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NEW JERSEY REPUBLICAN STATE
COMMITTEE a/k/a the NJGOP; DECLAN
O'SCANLON; HAL WIRTHS; LISA
NATALE-CONTESSA; and ILEANA
SCHIRMER

Plaintiffs,

vs.

PHILIP D. MURPHY, in his Official
Capacity as Governor of New Jersey;

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO.:

CIVIL ACTION

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Plaintiffs, New Jersey Republican State Committee a/k/a the NJGOP; Declan O'Scanlon; Hal Wirths; Lisa Natale-Contessa and Ileana Schirmer (collectively, "Plaintiffs") by way of Verified Complaint against Defendant, Philip D. Murphy, in his Official Capacity as Governor of New Jersey; hereby state:

NATURE OF ACTION

1. This action brought by Plaintiffs seeks injunctive relief against Defendant in the form of restraining Defendant from enacting Assembly Bill 4175 / Senate Bill 2697 in violation of the Debt Limitation Clause of the Constitution of the State of New Jersey.

THE PARTIES

2. Plaintiff, New Jersey Republican State Committee (the “NJGOP”) is an unincorporated association with an address of 150 W. State Street, Trenton, New Jersey 08608.

3. Plaintiff, Declan O’Scanlon, is an individual and a citizen and taxpayer of the State of New Jersey with an address of 21 Northvale Avenue, Little Silver, New Jersey, 07739.

4. Plaintiff, Hal Wirths, is an individual and a citizen and taxpayer of the State of New Jersey with an address of 12 Corwnall Court, Hamburg (Hardyston Twp.), New Jersey, 07419.

5. Plaintiff, Lisa Natale-Contessa, is an individual and a citizen and taxpayer of the State of New Jersey with an address of 829 Portobello Road, Toms River, New Jersey, 08753.

6. Plaintiff, Ileana Schirmer, is an individual and a citizen and taxpayer of the State of New Jersey with an address of 350 S. Lehigh Avenue, Hamilton Township, New Jersey 08619.

7. Defendant, Philip D. Murphy (“Defendant Murphy”), at all relevant times, is the Governor of the State of New Jersey, and is named as a defendant in his Official Capacity as such. As Governor of the State of New Jersey, Defendant Murphy is sworn to among other duties, diligently, faithfully and to the best of his knowledge, maintain and enforce the laws of the State of New Jersey. Governor Murphy’s official address is 225 W. State Street, Trenton, New Jersey 08625.

JURISDICTION AND VENUE

8. Venue is appropriate in the Superior Court of Mercer County pursuant to Court Rule 4:3-2(2), as Defendant’s official address is in Mercer County, and Defendant is an elected New Jersey public official whose actions affect real property in the county.

FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS

9. All facts alleged herein are matters of public record and/or subject to judicial notice pursuant to N.J.R.E. 201.

10. On March 11, 2020, the World Health Organization declared the novel coronavirus (hereinafter “COVID-19”) outbreak a pandemic, and on March 13, 2020, the President of the United States proclaimed that the COVID-19 outbreak constituted a national emergency.

11. On March 21, 2020, Defendant Murphy issued Executive Order No. 107, whereby it was ordered that for the most part all State residents remain home or at their place of residence except for certain very limited exceptions. Through this act all non-essential retail businesses were to be closed to the public.

12. Defendant Murphy renewed his stay at home orders, as well as ordered all non-essential retail business remain closed, with Executive Order 119 on April 7, 2020, Executive Order 138 on May 6, 2020, Executive Order 151 on June 4, 2020, and Executive Order 162 on July 2, 2020.

13. As a result of Defendant Murphy’s actions, the State of New Jersey’s economy has been severely impacted, and as a direct result, the State of New Jersey will experience a budget shortfall entering fiscal year 2020.

14. As a response to the anticipated shortfall, and in an attempt to restart the State economy and recover from the financial problems resulting from the COVID-19 Pandemic, on

May 28, 2020 the New Jersey State Assembly introduced Assembly Bill 4175, entitled the “New Jersey COVID-19 Emergency Bond Act” (hereinafter the “Bill”).

15. On July 16, 2020, the New Jersey State Senate passed their chamber’s version of the Bill, S-2697.

16. Having passed both chambers of the New Jersey legislature, the Bill is expected to be signed into law by Defendant Murphy, imminently.

17. The Bill authorizes the issuance of up to 9.9 billion dollars (\$9,900,000,000.00) in State general obligation bonds to be used for the purpose of responding to the fiscal exigencies caused by the COVID-19 Pandemic.

18. In addition, section 4(d) of the Bill authorizes bonds to be issued in the form of short-term notes to provide effective cash flow management for revenues and expenditures of the General Fund and the Property Tax Relief Fund in the implementation of the annual appropriations acts for Fiscal Year 2020 and Fiscal Year 2021.

19. This debt would be issued for the purpose of budget-financing in fiscal years 2020 and 2021, and the Bill permits refinancing that debt, including with long-term bonds maturing decades from now.

20. Article VIII, Section II, paragraph 2 of the Constitution of the State of New Jersey, the “Appropriations Clause”, holds that “[n]o 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.”

21. Further, Article VIII, Section II, paragraph 3(b) of the Constitution of the State of New Jersey, the “Debt Limitation Clause”, holds that “[t]he Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year”.

22. However, paragraph 3(e) holds that “[t]his paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the government of the United States. Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God.”

23. The Supreme Court has defined the term “revenue” as it is use in the appropriations clause to exclude bond proceeds because, according to the Court, bond proceeds are not considered revenue for budgetary purposes. Lance v. McGreevey 180 N.J. 590, 596 (2004).

24. The holding in Lance v. McGreevey set forth the important principle that borrowed money cannot be considered revenue.

25. As a result, general obligation bonds issued under the exception to the debt limitation clause cannot be considered revenue for the purpose of balancing a future budget.

26. On May 7, 2020, the Office of Legislative Services (“OLS”) issued an opinion wherein they determined that while revenue shortfalls related to the COVID-19 disaster may persist for some or all of the fiscal year, there will not be a precipitous and unforeseen shortfall, but rather an anticipated decline in revenue. A true and correct copy of the OLS opinion is attached as Exhibit “A”.

27. While the Supreme Court's ruling in Lance v. McGreevey only sets forth the purpose of the appropriations clause generally, the Court held that "borrowed monies, which themselves are a form of expenditure when repaid, are not income and cannot be used for the purpose of funding or balancing any portion of the budget pertaining to general costs without violating the Appropriations Clause." Lance, supra, 180 N.J. at 598.

28. Section 4(d) of the Bill directly contradicts the limitations set forth in Article VIII, Section 2, paragraphs 2 of the Constitution of the State of New Jersey, as well as the Supreme Court's holding in Lance v. McGreevey.

29. As such, Defendant must be enjoined from enacting and enforcing Assembly Bill 4175 / Senate Bill 2697 as doing so would be a violation of the Debt Limitation Clause of the Constitution of the State of New Jersey.

COUNT ONE

(DECLARATORY AND INJUNCTIVE RELIEF)

30. Plaintiffs repeat and reassert each and every allegation contained in the foregoing paragraphs as is set forth at length herein.

31. Defendant's enactment of Assembly Bill 4175 / Senate Bill 2697 would be in direct violation of the Debt Limitation Clause of the Constitution of the State of New Jersey and the Supreme Court's holding in Lance v. McGreevey.

WHEREFORE, Plaintiffs seek a declaration that the challenged Bill violates the Constitution of the State of New Jersey, as well as a permanent injunction against further infringement of their rights under these clauses, enjoining Defendant from enacting into law and/or enforcing the Bill and from passing any further order or rules similar to the invalid ones described in this action, along with any and all relief the Court deems equitable and just.

JURY DEMAND

DEMAND is hereby made for a trial by jury on all issues triable herein.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is hereby advised that **MICHAEL L. TESTA, SR., ESQ.** has been designated Trial Counsel in the matter.

RULE 1:38-7(b) CERTIFICATION

I certify that Confidential Personal Identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

TESTA HECK TESTA & WHITE, P.A.
Attorneys for Plaintiffs

Dated: July 16, 2020

By: s/ Michael L. Testa, Jr.
MICHAEL L. TESTA, JR.
MICHAEL L. TESTA, SR.
JUSTIN R. WHITE

RULE 4:5-1 CERTIFICATION

I certify, in accordance with R. 4:5-1, to the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, no other action or arbitration proceeding is contemplated, and there are no other parties know who should be joined in this action.

Dated: July 16, 2020

By: s/ Michael L. Testa, Jr.
MICHAEL L. TESTA, JR.

VERIFICATION

I, Douglas J. Steinhardt, do hereby certify:

1. I am the chairman and authorized agent of the New Jersey Republican State Committee a/k/a the NJGOP. The NJGOP is a Plaintiff in this matter. As such, I have knowledge of relevant facts.

2. The facts alleged in the Plaintiffs' Verified Complaint are true and correct to the best of my knowledge and understanding.



Dated: July 16, 2020

DOUGLAS J. STEINHARDT
Chairman, NJGOP

EXHIBIT “A”

LEGISLATIVE SERVICES
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NEW JERSEY STATE LEGISLATURE
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*First Assistant Legislative
Counsel, Ethics Counsel*

Gabriel R. Neville
Assistant Legislative Counsel

Roger Lai
Assistant Legislative Counsel

Katelyn McElmoyl
Assistant Legislative Counsel

May 7, 2020

Assembly Republican Leader Jon M. Bramnick:
Assembly Republican Office
P.O. Box 098
Trenton, NJ 08625-0098

Dear Assemblyman Bramnick:

Mr. Kevin Logan of your staff requested an opinion regarding whether or not the State may issue general obligation bonds without voter approval to meet the needs of the State arising from the COVID-19 pandemic. Specifically, he asked whether the exception to the debt limitation clause “to meet an emergency caused by disaster or act of God” in Article VIII, Section II, paragraph 3, subparagraph e., would apply to the issuance of debt to combat the COVID-19 pandemic, and whether the proceeds of such bonds may be considered revenue for purposes of an appropriations act.

BORROWING FOR A DISASTER

It is the opinion of Legislative Counsel that the COVID-19 pandemic is a disaster contemplated by the debt limitation exception and the State therefore may issue bonds, without the usual requirement for voter approval, to meet COVID-19 related emergency needs.

The Constitutional parameters for the conduct of the State’s fiscal affairs are set forth in Article VIII, Section II. They include the requirement for a single fiscal year, a balanced budget and a limitation on incurring debt. Paragraph 2 of section II sets forth the requirement for an annual and balanced budget.

No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be

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ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year....
 [N.J.Const. (1947), Art. VIII, § II, par. 2.]

The courts have referred to this paragraph as, “. . . the center beam of the State's fiscal structure. It cannot in any sense be regarded as merely providing governmental "housekeeping details," necessary and important but not truly vital. See Vreeland v. Byrne, 72 N.J. 292, 304-305 (1977). Its terms must therefore be given full and complete effect in accordance with their clear and obvious intent.” City of Camden v. Byrne. 82 N.J. 133, 151, (1980).

Paragraph 3 of Section II prohibits the State from incurring debt in an amount exceeding 1 percent of the appropriations in the general appropriation law for that fiscal year, unless the debt is approved at a general election and other conditions are met. Sub-paragraph e provides an exception to this debt limitation.

This paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the government of the United States. Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God. (emphasis added)

The final clause, “or to meet an emergency caused by disaster or act of God” was added when the 1947 Constitution was drafted. The proceedings of the constitutional convention do not provide a robust explanation for this clause. A statement from the committee on Taxation and Finance noted that the clause had practically been put in effect “in 1932 by the Legislature and looked upon with a great deal of propriety by the people of the State because those things had to be done.” Constitutional Convention of 1947, Convention Proceedings, Volume I, at 149.

Although the Constitution does not define the terms “disaster” or “act of God,” the New Jersey Supreme Court has stated that “[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” Vreeland v. Byrne, 72 N.J. 292, 302, (1977) (internal quotation marks and citation omitted). The Oxford American Dictionary defines disaster as, “a sudden event, such as an accident or a natural catastrophe, that causes great damage or loss of life.” Oxford American College Dictionary (1st edition, 2002).

It is worth noting that there is an instructive statutory corollary. When the Legislature enacted The Civilian Defense and Disaster Control Act (N.J.S.A. App.A.:9-33 et seq), which grants the Governor emergency powers, it defined disaster as “any unusual incident resulting from natural or unnatural causes which endangers the health, safety or resources of the residents of one or more municipalities of the State, and which is or may become too large in scope or unusual in type to be handled in its entirety by regular municipal operating services.” The Governor invoked this statutory authority in Executive Order No. 103 of 2020, which responds directly to the

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COVID-19 pandemic. Based on the history of Article VIII, Section II, Paragraph 3e, the plain meaning of the term disaster, and the Legislature's subsequent use of that term in relevant law, it is reasonable to conclude that the debt limitation exception applies to a COVID-19 pandemic.

In summary, the Constitution requires the enactment of an annual, balanced budget free from borrowing unless that borrowing is either approved by the voters or is to meet an emergency caused by disaster. The COVID-19 pandemic is the type of disaster contemplated by the Constitutional exception. The exception to the debt limit clause allows the State to incur debt through the issuance of general obligations bonds without voter approval "to meet an emergency caused by [COVID-19]."

BORROWING FOR REVENUE

It is also the opinion of Legislative Counsel that borrowing to supplement revenue for future fiscal year budgets would violate Article VIII, Section II of the Constitution and the principles set forth by the New Jersey Supreme Court in Lance V. McGreevey 180 N.J. 590 (2004).

The drafters' inclusion of the paragraph 3e exceptions to the debt limitation clause allows borrowing money where the anticipated revenue certified in accordance with Article VIII, Section II, paragraph 2 of the Constitution becomes insufficient due to an unexpected event. However, the Constitution does not define "emergency" or the meaning of "to meet an emergency."

The other exceptions to the debt limitation clause contained in paragraph 3e are: "for purposes of war," "to repel invasion," and "to suppress insurrection." Each is a discrete problem that sets forth a nexus test. For example, if the State needs to borrow money "for purposes of war" it may do so as long as the expenditure has a nexus to the war. Borrowing to buy warfighting equipment and weapons falls clearly within this provision. An ancient maxim of statutory construction is that the meaning of words may be indicated and controlled by those with which they are associated. This maxim, *noscitur a sociis*, applies to associated words in a manner similar to application of the more familiar doctrine of *in pari materia* to statutes covering the same subject matter. Germann v. Matris, 55 N.J. 193, 210 (1970), see also Soto v. Scaringelli, 189 N.J. 558, 572 (2006). Read in context with the other exceptions in paragraph 3e, "to meet an emergency" appears to be limited to borrowing to directly resolve the presently identifiable emergency. Consequently, just as the purchase of weapons bears a nexus to "for purposes of war" it is clear that purchasing ventilators and personal protective equipment bears a nexus to meeting the COVID-19 emergency. It is also reasonable to argue that the sudden, unanticipated and precipitous shortfall of expected revenue, resulting from the COVID-19 pandemic is the type of emergency contemplated by paragraph 3e. At the time the appropriations act was enacted, anticipated revenue was determined without knowledge of the COVID-19 pandemic. The shortfall of revenue in the current fiscal year was unanticipated and caused by the COVID-19 pandemic. Therefore it is fair to conclude that the State can borrow both for expenses directly addressing COVID-19 and to meet the needs of the State at the time the 2020 appropriations act was enacted. That is, the State can borrow to replace certified, anticipated revenue that was never realized due to COVID-19.

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As noted above, Article VIII, Section II, paragraph 2 of the Constitution provides that all spending as far as can be ascertained or reasonably foreseen must be provided in a single appropriations law and further requires that no appropriations law may be enacted if the appropriations exceed the revenue on hand and anticipated during the relevant fiscal period. The debt limitation exceptions apply only to the general prohibition against borrowing and the requirement for voter-approval within paragraph 3. The exceptions do not provide an exemption to the balanced budget requirements of paragraph 2.

The language and structure of Article VIII, Section II indicate that exceptions to the debt limitation clause are intended only to allow the State to address a specific, unforeseen spending need that arises notwithstanding the Legislature's and Governor's previous compliance with the anticipated revenue certification, and balanced budget provisions of Article VIII, Section II, paragraph 2. When a Fiscal Year 2021 budget is adopted, normal constitutional procedures, including revenue certification and balanced budget requirements will apply. While revenue shortfalls related to the COVID-19 disaster may persist for some or all of the fiscal year, there will not be a precipitous and unforeseen shortfall, but rather an anticipated decline in revenue. Borrowing to supplement anticipated revenue is inconsistent with the purpose of Article VIII, Section II, paragraph 2 (a balanced budget) and has been expressly rejected by the New Jersey Supreme Court:

the question is whether the constitutional framers would have considered the Appropriations Act, relying as it does on \$1.9 billion in borrowed monies to fund general expenses, to be consistent with a "balanced budget." (For purposes of our analysis, general expenses include the ordinary, operating, and day-to-day costs of government.) The short answer is no. We cannot reasonably find that the current Appropriations Act constitutes a balanced budget without defeating the very purpose behind the Appropriations Clause. That purpose is to bar the State from adopting an annual budget in which expenditures exceed revenues. [Lance v. McGreevey 180 N.J. 590, 596 (1980).]

The Supreme Court's ruling in Lance v. McGreevey, not only sets forth the purpose of the appropriations clause generally, it also defines the term "revenue" as it is used in the appropriations clause to exclude bond proceeds because, according to the Court, bond proceeds are not considered revenue for budgetary purposes. Lance at 593. The Court held that "borrowed monies, which themselves are a form of expenditure when repaid, are not income (i.e., revenues) and cannot be used for the purpose of funding or balancing any portion of the budget pertaining to general costs without violating the Appropriations Clause." Id. at 598. Although that case concerned the State's issuance of *appropriations-backed bonds* and the Court did not address *general obligation bonds* issued under the emergency exception to the debt limit clause, it set forth the important principle that borrowed money cannot be considered revenue. As a result, even general obligation bonds

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issued under the exception to the debt limitation clause cannot be considered revenue for the purpose of balancing a future budget.

In conclusion, The COVID-19 pandemic is a disaster that that has resulted in an emergency as contemplated by the New Jersey Constitution. Accordingly, the State may borrow money to meet the emergency caused by COVID -19 without voter approval and without violating the debt limitation clause. The proceeds of the bonds are borrowed money and may be used to pay for equipment and expenses directly related to COVID-19. This opinion sets forth justification for using borrowed money to pay for COVID-19 related equipment and to meet the needs of the State previously determined when the FY2020 budget was enacted. However, borrowed money may not be used to replace general revenue to support non-COVID-19 related spending in future budgets. What future expenses are directly related to COVID-19 is a matter to be resolved jointly by the Legislative and Executive Branches through the legislative process, including future budget acts.

Respectfully.

Jason M. Krajewski
Legislative Counsel

By: /s/ N. Lang
Neal Lang
Associate Counsel

JK:

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Plaintiffs,

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PHILIP D. MURPHY, in his Official
Capacity as Governor of New Jersey;

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO.:

CIVIL ACTION

**ORDER TO SHOW CAUSE WITH
TEMPORARY AND PERMANENT
RESTRAINTS**

THIS MATTER having been opened to the Court by Testa, Heck, Testa & White, P.A.,
attorneys for Plaintiffs, New Jersey Republican State Committee a/k/a the NJGOP; Declan

O'Scanlon; Hal Wirths; Lisa Natale-Contessa; and Ileana Schirmer ("Plaintiffs"), by way of Verified Complaint and Order to Show Cause with Temporary and Permanent Restraints, for an Order against Defendant, Philip D. Murphy, in his Official Capacity as Governor of New Jersey; and opposition and argument of counsel having been heard, if any; and for good cause shown;

It is on this _____ day of _____, 2020:

ORDERED as follows:

I. TEMPORARY RESTRAINTS

IT IS ORDERED that until a final resolution of Plaintiffs' application for Preliminary Injunction, Defendant is hereby:

- (1) Temporarily restrained from enacting and enforcing Assembly Bill 4175 / Senate Bill 2697 in violation of the Debt Limitation Clause of the Constitution of the State of New Jersey;

II. ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that the Defendant appear and show cause before the Superior Court of New Jersey at the Mercer County Courthouse, located at 175 South Broad Street, Trenton, New Jersey 08608, on the _____ day of _____, 2020 at _____ o'clock in the _____ noon or as soon thereafter as counsel may be heard, why an Order should not be issued:

(a) Enjoining the Defendant from enacting and enforcing Assembly Bill 4175 / Senate Bill 2697 in violation of the Debt Limitation Clause of Constitution of the State of New Jersey;

(b) Awarding Plaintiffs reasonable attorneys' fees and costs for initiating and prosecuting this action in the public interest and providing such other relief as the Court may deem appropriate under the circumstances; and

AND IT IS FURTHER ORDERED that if Defendant has not been provided prior notice of the hearing for temporary restraints, they may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to the Court and all parties;

AND IT IS FURTHER ORDERED that:

(a) A copy of this Order to Show Cause, Verified Complaint, Memorandum of Law, and any supporting affidavits or certifications submitted in support of this application be served upon the Defendant within _____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

(b) Service of this Order to Show Cause pursuant to its terms shall operate in lieu of a Summons, and the Defendant shall be required to serve upon the Plaintiffs an Answer or other responsive pleading to the affirmative claims set forth in the Verified Complaint within thirty-five (35) days after service of this Order to Show Cause and supporting papers upon him, exclusive of the dates of service, and if said party shall fail to Answer or appear in accordance with R. 4:43-1, judgment may be rendered against him for the relief demanded in the Verified Complaint and/or the Order to Show Cause;

(c) Plaintiffs must file with the Court its proof of service of the pleadings on the Defendant no later than three (3) days before the return date; and it is further ordered that the Defendant shall file and serve written responses to this Order to Show Cause and the request for entry of injunctive relief and proof of service by _____, 2020. The original documents must be filed with the Clerk of the Superior Court in the county listed on page one. You must also send a copy of your opposition papers to Plaintiffs' attorney whose name and address appears above. A telephone call will not protect your rights; you must file your opposition and pay the filing fee _____ and serve your opposition on your adversary, if you want

the Court to hear your opposition to the injunctive relief plaintiffs are seeking.

(d) Plaintiffs must file and serve any written reply to the Defendant's opposition to the Order to Show Cause by _____, 2020. The reply papers must be filed with the Clerk of the Superior Court in the county listed on page one.

(e) If the Defendant does not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiffs file a proof of service and a proposed form of order at least three (3) days prior to the return date.

(f) If Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

(g) DEFENDANT TAKE NOTICE that Plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey.

(h) The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this Verified Complaint, you, or your attorney, must file a written answer to the Verified Complaint and proof of service within thirty-five (35) days from the day of service of this Order to Show Cause; not counting the day you received it.

(i) These documents must be filed with the Clerk of the Superior Court of Mercer County. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at <http://www.njcourts.gov>. Include a \$175.00 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer to Plaintiffs' attorney whose name and address appear on page one. A telephone call will not protect your rights; you must file and serve your answer (with the fee) or judgment may be entered against you

by default. Please note: Opposition to the Order to Show Cause is not an answer and you must file both. If you do not file and serve an answer within 35 days of this Order, the Court may enter default against you for the relief plaintiffs demand.

(j) If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJLAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at <http://www.njcourts.gov/forms/10153deptvclerklawref.pdf>.

(k) The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.

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THIS MATTER having been opened to the Court by Testa, Heck, Testa & White, P.A.,
attorneys for Plaintiffs, New Jersey Republican State Committee a/k/a the NJGOP; Declan

O'Scanlon; Hal Wirths; Lisa Natale-Contessa; and Ileana Schirmer ("Plaintiffs"), by way of Verified Complaint and Order to Show Cause with Temporary and Permanent Restraints, for an Order against Defendant, Philip D. Murphy, in his Official Capacity as Governor of New Jersey; and opposition and argument of counsel having been heard, if any; and for good cause shown;

It is on this _____ day of _____, 2020:

ORDERED as follows:

I. TEMPORARY RESTRAINTS

IT IS ORDERED that until a final resolution of Plaintiffs' application for Preliminary Injunction, Defendant is hereby:

- (1) Temporarily restrained from enacting and enforcing Assembly Bill 4175 / Senate Bill 2697 in violation of the Debt Limitation Clause of the Constitution of the State of New Jersey;

II. ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that the Defendant appear and show cause before the Superior Court of New Jersey at the Mercer County Courthouse, located at 175 South Broad Street, Trenton, New Jersey 08608, on the _____ day of _____, 2020 at _____ o'clock in the _____ noon or as soon thereafter as counsel may be heard, why an Order should not be issued:

(a) Enjoining the Defendant from enacting and enforcing Assembly Bill 4175 / Senate Bill 2697 in violation of the Debt Limitation Clause of Constitution of the State of New Jersey;

(b) Awarding Plaintiffs reasonable attorneys' fees and costs for initiating and prosecuting this action in the public interest and providing such other relief as the Court may deem appropriate under the circumstances; and

AND IT IS FURTHER ORDERED that if Defendant has not been provided prior notice of the hearing for temporary restraints, they may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to the Court and all parties;

AND IT IS FURTHER ORDERED that:

(a) A copy of this Order to Show Cause, Verified Complaint, Memorandum of Law, and any supporting affidavits or certifications submitted in support of this application be served upon the Defendant within _____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

(b) Service of this Order to Show Cause pursuant to its terms shall operate in lieu of a Summons, and the Defendant shall be required to serve upon the Plaintiffs an Answer or other responsive pleading to the affirmative claims set forth in the Verified Complaint within thirty-five (35) days after service of this Order to Show Cause and supporting papers upon him, exclusive of the dates of service, and if said party shall fail to Answer or appear in accordance with R. 4:43-1, judgment may be rendered against him for the relief demanded in the Verified Complaint and/or the Order to Show Cause;

(c) Plaintiffs must file with the Court its proof of service of the pleadings on the Defendant no later than three (3) days before the return date; and it is further ordered that the Defendant shall file and serve written responses to this Order to Show Cause and the request for entry of injunctive relief and proof of service by _____, 2020. The original documents must be filed with the Clerk of the Superior Court in the county listed on page one. You must also send a copy of your opposition papers to Plaintiffs' attorney whose name and address appears above. A telephone call will not protect your rights; you must file your opposition and pay the filing fee _____ and serve your opposition on your adversary, if you want

the Court to hear your opposition to the injunctive relief plaintiffs are seeking.

(d) Plaintiffs must file and serve any written reply to the Defendant's opposition to the Order to Show Cause by _____, 2020. The reply papers must be filed with the Clerk of the Superior Court in the county listed on page one.

(e) If the Defendant does not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiffs file a proof of service and a proposed form of order at least three (3) days prior to the return date.

(f) If Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

(g) DEFENDANT TAKE NOTICE that Plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey.

(h) The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this Verified Complaint, you, or your attorney, must file a written answer to the Verified Complaint and proof of service within thirty-five (35) days from the day of service of this Order to Show Cause; not counting the day you received it.

(i) These documents must be filed with the Clerk of the Superior Court of Mercer County. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at <http://www.njcourts.gov>. Include a \$175.00 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer to Plaintiffs' attorney whose name and address appear on page one. A telephone call will not protect your rights; you must file and serve your answer (with the fee) or judgment may be entered against you

by default. Please note: Opposition to the Order to Show Cause is not an answer and you must file both. If you do not file and serve an answer within 35 days of this Order, the Court may enter default against you for the relief plaintiffs demand.

(j) If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJLAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at <http://www.njcourts.gov/forms/10153deptvclerklawref.pdf>.

(k) The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.

TESTA HECK TESTA & WHITE, P.A.

Counselors at Law

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July 16, 2020

Via ECourts E-Filing
Superior Court of New Jersey
Mercer County
Law Division
Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08608

RE: NJGOP et. al. v. Philip D. Murphy, Governor

Dear Judge of the Superior Court of New Jersey:

Please accept this letter in lieu of a formal brief in support of Plaintiffs' Order to Show Cause seeking injunctive relief restraining Defendant from enforcing Assembly Bill 4175 . Senate Bill 2697, the "New Jersey COVID-19 Emergency Bond Act".

By way of background, on March 11, 2020, the World Health Organization declared the novel coronavirus (hereinafter "COVID-19") outbreak a pandemic, and on March 13, 2020, the President of the United States proclaimed that the COVID-19 outbreak constituted a national emergency. On March 21, 2020, Defendant Murphy issued Executive Order No. 107, whereby it was ordered that for the most part all State residents remain home or at their place of residence except for certain very limited exceptions. Through this act all non-essential retail businesses were to be closed to the public. Defendant Murphy renewed his stay at home orders and ordered all non-essential retail businesses remain closed, with Executive Order 119 on April 7, 2020, Executive Order 138 on May 6, 2020, Executive Order 151 on June 4, 2020 and Executive Order 162 on July 2, 2020.

As a result of Governor Murphy's actions, the State of New Jersey's economy has been severely impacted, and as a direct result, the State of New Jersey will experience as budget shortfall entering fiscal year 2020. As a response to the anticipated shortfall, and in an attempt to restart the State economy and recover from the financial problems resulting from COVID-19, on May 28, 2020 the New Jersey State Assembly introduced Assembly Bill 4175 and on July 16, 2020 the New Jersey State Senate passed the corresponding Senate Bill 2697.

Having passed both chambers of the New Jersey Legislature, it is expected that Governor Murphy will sign the legislation into law.

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This legislation authorizes the issuance of 9.9 billion dollars (\$9,900,000,000.00) in State general obligation bonds to be used for the purpose of responding to the fiscal exigencies caused by COVID-19. In addition, section 4(d) of the bill authorizes bonds to be issued in the form of short-term notes to provide effective cash flow management for revenues and expenditures of the General Fund and the Property Tax Relief Fund in the implementation of the annual appropriations acts for Fiscal Year 2020 and Fiscal Year 2021. This debt would be issued for the purpose of budget-financing in fiscal years 2020 and 2021, and permits refinancing that debt, including with long-term bonds maturing decades from now.

I. PLAINTIFFS' ORDER TO SHOW CAUSE SEEKING INTERIM INJUNCTIVE RELIEF MUST BE GRANTED BECAUSE IT MEETS ITS BURDEN TO CLEARLY AND CONVINCINGLY DEMONSTRATE THE FACTORS ENTITLING PLAINTIFFS TO INJUNCTIVE RELIEF UNDER CROWE V. DEGIOIA

Article VIII, Section II, paragraph 2 of the Constitution of the State of New Jersey, the "Appropriations Clause", holds that "[n]o 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."

Further, Article VIII, Section II, paragraph 3(b) of the Constitution of the State of New Jersey, the "Debt Limitation Clause", holds that "[t]he Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year". While the legislature is not permitted to create debt to meet the needs of the budget, paragraph 3(e) permits the State to create debt in the limited purpose of "war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God." *Id.* at 3(e).

The New Jersey Supreme Court has defined the term "revenue" as to its use in the appropriations clause to exclude bond proceeds because, according to the Court, bond proceeds are not considered revenue for budgetary purposes. *Lance v. McGreevey* 180 N.J. 590, 596 (2004).

On May 7, 2020, the Office of Legislative Services ("OLS") issued an opinion to determine whether or not the State may issue general obligation bonds without voter approval to meet the needs of the State arising from COVID-19. The OLS determined while revenue shortfalls related to the COVID-19 disaster may persist for some or all of the fiscal year, there will not be a precipitous and unforeseen shortfall, but rather an anticipated decline in revenue.

While the Supreme Court's ruling in *Lance v. McGreevey* only sets forth the purpose of the appropriations clause generally, the Court held that "borrowed monies, which themselves are a form of expenditure when repaid, are not income and cannot be used for the purpose of funding

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or balancing any portion of the budget pertaining to general costs without violating the Appropriations Clause.” Id. at 598.

Although that case concerned the State’s issuance of appropriations-backed bonds and the Court did not address general obligation bonds issued under the emergency exception to the debt limitation clause, it set forth the important principle that borrowed money cannot be considered revenue. As a result, even general obligation bonds issued under the exception to the debt limitation clause cannot be considered revenue for the purpose of balancing a future budget.

By enacting and enforcing Assembly Bill 4175 / Senate Bill 2697, Defendant will do just that. With paragraph 4(b) of the Act, Governor Murphy would be permitted to supplement and “balance” the State’s budget with bonds, directly contradicting the Debt Limitation Clause.

Whenever a plaintiff files a complaint seeking injunctive relief, the plaintiff may apply for an order requiring the defendant to show cause why an interlocutory injunction should not be granted pending the disposition of the action. R. 4:52-1. Generally, Orders to Show Cause are governed by R. 4:52, which prohibits a Court from granting any temporary restraints or other interim relief unless plaintiff demonstrates that “immediate and irreparable damage will probably result to the plaintiff” unless the requested temporary restraints are granted. R. 4:52-1(a).

The criteria governing the grant of a preliminary injunction are well known. Where injunctive relief is sought, the Court must consider four elements: (1) whether the preliminary injunction is necessary to prevent irreparable harm; (2) whether the legal right underlying plaintiff’s claim is unsettled; (3) whether the plaintiff makes a preliminary showing of a reasonable probability of ultimate success on the merits; and (4) the relative hardship to the parties in granting or denying relief. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). The plaintiff must “clearly and convincingly” demonstrate that each of the four Crowe factors entitle it to injunctive relief. McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007) (citations omitted).

First, “a preliminary injunction should not issue except when necessary to prevent irreparable harm.” Crowe, supra, 90 N.J. at 132-33. “[H]arm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Id. Hence, with these four (4) elements, of course, should be considered the rule that an injunction will not ordinarily issue where there is an adequate remedy at law. Morris Cty. Transfer Station, Inc. v. Frank's Sanitation Serv., Inc., 260 N.J. Super. 570, 574 (App. Div. 1992). Plaintiffs, as citizens and taxpayers in the State, would suffer immediate and irreparable harm should Defendant be permitted to enact and enforce Assembly Bill 4175. Should their request for injunctive relief be denied and the bill be enacted, Plaintiffs have no other avenue of relief. The decisions made by the Defendant would be in direct violation of the State Constitution and State Supreme Court precedent, and result in the Legislature having free reign to balance their budget with bonds, and ultimately shoulder the cost upon the public, without giving them the opportunity to vote on same.

Second, “temporary relief should be withheld when the legal right underlying plaintiffs’

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claim is unsettled.” Crowe, supra, 90 N.J. at 133 (citation omitted). Pursuant to the Supreme Court’s ruling in Lance v. McGreevey, it is undisputed that bonds are not considered revenue for the purpose of balancing the State budget.

Third, “a preliminary injunction should not issue where all material facts are controverted;” thus, “to prevail on an application for temporary relief, a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.” Crowe, supra, 90 N.J. at 133-34 (citations omitted). Here, all material facts alleged in Plaintiffs’ Verified Complaint are matters of public record and/or subject to judicial notice. There is no issue of material fact for the Court to settle, as such Plaintiffs meet this burden.

Fourth, the final consideration in the appropriateness of a preliminary injunction is “the relative hardship to the parties in granting or denying relief.” Crowe, supra, 90 N.J. at 134 (citations omitted). As the State of New Jersey has pushed its deadline to enact fiscal year 2020’s budget from June 30, 2020 to September 30, 2020, there is relatively little hardship faced should Plaintiffs’ preliminary injunction be granted.

For all the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs injunctive relief and enjoin Defendant from enacting and enforcing Assembly Bill 4175 / Senate Bill 2697, the “New Jersey COVID-19 Emergency Bond Act”.

Thank you for your attention to this matter. Should you have any questions or concerns please do not hesitate to contact me.

Respectfully,
TESTA HECK TESTA & WHITE, P.A.

s/ Michael L. Testa, Jr.

By: MICHAEL L. TESTA, JR., ESQ.

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NEW JERSEY REPUBLICAN STATE
COMMITTEE a/k/a the NJGOP; DECLAN
O'SCANLON; HAL WIRTHS; LISA
NATALE-CONTESSA; and ILEANA
SCHIRMER

Plaintiffs,

vs.

PHILIP D. MURPHY, in his Official
Capacity as Governor of New Jersey;

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO.:

CIVIL ACTION

CERTIFICATE OF SERVICE

I, Michael L. Testa, Jr., do hereby certify:

1. On July 16, 2020, I caused a copy of the Plaintiffs' Verified Complaint, letter brief, proposed Order to Show Cause and this Certificate of Service to be served upon Defendant by electronic filing and Regular Mail to the New Jersey Attorney General:

Gurbir S. Grewal, Attorney General of the State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 080
Trenton, NJ 08625

2. 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 16, 2020

By: s/ Michael L. Testa, Jr.
MICHAEL L. TESTA, JR.

Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-001263-20

Case Caption: NEW JERSEY REPUBLICAN STATE VS MURPHY PHILIP

Case Initiation Date: 07/16/2020

Attorney Name: MICHAEL L TESTA JR

Firm Name: TESTA HECK TESTA & WHITE, PA

Address: 424 LANDIS AVE P.O. BOX 749

VINELAND NJ 083620749

Phone: 8566912300

Name of Party: PLAINTIFF : New Jersey Republican State

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: OTHER Declaratory Judgment / Injunctive Relief

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: New Jersey Republican State ? NO

Are sexual abuse claims alleged by: Declan O'Scanlon? NO

Are sexual abuse claims alleged by: Hal Wirths? NO

Are sexual abuse claims alleged by: Lisa Natale-Contessa? NO

Are sexual abuse claims alleged by: Ileana Schirmer? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

07/16/2020
Dated

/s/ MICHAEL L TESTA JR
Signed