistad Commission	\$75
State	Count Basie Center for the Arts	\$75
Community Affairs	Boys & Girls Club of NJ	\$45
Subtotal, Governor's Proposals		\$849,700
Other Solution Items		
Interdepartmental	Defer September Pension Payment to October	\$950,860
Education	Defer September 22 School Aid Payment to October	\$467,000
Community Affairs/Treasury	Defer September CMPTRA/ETR Payments to October	\$354,883
Education	Defer Extraordinary Special Education Aid Payment to October	\$250,000
Treasury	Senior Freeze	\$219,700
Treasury	Homestead Benefit Program	\$138,100
Higher Education	Senior Public College Operating Aid	\$119,870
NJ Transit	Defer NJ Transit Base Subsidy to October	\$114,367
Revenue Offset	Clean Energy Fund Uncommitted Balances	\$86,000
Revenue Offset	Affordable Housing Trust Fund Uncommitted Balances	\$60,000
Higher Education	County College Operating Aid	\$33,531
Community Affairs	Defer Transitional Aid Based on Timing of Payments	\$28,641
Various	Reduction to Statewide Discretionary Grants by 10%	\$28,305
Education	Defer Nonpublic Security Aid Payment to October	\$22,600
Various	Reduction to Statewide Department Non-Salary Operating by 5%	\$9,717
Treasury	Tenants Assistance Rebate Program	\$9,046
Treasury	Payments for Lifeline Credits	\$6,725
Education	Nonpublic Technology Initiative	\$5,400
Community Affairs	State Rental Assistance Program	\$4,625
Human Services	Social Services for the Homeless	\$3,554
Agriculture	Community Food Bank of New Jersey	\$1,750
Agriculture	Hunger Initiative/Food Assistance Program	\$1,705
Human Services	Supportive Housing Subsidies	\$1,097
Higher Education	Aid to Independent Colleges	\$800
Health	Public Health Infectious Disease Control	\$625
Agriculture	South Jersey Food Bank	\$250
Various	Other Miscellaneous Deferrals Based on Spending Patterns	\$260,350
Subtotal, Other Solutions		\$3,179,501
Grand Total, Supplemental Appropriation Solutions		\$4,029,201