FILED, Clerk of the Appellate Division, September 05, 2025, **A-002434-24**, **AMENDED**

PATERSON BOARD OF EDUCATION, Plaintiff-Appellant, vs. PRITCHARD INDUSTRIES, INC., and THOMAS MARTIN, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-2434-24 On Appeal From: Superior Court of New Jersey Law Division/Passaic County Sat Below: Vicki A. Citrino, J.S.C.

BRIEF OF DEFENDANTS-RESPONDENTS PRITCHARD INDUSTRIES, INC. AND THOMAS MARTIN

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PRELIMINARY STATEMENT

This appeal concerns the narrow question of whether a statute signed into law by the Governor on April 14, 2020, in the early stages of the COVID-19 pandemic, enacted for the purpose of ameliorating certain of the pandemic's financial consequences, should be applied retroactively so as to more fully ameliorate those consequences than would occur if it was only applied prospectively. The statute, *N.J.S.A*. 18A:7F-9(e)(3) (the "COVID Statute" or the "Statute"), requires that public school districts having service contracts continue to pay their contracted service providers when schools are closed due to a public health emergency, whether or not those contractors are actually providing services during the public health emergency. While the Statute is silent as to whether it is subject to retroactive application, since it was enacted on an emergent basis in an effort to reduce certain of the adverse financial consequences that had been brought on by the pandemic, logically it would seem that it should be applied in a manner that would enable the Statute to have maximum effect.

Defendant Pritchard Industries, Inc. ("Pritchard") is a custodial services contractor which was affected by the pandemic and prevented from performing services to its public school clients as a result of it. Plaintiff Paterson Board of Education ("Paterson") operates a public school district served by Pritchard and has vehemently resisted carrying out the Statute's mandate and paying Pritchard for the

period during which its schools were closed due to the pandemic, resorting to wild allegations about Pritchard in its efforts to avoid the legal obligations imposed by the Statute. Those efforts were rejected by this Court, and this second appeal is Paterson's last gasp at trying to avoid paying a portion of what it owes to Pritchard pursuant to the Statute.

This case appears to be the only litigation that the COVID Statute has generated, as an internet search yields no results suggesting otherwise. This is because the wording and purpose of the Statute are entirely clear, and no other public school district has chosen to resist its clear mandate.

PROCEDURAL HISTORY

The Procedural History see forth in appellant's brief is essentially correct. Pritchard adds that the Supreme Court denied Paterson's petition for certification of this Court's previous decision in this matter on July 1, 2025.

STATEMENT OF FACTS

Pritchard is a custodial services contractor. Prior to the 2019-2020 school year, Pritchard had served as Paterson's custodial services contractor for several years. Pb-4. Its services were rendered under a contract that was awarded pursuant to public bidding conducted under *N.J.S.A.* 18A:18-1, *et. seq*. Pa-161. For the period under discussion, consistent with its bid, Pritchard was to be paid $620,250 per month for the provision of the services required under its contract with Paterson,

in addition to charges for any additional custodial services and supplies requested by Paterson beyond those specified in the contract. Pa-162. Through March 2020, payments were made by Paterson consistent with its contractual obligations.

As required by the Governor's executive orders pertaining to the coronavirus epidemic, in March 2020, Paterson closed its schools, and on March 25, 2020, Paterson instructed Pritchard that it was to cease providing its services effective the next day. Pa-162. On April 14, 2020, the Governor signed into law a bill passed by the Legislature, the COVID Statute, that required school districts to pay contracted service providers during the COVID-19 shutdown as if schools were still open and the services were being rendered, without regard to whether any services were being rendered or not. Pa-165.

The full text of the COVID Statute in its amended form appears below. The language of the June 29, 2020, amendment to the Statute, which is not implicated in this appeal, is boldened.

> If the schools of a school district are subject to a health-related closure for a period longer than three consecutive school days, which is the result of a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer, then the school district shall continue to make payments of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider in effect on the date of the closure as if the services for such benefits, compensation, and emoluments had been provided, and as if the school facilities had remained open. Payments received by a contracted service provider

> pursuant to this paragraph shall be used to meet the payroll and fixed costs obligations of the contracted service provider, **and employees of the contracted service provider shall be paid as if the school facilities had remained open and in full operation**. A school district shall make all reasonable efforts to renegotiate a contract in good faith subject to this paragraph and may direct contracted service providers, who are a party to a contract and receive payments from the school district under this paragraph, to provide services on behalf of the school district which may reasonably be provided and are within the general expertise or service provision of the original contract. Negotiations shall not include indirect costs such as fuel or tolls. As a condition of negotiations, a contracted service provider shall reveal to the school district whether the entity has insurance coverage for business interruption covering work stoppages. A school district shall not be liable for the payment of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider under this paragraph for services which otherwise would not have been provided had the school facilities remained open. Nothing in this paragraph shall be construed to require a school district to make payments to a party in material breach of a contract with a contracted service provider if the breach was not due to a closure resulting from a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer. (Emphasis supplied.)

The Department of Education issued a "Guidance" memorandum pertaining to the COVID Statute to the State's schools on May 19, 2020. Da-1. The guidance offered is largely a recitation of the plain language of the Statute; it states that school districts "must continue to make . . . payments to a contracted service provider" when schools are closed for three days or more due to health-related emergencies.

It also states that the payments to those service providers "must be consistent with the terms of the contact in effect on the date of the closure." This language makes no reference to the suspension of those payments from the date of the school closure up until the date of the Statute's enactment.

Pritchard provided no services to Paterson for the period March 26, 2020-July 6, 2020, but, as per the COVID Statute, it invoiced Paterson $620,250 for the months of April, May and June 2020, and $591,417 for the month of July 2020. Pa-164. Paterson paid the May and June invoices in August 2020, as required by the Statute, but did not pay Pritchard's April 2020 invoice, and only partially paid its July invoice, leaving $77,141 unpaid, as a proration of the July invoice, since Pritchard had only resumed providing services on July 6. Pa-165. These payments were made by Paterson following a board resolution approving the payments on August 12, 2020. Pa-164-65.

Upon receipt of the May and June 2020 payments, Pritchard issued payroll checks for those periods to the custodians who had been working in Paterson's schools but had been laid off as a result of the schools' closure and documented that it had done so. Pa-165. Paterson continued to withhold payment from Pritchard of its April 2020 invoice and the balance of its July 2020 invoice, and Pritchard continually pressed Paterson for the payment. Pritchard did not initially sue Paterson for the outstanding payments, as it continued to serve as Paterson's custodial

services contractor and remained hopeful that Paterson would ultimately meet its obligation.

On September 27, 2021, Paterson, through its counsel, wrote to Pritchard to demand return of the payments it had made to Pritchard satisfying Pritchard's May and June 2020 invoices. Pa-63. Pritchard did not comply with Paterson's demand, instead asserting that the COVID Statute had required Paterson to issue the payments it had made to Pritchard and sought to claw back.

On July 20, 2022, Paterson passed a resolution rescinding the payments it had made to Pritchard two years earlier in the amount of $1,301,300. Pa-166-67. Somewhat incredibly, the resolution states that Paterson had performed an "investigation" that had "revealed" that Pritchard had not provided any services to Paterson during the period in which its schools were closed due to the COVID-19 emergency. Pa-166-67. The resolution asserted that the payments that Paterson had made to Pritchard for the May-June 2020 period were "illegal and pursuant to a breach of contract," that any resolutions approving the payments were declared null and void and that its counsel was to pursue legal action against Pritchard to recover the payments made. The resolution does not mention the COVID Statute. Pa-166-67.

On August 11, 2022, Paterson filed its ten count Complaint against Pritchard seeking return of the payments it made for the May-June 2020 period, as well as an

unrelated $60,800 payment, apparently confusing it with the payments it made for that period. Pa-1. The Complaint includes counts for conversion, theft, fraud, tortious interference and others that defy simple characterization. Pritchard asserted a counterclaim against Paterson for the payments due it under the COVID Statute for the April and July 1-6, 2020, periods; it asserted three counts, including breach of contract, unjust enrichment and Paterson's failure to comply with the mandate of the COVID Statute. Pa-167.

Pritchard filed a motion for summary judgement based upon the simple assertion that the COVID Statute required that Paterson pay it for the period that Paterson's schools were closed due to the pandemic. It explained that Pritchard had received payment from Paterson for the May-June 2020 period, that it had thereafter paid the laid off custodians it had assigned to Paterson their wages for that period, (which was documented), but that it had not been paid for April and July 1-6, 2020, and had not paid its custodians for that period. Pa-167. The lower court initially denied Pritchard's motion but granted Pritchard's motion for reconsideration of that denial.

In its decision on Pritchard's reconsideration motion, the lower court adopted Pritchard's above stated position. It construed the COVID Statute as it is worded, noting that it imposed on the school district the obligation to pay its contracted service providers while its schools were closed, that it required the service providers

to apply the funds received to payroll and fixed costs and that the COVID Statute did not empower the school district to verify how the funds it paid were applied. Pa-153. It accordingly entered summary judgment in favor of Pritchard dismissing Paterson's Complaint and entering judgment against it in the amount of $697,031, per its April 28, 2023, Order. Pa-172.

Paterson appealed the lower court's decision and this Court affirmed it. Pa-160. However, in the concluding section of its opinion, the Court noted that the lower court in its ruling had not specifically addressed the question of the retroactive application of the statute, as it was enacted on April 14, 2020, and was applied by the Court from April 1, 2020, the first date on which Paterson had withheld payment from Pritchard. Specifically, the Court wrote as follows:

> Paterson asserts the effective date of N.J.S.A. 18A:7F-9(e)(3) is June 29, 2020, and thus, the statute should be applied prospectively to negate Pritchard's claims for payment of the April, May, and June 2020 invoices. Paterson ignores that the original legislation became effective at least as of April 14, 2020, when it was enacted. The original statute did not become unenforceable when it was amended on June 29, 2020. Rather, the amendment only clarified that "employees of the contracted service provider shall be paid as if the school facilities had remained open and in full operation." Pritchard was already required under the original version to use the funds to "meet the payroll." Accordingly, Paterson's argument that the statute should only be effective as of June 29, 2020, is unpersuasive because it had an obligation to pay the invoices since at least April 14, 2020.

Nevertheless, the trial court retroactively applied N.J.S.A. 18A:7F-9(e)(3) in awarding Pritchard payment from April 1 rather than from the April 14 enactment date. Indeed, Paterson argues in the alternative that the statute should be applied prospectively from the April 14, 2020 date to reduce Pritchard's claim for the $620,250.09 April invoice by at least half because the Legislature did not expressly or impliedly intend for retroactive application of the statute. Pritchard counters that although the Legislature never expressly addressed retroactive application of the statute, it is implied based on the pandemic and legislative intent.

The general rule that newly enacted statutes are applied prospectively "is not to be applied mechanistically to every case." Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 387 (2016) (quoting Gibbons v. Gibbons, 86 N.J. 515, 522 (1981)). Courts must interpret the statute with the overriding goal of determining the Legislature's intent. Id. at 386-87. If the plain language of the statute leads to an ambiguous result, "[courts] turn to extrinsic evidence, such as legislative history." Id. at 386.

Courts must ask two questions to determine whether a statute should be retroactively applied: (1) "whether the Legislature intended to give the statute retroactive application," and (2) "whether retroactive application is an unconstitutional interference with 'vested rights' or will result in a 'manifest injustice.'" Twiss v. State, Dep't of Treasury, 124 N.J. 461, 467 (1991) (first quoting State, Dep't of Env't Prot. v. Ventron Corp., 94 N.J. 473, 499 (1983); and then quoting Gibbons, 86 N.J. at 523). Regarding the first inquiry, legislative intent for retroactivity can be demonstrated when: (1) the Legislature expressly or implicitly intended the statute be applied retroactively; (2) an amendment is curative; or (3) "the reasonable expectations of those affected by the statute warrant such application." Ibid. Courts will only give a statute retroactive effect if one of these grounds is present. Johnson, 226 N.J. at 387.

> Here, the court did not directly analyze whether the statute should be applied prospectively, as of April 14, or retroactively. Because the court did not address this retroactive issue, we decline to do so in the first instance and remand for the court to address this question. See Ins. Co. of N. Am. v. Gov't Emps. Ins. Co., 162 N.J. Super. 528, 537 (App. Div. 1978). To the extent the court determines the statute should be applied prospectively, as of April 14, it shall recalculate the damages award consistent with that decision. Our remand order shall not be construed as an expression of an opinion on the merits of this issue.

Pa-205-08.

The lower court followed this Court's mandate and received briefs and oral argument from the parties in connection with its determination as to whether the COVID Statute should be applied retroactively.[1] In deciding that retroactive application was warranted, the lower court stated the following:

> This Court determines that applying the statute retroactively justifies the Legislature's intent of meeting payroll obligations and allowing for employees of contracted service providers to be paid as if the school facilities had remained open and in full operation. Further, applying the statute retroactively makes it ameliorative as employees had an expectation to be paid as if the schools had remained open. *See generally, Maia v. IEW Const. Corp*., 257 N.J. 330 (2024). This Court does not find that manifest justice [sic.] would arise when Paterson pays Pritchard the cost of the service contract as the costs were previously allocated in the budget. Furthermore, the Court finds no unconstitutional interference with the vested

[1] Paterson's brief includes no discussion of or reference to the lower court's decision.

rights of the Board or a manifest injustice in the retroactive application.

The lower court's decision was logical and sensible, and incorporated an analysis consistent with rules of statutory construction. It warrants affirmance by this Court.

ARGUMENT-THE COVID STATUTE SHOULD BE APPLIED RETROACTIVELY

As noted above, it is correct that the Statute's effective date, April 14, 2020, post-dates the commencement of the period for which Pritchard sought payment pursuant to its counterclaim by thirteen days. Pritchard maintains that the lower court's ruling, which applied the Statute retroactively to April 1, 2020, was correct, and that the judgment entered by it should stand.

The analysis required to determine if a statute is to be given retroactive effect requires a two-part test most recently restated by the Supreme Court in *Maia v. IEW Constriction Corp*., 257 *N.J.* 330 (2024). To determine if a statute should apply retroactively, the court first determines "whether the Legislature intended to give the statute retroactive application"; and second, "whether retroactive application of that statute will result in either an unconstitutional interference with vested rights or a manifest injustice." *Maia*, 257 *N.J.* at 349; *James v. N.J. Mfrs. Ins. Co*., 216 *N.J.* 552, 563 (2014). "Both questions must be satisfied for a statute to be applied retroactively." *Maia*, 257 N.J. at 340-50; *Johnson v. Roselle EZ Quick, LLC*, 226

N.J. 370, 387 (2016).

As to the first question, there are three circumstances that justify applying a statute retroactively: (1) when the Legislature explicitly or implicitly expresses an intent that a law be retroactive; (2) when an amendment is ameliorative or curative; or (3) when the parties' expectations warrant retroactive application. The Legislature may convey its intent to apply a statute retroactively by expressing it explicitly "in the language of the statute or in the pertinent legislative history," or impliedly, by rendering it necessary "to make the statute workable or to give it the most sensible interpretation." *Maia,* 257 *N.J.* at 350-51; *Gibbons v. Gibbons*, 86 *N.J.* 515, 522 (1981). Second, when determining whether a statute or amendment is ameliorative or curative, courts look to whether the statute or amendment "is designed merely to carry out or explain the intent of the original statute." *Johnson*, 226 *N.J.* at 388 (quoting *Nelson v. Bd. of Educ*., 148 *N.J.* 358, 370 (1997)). And third, the court must consider the expectation of the parties: If there is no "clear expression of legislative intent" concerning retroactivity, then "a court will look at the controlling law at the relevant time and consider the parties' reasonable expectations as to the law," which may warrant retroactive application. *Maia, supra, James*, 216 *N.J.* at 573.

While newly enacted laws are generally applied prospectively, that practice is no more than a rule of statutory interpretation meant to "aid the court in the search

for legislative intent." *Twiss v. State*, 124 *N.J.* 461, 467 (1991) (citation omitted). As such, it "is not to be applied mechanistically to every case." *Gibbons*, 86 *N.J.* at 522, (*citing Rothman v. Rothman*, 65 *N.J.* 219, 224 (1974). Rather, "[t]wo questions inhere in the determination whether a court should apply a statute retroactively." *Twiss*, 124 *N.J.* at 467. "The first question is whether the Legislature intended to give the statute retroactive application." *Ibid*., (*citing Gibbons*, 86 *N.J.* at 522). "If so, the second question is whether retroactive application is an unconstitutional interference with 'vested rights' or will result in a 'manifest injustice.' *Ibid*.,(*quoting State, Dep't of Envtl. Prot. v. Ventron Corp*., 94 *N.J.* 473, 498–99 (1983)).

The Legislature's expression of intent to apply a statute retroactively "may be either express, that is, stated in the language of the statute or in the pertinent legislative history, or implied, that is, retroactive application may be necessary to make the statute workable or to give it the most sensible interpretation[.]" *Gibbons*, 86 *N.J.* at 522. "In the absence of a clear expression of legislative intent that the statute is to be applied prospectively, such considerations as the expectations of the parties may warrant retroactive application of a statute." *Gibbons*, 86 *N.J.* at 523. In such circumstances, a court will look at the controlling law at the relevant time and consider the parties' reasonable expectations as to the law. *James*, 216 *N.J.* at 573. An expectation of retroactive application "should be strongly apparent to the parties in order to override the lack of any explicit or implicit expression of intent for

retroactive application." *Ibid*. Applying those principles to the present case, it is clear that the COVID Statute deserves retroactive application.

With regard to the first question, the Legislature did not expressly address retroactive application of the COVID Statute, but the context of its passage speaks volumes; it was enacted on April 14, 2020, as the reality of the pandemic's impact on society, and that it was not going to go away quickly, was first becoming apparent. It was enacted to address a sudden, acute, unanticipated and ongoing problem of significant magnitude. The Statute was given "immediate" effect on April 14, 2020, at a time when the first wave of the coronavirus was at its peak in New Jersey, and after the Governor had ordered, just three weeks earlier, that all schools in the State remain closed. Indeed, retroactive application to when the schools were closed is necessary to make the statute workable and give it the most sensible interpretation. There can be no reasonable dispute that the most sensible way to interpret the COVID Statute is to have it apply retroactive to the time when schools actually closed due to a health emergency, as that was when the impact of the pandemic that the Statute was intended to ameliorate was first being experienced.

Additionally, the reasonable expectations of the affected parties call for the COVID Statute's retroactive application. While it applies to health-related school closures of three days or more, at the time of its passage, the State was already four weeks into the mandatory closure of schools, for the first time in anyone's memory.

Whether there would be another instance of a health-related school closure of three days or longer was unknown; it would thus be within the expectation of affected contractors that the COVID Statute would be retroactively applied to the only historic instance of its applicability.

With regard to the second question, applying the COVID Statute to the time when Paterson schools closed nineteen days earlier does not interfere with Paterson's vested rights, nor does it result in a manifest injustice. There is no injustice in ensuring that contractors be paid starting at the time when a health-related closure occurred, rather than two weeks later. The clear intent of the COVID Statute is that there be no break in payment on school contracts, so that contractors and their employees continue to receive their regular income. And it must be remembered that Paterson had budgeted for the monthly payments to Pritchard going back to June 2019, so the making of the payments the COVID Statute required had already been anticipated by it. Given that, Paterson can hardly argue that retroactive application of the COVID Statute represents an interference with its "vested rights," or results in a "manifest injustice."

In sum, all factors point to the conclusion that the COVID Statute should apply retroactive to the date when Paterson closed its schools because of the declared public health emergency and state of emergency in New Jersey, and the effective date of a statute passed in the throes of an unanticipated public health emergency

should not create a window during which the outcome decreed by the Legislature should not be had.

Paterson's arguments against the Statute's retroactive application are transparently unavailing. It first argues that the legislative history of the Statute reveals no indicia of an intention to apply it retroactively, on the reasoning that none of the earlier drafts of the bill address retroactive application. In fact, if any of the proposed drafts of the bill had included provisions for its retroactive application that failed to make it into the enacted version, the case for the Statute's application on a prospective-only basis would more or less be made; had earlier drafts provided for retroactivity, the affirmative removal of such a provision from the final bill would be demonstrative of legislative intent not to apply it retroactively. Paterson ends its analysis of the first prong of the applicable test there and does not address the factor of the parties' expectations upon the Statute's enactment. Its failure to do so is telling.

Paterson asserts that retroactive application of the Statute would constitute an unconstitutional interference with its vested rights but fails to cite any law supporting its argument. This failure echoes its approach on its earlier appeal, where Paterson asserted that the COVID Statute was itself unconstitutional but cited no law in support of its argument. This Court stated the following in response to that failure:

> Here, Paterson provided no discussion of the case law, analysis of the relevant factors, or the relative impact of

> the pandemic on the evaluation of these constitutional issues. Consequently, we decline to address this constitutional issue based on the insufficient briefing and record on this issue. An issue may be deemed waived if not properly briefed. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2017); see also Telebright Corp. v. Dir., Div. of Tax'n, 424 N.J. Super. 384, 393 (App. Div. 2012) (treating such a failure to brief an argument as a waiver); Gormley v. Wood-El, 422 N.J. Super. 426 437 n.3 (App. Div. 2011), aff'd in part and rev'd in part, 218 N.J. 72 (2014); Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001) (noting that a party's failure to present any argument relating to a cross-appeal constituted an abandonment of that claim).

The outcome should be the same here; Paterson cannot maintain an argument to the effect that the Constitution is offended by the lower court's ruling without offering any legal support for that proposition. Its contention on this point should, once again, be deemed waived.

Paterson's assertions regarding the manifest injustice it claims would ensue if the Statute is applied retroactively are nearly senseless. Its argument on this point, (again supported by no cited law), refers to two other school closings resulting from health-related emergencies and expresses concern that Paterson would be exposed to a "floodgate" of claims relating to these should the lower court be affirmed. The first of these closures is that associated with Hurricane Sandy in 2012; Paterson expresses concern that it will be faced with demands by vendors for payment for services they were unable to render back then should the Statute be subject to retroactive application. Five years have passed since the Statute's enactment, and

Paterson points to no such claims. And presumably, since any such claim would be contract-based, it would be outside of the statute of limitations.

Even more puzzling is Paterson's expression of concern about claims arising from the school closure occasioned by Hurricane Ida in 2021. Since that event occurred subsequent to the Statute's enactment, retroactive application of the Statute would not be required in order for a claim to be made for payment for services that could not be rendered due to a school closing following Hurricane Ida. An affirmance of the lower court's decision will not generate a floodgate of claims based upon historic events

In summary, the COVID Statute was passed into law for the purpose of reducing the financial consequences of the pandemic in one specific way: Having budgeted payments by school districts made to service vendors unable to work due to the pandemic, and seeing that their employees did not miss paychecks due to their sudden involuntary lack of employment. The Statute was drawn and passed hurriedly, and the non-inclusion of specific language providing for its retroactive application hardly bespeaks of a legislative intention that it be applied on a prospective-only basis. Paterson has offered no cogent arguments for the position it advances, and this Court should accordingly affirm the lower court's ruling.

CONCLUSION

For the forgoing reasons, Pritchard submits that the Court would act properly in affirming the lower court's decision that the COVID Statute is to be retroactively applied to the point in time when schools throughout New Jersey were closed due to the pandemic.

Dated: September 5, 2025

s/Patrick T. Collins
PATRICK T. COLLINS