

PREPARED BY THE COURT:

STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION-CRIMINAL PART
Plaintiff	:	CAPE MAY COUNTY
	:	
vs.	:	INDICTMENT NO. 23-07-109-S
	:	
ERNEST TROIANO,	:	<b>AMENDED ORDER</b>
	:	
Defendant	:	

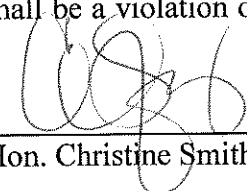
**THIS MATTER** having come before the Court on this 3rd day of October, 2025, and Christopher St. John, Esq., appearing on behalf of defendant Steven Mikulski, Charles H. Nugent, Jr., Esq., appearing on behalf of defendant Ernest Troiano, and Laura Croce, Esq. appearing on behalf of the State of New Jersey; and the court having considered the arguments of counsel and for good cause shown.

**IT IS ON THIS 9<sup>th</sup> DAY OF OCTOBER 2025:**

**ORDERED** that the State's Motion to reconsider its Motions in Limine decided on August 12, 2025, is hereby **DENIED**.

**ORDERED** that the State's Motion to reconsider its Motion to Compel Discovery decided on August 12, 2025, is hereby **GRANTED** as follows

**ORDERED** that the State shall provide (1) any and all referrals for investigation made by the Department of Pensions and Benefits to the Attorney General's Office regarding abuse of the State Health Benefits Program by publicly elective officials seated after 2010 until June 24, 2022; (2) the findings as to the results of investigations conducted by the Attorney General's Office into any municipality with publicly elected officials seated after 2010 and before June 24, 2022 who receive(d) State Health Benefits Program coverage or opt-out payments. Further, all information contained therein shall be subject to an in camera review subject to a protective order and may be used only in the pending matter, State of New Jersey v. Ernest Troiano, and shall not be used in any other matter in the absence of further Order of the Court and upon proper notice to the Office of the Attorney General. All information contained in or derived from said records shall not be disclosed to any other person for any reason nor disseminated or made public by any means, direct or indirect. Further, the use of information contained or derived from said records for any purpose other than as set forth above, shall be a violation of this Order and subject to the contempt powers of the Court.

  
 Hon. Christine Smith, J.S.C.

*FOR THE REASONS SET FORTH IN THE ATTACHED MEMORANDUM OF DECISION*



**SUPERIOR COURT OF NEW JERSEY  
COUNTIES OF ATLANTIC AND CAPE MAY**

***VICINAGE 1***

***CHRISTINE SMITH, J.S.C.***  
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***9 North Main***  
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**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE  
COMMITTEE ON OPINIONS**

**MEMORANDUM OF DECISION**

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**RE:** State of New Jersey v.  
Steven Mikulski  
State of New Jersey v. Ernest Troiano

**INDICTMENT** 23-07-00109-S  
**NO(S).**

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Dear Counselors:

This matter comes before the court on a Motion to Reconsider. After oral argument, the court reserved its decision on all matters in dispute. This Memorandum of Decision now serves as the Court's decision.

#### **NATURE OF THE CASE AND PROCEDURAL HISTORY**

On April 23, 2025, Defendant Troiano filed several motions in limine seeking to preclude certain evidence and arguments at trial. On May 28, 2025, the State responded in opposition. Defendant Mikulski filed corresponding motions in limine and, on May 30, 2025, submitted a separate Motion to Compel Discovery relating to claims of selective prosecution. The State opposed the discovery application and motions in limine. Oral argument was held on July 8, 2025 (on Mikulski's motions), and again on July 10, 2025 (on Troiano's motions).

During the July 10, 2025 hearing, Troiano requested leave to join Mikulski's Motion to Compel Discovery. On August 12 and August 15, 2025, the Court issued its Memoranda of Decision and Orders addressing all outstanding motions, with detailed reasonings. On September 3, 2025, the State filed a Motion for Reconsideration, challenging the Court's prior rulings on both the Motion to Compel Discovery and substantive Motions in Limine. Defendants Mikulski and Troiano timely submitted opposition briefs.

#### **ISSUES IN CONTENTION**

##### **STATE OF NEW JERSEY**

The State seeks reconsideration of the Court's interlocutory orders excluding and limiting evidence which the prosecution regards as central to proving the charged offenses. The State asserts that testimony from Commissioner colleagues regarding duties and time commitments should be admissible as it provides necessary context for the jury to evaluate what the Commissioner role entailed and whether Defendants knowingly claimed to fulfill the 35-hour weekly requirement when they did not. The State maintains that evidence regarding the Defendants' non-accrual of sick, personal, and vacation leave, as well as their pursuit of outside employment or business interests, is highly relevant to the question of whether Defendants acted with knowledge and intent, and that such circumstantial evidence bears on whether they qualified for health benefits reserved for full-time employees. The State also contends that City staff should be permitted to testify as to how the Commissioner position was officially classified during the period at issue, particularly as reflected in personnel documents and internal records.

Additionally, the State challenges the Court's order compelling discovery related to statewide investigations into SHBP participation by local elected officials, arguing that the Defendants have not produced sufficient evidence to justify such discovery under selective prosecution standards, and that such an order threatens privileged internal communication and prosecutorial independence. The State maintains that these evidentiary limitations and discovery orders place undue and inappropriate restrictions on its ability to present a full and fair case to the jury.

### **DEFENDANTS**

Defendants Troiano and Mikulski seek to preclude the State from introducing several categories of evidence which they argue are irrelevant or unduly prejudicial to the jury's determination of whether they qualified for state health benefits as full-time employees. Specifically, the Defendants move to exclude testimony by Krista Fitzsimons and Anthony Leonetti concerning their own duties and time spent as Commissioners, on the grounds that such evidence does not pertain to the actual hours worked by the Defendants and risks confusing the jury into drawing impermissible inferences. The Defendants further request that any argument or testimony suggesting the lack of sick, personal, or vacation leave is indicative of a part-time employment status should be barred, asserting that entitlement to paid leave is not a requirement for SHBP eligibility. They seek to prevent City staff members, including Susan Maxwell, from offering opinion testimony about whether the Commissioner position is considered part-time or full-time, outside of firsthand knowledge of Defendants' actual hours.

The Defendants also ask the Court to exclude evidence or argument asserting that their outside business interests rendered them incapable of fulfilling the 35-hour workweek requirement, unless there is direct evidence that the Defendants worked at those businesses during hours reported as Commissioner work. Finally, Defendants seek to bar the State from arguing that only activities conducted inside City Hall count toward "work" under the statute, emphasizing that the law does not restrict eligible work to physical presence at City Hall.

### **FINDINGS OF FACT**

1. In 2010, N.J.S.A. 52:14-17.26 was enacted and changed the eligibility requirements for participation in the SHBP.
2. The State asserts that the law requires local elected officials to work full-time in those positions in order to participate in the publicly funded SHBP. The defendants, as locally

elected City of Wildwood officials, were allegedly not working full-time hours, maintaining set schedules or accurately documenting any of the time that they worked. The State maintains the defendants relied upon city resolutions declaring them to be full-time employees, at least in name, so as to qualify for benefits under the SHBP. (Memorandum of Decision, June 23, 2023, Hon. Bernard E. DeLury, Jr.).

3. The State relies on the Legislature's 2010 enactment of changes to the eligibility requirements for participation in the SHBP. Among other modifications, pursuant to Chapter 2, P.L. 2010 and effective May 21, 2010, all future elected and appointed officials had to be "full-time" employees of their respective localities, "whose hours of work are fixed at 35 or more per week" to qualify for employer-provided SHBP health benefits. N.J.S.A. 52:14-17.26. Prior to the statutory change, with particular regard to elected officials, no such hourly requirement existed for participation in the SHBP. Local elected officials could receive benefits even in a part-time capacity. Ibid.
4. The municipal government for the City of Wildwood, New Jersey operates under a three-member Board of Commissioners who are elected at large and who serve for a term of four years. (Municipal Code, ch. 1A.)
5. The commissioners choose one of their number to be designated mayor in accordance with N.J.S.A. 40:72-10. (Ibid.)
6. In 2011, defendant Ernest V. Troiano, Jr. was elected commissioner and appointed Mayor, a position he held from 2011 to 2019.
7. Co-defendant Peter J. Byron was elected to the commission in 2011 and was appointed Mayor in 2020.
8. Byron resigned from his office in September 2023 and pleaded guilty to 2<sup>nd</sup> degree theft in relation to his receipt of State health benefits while a commissioner.
9. Mikulski was elected in 2020, and presently serves as Commissioner and deputy mayor.
10. In 2011, the commission enacted two resolutions concerning health coverage and participation in the SHBP.
  - a. June 8, 2011, Resolution No. 226-11 acknowledged changes made by the Legislature which expressly limited participation in the SHBP to those elected officials who work a fixed full-time schedule and a minimum of 35 hours per week.

- b. June 8, 2011, Resolution No. 227-6-11 declared, “that each member of the Board of Commissioners of the City of Wildwood is hereby considered a full-time employee, and works a minimum of thirty-five (35) hours per week for the City of Wildwood.”
- 11. Following these Resolutions, Troiano enrolled in the SHBP in July 2011 and received those benefits until he left office in 2019.
- 12. Byron also enrolled in the SHBP.
- 13. After his election, Mikulski enrolled in the SHBP.
- 14. Information provided by the State Division of Pensions and Benefits provided a tally of the cost of the SHBP benefits provided to the defendants after the change in the law.
  - a. Troiano received family SHBP coverage from July 17, 2011, through the end of his final term in December 2019. During that period, the total SHBP benefit received by Troiano was about \$287,000.
  - b. Byron received family SHBP coverage from July 27, 2011, through mid-2022. The total SHBP benefit received by Byron was about \$609,000.
  - c. Mikulski received spousal SHBP coverage with the benefit totaling more than \$103,000.
- 15. Defendant was elected as a commissioner for the City of Wildwood in 2019 and officially assumed office in 2020.
- 16. Defendant knew the State was conducting a criminal investigation into the City of Wildwood’s Commissioner’s SHBP participation.
- 17. Defendant was initially classified as a part-time employee.
- 18. Defendant later sought, and received, reclassification as a full-time employee.
- 19. Thereafter, defendant sought health benefits through the SHBP.
- 20. On February 6, 2020, counsel for the City of Wildwood generated a memorandum advising, “if it is questionable as to whether the City of Wildwood Commissioners are truly full-time employees working a minimum of thirty-five hours a week, they should keep complete and accurate records of their hours worked to support eligibility for the SHBP.”
- 21. Defendant regularly completed timesheets that varied in number of hours worked each week, including weeks with as little as zero hours worked.
- 22. On June 24, 2022, Troiano was charged on Complaint S-2022-131-0514 in relation to the State’s investigation into the improper receipt of State health benefits.

23. The summon charges Troiano with 2<sup>nd</sup> degree Theft and 3<sup>rd</sup> degree Tampering with Public Records or Information, for conduct that occurred on or about January 1, 2012.
24. On June 24, 2022, Mikulski was charged on Complaint S-2022-133-0514 with 2<sup>nd</sup> degree Theft and 3<sup>rd</sup> degree Tampering with Public Records or Information, for conduct that occurred on or about July 1, 2020.
25. On June 24, 2022, Byron was charged on Complaint S-2022-132-0514 with 2<sup>nd</sup> degree Theft and 3<sup>rd</sup> degree Tampering with Public Records or Information, for conduct that occurred on or about January 1, 2012.
26. On March 10, 2023 the State Grand Jury returned a multi-count indictment (23-03-00038-I) as to Troiano, Byron and Mikulski.
27. Troiano was indicted for:
- **Count 1:** Official Misconduct – Second Degree, contrary to N.J.S.A. 2C:30-2a
  - **Count 4:** Theft by Unlawful Taking – Second Degree, contrary to N.J.S.A. 2C:20-3a.
  - **Count 7:** Tampering with Public Records – Third Degree, contrary to N.J.S.A. 2C:28-7a(2).
  - **Count 10:** Falsifying or Tampering with Records – Fourth Degree, contrary to N.J.S.A. 2C:21-4a.
28. Byron was indicted for:
1. **Count 2:** Official Misconduct – Second Degree, contrary to N.J.S.A. 2C:30-2a.
  2. **Count 5:** Theft by Unlawful Taking – Second Degree, contrary to N.J.S.A. 2C:20-3a.
  3. **Count 8:** Tampering with Public Records – Third Degree, contrary to N.J.S.A. 2C:28-7a(2).
  4. **Count 11:** Falsifying or Tampering with Records – Fourth Degree, contrary to N.J.S.A. 2C:21-4a.
29. Mikulski was indicted for:
1. **Count 3:** Official Misconduct – Second Degree, contrary to N.J.S.A. 2C:30-2a.
  2. **Count 6:** Theft by Unlawful Taking – Second Degree, contrary to N.J.S.A. 2C:20-3a.



3. **Count 9:** Tampering with Public Records – Third Degree, contrary to N.J.S.A. 2C:28-7a(2).

4. **Count 12:** Falsifying or Tampering with Records – Fourth Degree, contrary to N.J.S.A. 2C:21-4a.

30. Troiano filed a motion to dismiss the indictment on May 1, 2023, which Mikulski joined.

31. On June 23, 2023, the motion was granted as to each defendant.

32. On July 31, 2023, the indictment was superseded, and the defendants indicted for the same charges as set forth above.

33. A subsequent motion to dismiss the superseding indictment was filed and denied.

34. The defendants' cases were severed and scheduled for trial.

35. A change in assigned trial judge took place in early 2025, and a new trial date was scheduled.

### LAW

A legal decision made in a particular matter “should be respected by all other lower or equal courts during the pendency of that case.” Lombardi v. Masso, 207 N.J. 517, 538 (2011) (quoting Lanzet v. Greenberg, 126 N.J. 168, 192 (1991)). “It is a non-binding rule intended to ‘prevent relitigation of a previously resolved issue.’” Ibid. (quoting In re Estate of Stockdale, 196 N.J. 275, 311 (2008)). For a determination to constitute the law of the case, the issue must have been contested and decided. State v. Reldan, 100 N.J. 187, 204 (1985). “A hallmark of law of the case doctrine is its discretionary nature, calling upon the deciding judge to balance the value of judicial deference for the rulings of a coordinate judge against those ‘factors that bear on the pursuit of justice and, particularly, the search for truth.’” Hart v. City of Jersey City, 308 N.J. Super. 487, 498 (App. Div. 1998) (quoting Reldan, 100 N.J. at 205).

However, the law of the case doctrine does not apply where a judge reconsiders an interlocutory order. Gonzalez v. Ideal Tile Importing Co., 371 N.J. Super. 349, 356 (App. Div. 2004), aff’d, 184 N.J. 415 (2005), cert. denied, 546 U.S. 1092 (2006). Rule 4:42-2 provides that “any order or form of decision which adjudicates fewer than all the claims as to all the parties shall not terminate the action as to any of the claims, and it shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice.”

Additionally, R. 1:7-4(b) allows for a “Motion for Amendment” and states in relevant part:



On motion made not later than 20 days after service of the final order or judgment upon all parties by the party obtaining it, the court may grant a rehearing or may, on the papers submitted, amend or add to its findings and may amend the final order or judgment accordingly, but the failure of a party to make such a motion or to object to the findings shall not preclude that party's right thereafter to question the sufficiency of the evidence to support the findings. The motion to amend the findings, which may be made with a motion for a new trial, shall state with specificity the basis on which it is made including a statement of the matters or controlling decisions that counsel believes the court has overlooked or on which it has erred. Motions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2.

Reconsideration "is a matter within the sound discretion of the court," and is "to be exercised in the interest of justice." Dover-Chester Assocs. v. Randolph Twp., 419 N.J. Super. 184, 195-96 (App. Div.), cert. denied, 208 N.J. 338 (2011). Accordingly, a trial judge's decision regarding a motion for reconsideration is reviewed under the "abuse of discretion" standard. Del Vecchio v. Hemberger, 388 N.J. Super. 179, 189 (App. Div. 2006).

Reconsideration is appropriate "only for those cases which fall into that narrow corridor in which either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Dover-Chester Assocs., 419 N.J. Super. at 196 (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)).

## DISCUSSION

### **I. Motions in Limine**

#### **A. Testimony of Krista Fitzsimons and Anthony Leonetti**

The State's principal contention is that the Court's exclusion of testimony regarding the hours and duties typically performed by other Commissioners—Fitzsimons and Leonetti—was overly restrictive and prevented the presentation of circumstantial evidence critical to the jury's resolution of the disputed "full-time" status required for SHBP eligibility. The State argues that, so long as coupled with limiting instructions, evidence of general job duties and expectations is admissible and relevant. Defendants respond—consistent with the Court's original reasoning—that this testimony poses a significant risk that the jury would draw impermissible inferences, substituting speculation for direct evidence.

Under Dover-Chester and Cummings, reconsideration requires identification of an overlooked controlling decision or probative factual issue. Here, the State offers no controlling authority or newly discovered fact undermining the original rationale—focused on risk of undue prejudice and confusion under N.J.R.E. 401 and 403. The Court’s prior order allows for testimony only as to direct personal knowledge of Defendants’ hours, which is consistent with principles of relevance and reliability. The exclusion is not palpably incorrect; the State’s resubmission does not demonstrate error or oversight.

**Conclusion:** The request for reconsideration as to Fitzsimons and Leonetti’s generalized testimony is denied.

### **B. Evidence of Sick, Personal, and Vacation Leave**

The State next challenges the exclusion of evidence that Commissioners do not accrue traditional leave as “full-time” employees, maintaining that this is circumstantial proof of Defendants’ knowledge of their own status. The Court previously ruled such evidence admissible only to clarify timesheet deviations, but not as categorical proof of “part-time” status.

Invoking Dover-Chester, reconsideration would be warranted if the Court failed to appreciate relevant probative evidence. Yet, as set forth in the prior Memoranda, the central statutory question is whether Defendants worked a “fixed” 35-hour schedule, not whether they received paid leave. The factual record remains unchanged, and the Court’s limitation avoids presenting misleading evidence to the jury. The risk of undue prejudice would substantially outweigh any marginal probative value.

**Conclusion:** The request for reconsideration is denied. The original evidentiary limitation stands.

### **C. Defendants’ Outside Employment**

The State seeks reconsideration of the order forbidding introduction of Defendants’ business ownership unless directly tied to specific hours during which Commissioner duties were claimed. The State argues simultaneous employment is circumstantial evidence relevant to credibility and the jury’s assessment of Defendants’ claimed hours.

Defendants reiterate that the mere existence of outside employment is not evidence of inability to meet statutory obligations without a documented factual overlap. The Court previously ruled this evidence irrelevant and prejudicial unless the State can demonstrate direct temporal conflict between reported Commissioner work and outside employment.

The State's submission does not identify new controlling law or overlooked evidence. The Court's rationale—limiting such evidence to cases of clear factual overlap—was fully considered and neither arbitrary nor capricious, satisfying the abuse of discretion standard described in Del Vecchio v. Hemberger, 388 N.J. Super. 179, 189 (App. Div. 2006).

**Conclusion:** Reconsideration is denied.

#### **D. City Staff Opinion/Testimony on Classification**

The State requests that City staff be permitted to opine as to the official classification (part-time/full-time) of the Commissioner role. The Court previously excluded opinion testimony absent direct knowledge.

Applying the reconsideration standard, the State advances no new fact or controlling decision. The limitation on lay opinion testimony is founded in N.J.R.E. 701 and supporting precedent. The Court's order appropriately allows evidence of contemporaneous City documents and facts, but bars speculative opinion. This approach remains both legally and factually sound.

**Conclusion:** No grounds for reconsideration exist. The order stands.

### **II. Motion to Compel Discovery – Selective Prosecution**

The New Jersey Rules of Court and controlling case law assign clear boundaries to discovery in criminal proceedings, recognizing both the critical importance of fair access to evidence and the equally vital protection of privileged communications and governmental deliberations. Rule 3:13-3(d) defines the general contours of discovery, distinguishing between materials subject to mandatory disclosure and those protected by legal privilege. The scope of this protection, as repeatedly reaffirmed by New Jersey courts, includes attorney work product, internal reports, memoranda, and documents reflecting the deliberative processes and strategic judgments that underlie government decision-making. The recent decision in State v. Thomas, which relies on State v. Hernandez and State v. Chambers, present controlling authority that prohibits courts from compelling the disclosure or creation of privileged material absent a compelling and specific showing of need. 2025 N.J. Super. Unpub. LEXIS 69, 13 (Jan. 14, 2025) (citing State v. Hernandez, 225 N.J. 451 2016) and State v. Chambers, 252 N.J. 561, 582-83 (2023)).

Here, the initial order entered by the Court on August 12, 2025, obligates the State to produce not only “any and all communications with or within the Attorney General’s Office regarding the decision to bring charges against Troiano and his co-defendants,” but also, critically, to “furnish ... a list of any and all referrals for investigation ... [and] a list of the findings as to the

results of investigations conducted by the Attorney General's Office ..." as well as any communications pertaining to the selected prosecutions. As the State's brief for reconsideration expressly observes, these requirements extend far beyond the boundaries set by Rule 3:13-3 and New Jersey jurisprudence. The bulk of the requested materials constitute classic work product and are shielded from disclosure by settled principles of the law-enforcement and deliberative process privileges.

In State v. Thomas, the Appellate Division surveyed this landscape with precision. The court there addressed the question of whether the State could be required to produce internal memoranda and summaries regarding other investigations and concluded – consistent with longstanding practice – that “[t]he work product privilege is designed to protect from pretrial disclosure an attorney's mental processes and litigation strategies ... [and] prohibits disclosure of certain materials prepared by an attorney in anticipation of litigation, and thereby creates a zone of privacy in which an attorney can investigate, prepare, and analyze a case.” Id. at \*22. The deliberative process privilege further insulates documents “reflect[ing] advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated” Id. at \*23. In practical effect, these privileges safeguard candor, confidentiality, and the independence of prosecutorial decision-making, protecting the government from compelled disclosure of the legal reasoning, strategic considerations, and communications that underlie its enforcement choices.

Moreover, Thomas confirms with unmistakable clarity, that courts may only order the production of documents “already in existence that are within the State's possession.” Id. at \*24 (citing 252 N.J. 561 at 582-83; State v. Tier, 228 N.J. 555, 565 (2025)). The Rules of Court categorically prohibit requiring any party – including the State – to create new documents, lists, summaries, or compilations for the purpose of discovery. The court in Thomas directly addressed this point, holding: “The State had no legal obligation to create a document for the defense to use in cross-examining [a witness].” Ibid. Just as it would be improper to require a defendant to prepare a witness statement where none existed, so too it is impermissible to require the State to create a catalogue of investigative actions or judgments simply to satisfy a defense request. The jurisprudential rationale underlying this prohibition is simple and powerful: any such requirement would force government lawyers to memorialize, organize, and present their strategic choices and

mental impressions, effectively exposing the “mental processes of the State’s attorney[s],” contrary to the core purpose of the work product privilege.

The problem of privilege is compounded in the present matter by the order’s lack of a temporal limitation. The Court’s initial directive requires production of all documents that may have been generated or received regarding investigative referrals, outcomes, or charging decisions, with no clear endpoint – creating an obligation that would span not only the events immediately surrounding Defendant’s own case but potentially cover years of communications and records. The State’s reconsideration motion rightly signals that such unlimited discovery is unduly burdensome and inconsistent with the principles of relevance and proportionality within discovery practice. The flow of precedent in both State and federal courts dictates that discovery must be “relevant to the issues in the case in order to be subject to disclosure,” not devolve into a fishing expedition. *Id.* at \*17. Material generated substantially after the date of the charges is neither probative nor necessary for the defense – its disclosure would be, at best, cumulative or tangential, at worst, an unwarranted intrusion into matters unconnected to the litigation at hand. Limiting the scope of discovery, as to both subject matter and temporal duration (ending at Mikulski’s charging), is thus an essential safeguard against overbreadth.

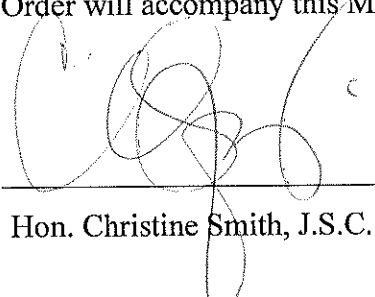
Beyond these technical flaws, the wider policy concerns articulated in the contemporaneous briefs and the record before the Court caution strongly against upholding a discovery order of such breadth. Both the Mikulski and Troiano response briefs, and the Court’s own Memorandum of Decision, acknowledge the legitimate governmental interest in maintaining the confidentiality and independence of criminal investigations and prosecutions. Indeed, compelling the State to devote untold resources to collecting, reviewing, and producing privileged materials and crafting new lists after the fact would cause diversion of resources from ongoing matters, with no guarantee that the information generated will be relevant or material to a claim of selective prosecution. The risk of disclosure of sensitive grand jury materials and the inadvertent release of private information relating to non-parties only amplifies the potential harm. Notably, the *Thomas* decision rejected exactly such open-ended requests for unrelated investigative files, holding that material false statements in unrelated investigations should be disclosed, but that “defendants were not entitled to independently search through the State’s files from unrelated criminal investigations to uncover that information for themselves.” *Id.* at \*28.

In sum, the plain language of the New Jersey Rules of Court, reinforced by controlling and persuasive judicial decisions, precludes the trial court from compelling the production or creation of privileged materials, internal communications, deliberative memoranda, or new investigative lists, outside documents already in existence and relevant to the case at hand. The absence of clear temporal boundaries in the initial order further exposes the State to burdensome and improper discovery demands extending beyond the permissible scope of criminal procedure. Reconsideration and vacatur of the August 12th discovery order is warranted, preserving the integrity of prosecutorial independence and the due process rights of all parties.

Accordingly, the Court orders that the period for permissible discovery shall be strictly confined to the timeframe commencing with the 2010 legislative enactment concerning eligibility for participation in the State Health Benefits Program and shall conclude upon the date of Mikulski's charging, June 24, 2022. Furthermore, the Court declines to compel the State to generate independent lists as previously ordered. The discovery process will, therefore, proceed as circumscribed above.

#### CONCLUSION

For the abovementioned findings of fact and conclusions of law, the State's Motion for Reconsideration is **GRANTED** in part as to the discovery order and **DENIED** in all other respects. As to discovery Accordingly, the Court orders that the period for permissible discovery shall be strictly confined to the timeframe commencing with the 2010 legislative enactment concerning eligibility for participation in the State Health Benefits Program and shall conclude upon the date of Mikulski's charging, June 24, 2022. Furthermore, the Court declines to compel the State to generate independent lists as previously ordered. The discovery process will, therefore, proceed as circumscribed above. An appropriate form of Order has been entered. Conformed copies of that Order will accompany this Memorandum of Decision.



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Hon. Christine Smith, J.S.C.

Date: October 9, 2025