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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET # A-002494-23

JEFFREY S. FELD, ESQ.
Plaintiff-Appellant

v.

THE TOWNSHIP OF MILLBURN, MAYOR TARA B. PRUPIS, DEPUTY MAYOR RICHARD WASSERMAN, COUNCILPERSON DIANNE THALL-EGLOW, COUNCILPERSON MAGGEE MIGGINS, COUNCILPERSON SANJEEV VINAYAK AND BUSINESS ADMINISTRATOR ALEXANDER MCDONALD, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,
Defendants-Respondents

On Appeal from the Superior Court of New Jersey Law Division, Essex County

Docket No. ESX-L-5448-21

Civil Action

Sat Below: Hon. Russell J. Passamano, J.S.C.

PLAINTIFF'S/APPELLANT'S AMENDED BRIEF

On the Brief: Jeffrey S. Feld, Esq.

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PRELIMINARY STATEMENT

This Appeal goes to the heart of our constitutional form of representative democracy and our State's strong public policy in favor of "robust informed civic participation." This Appeal involves the Township of Millburn-one of the wealthiest, most affluent and educated communities in our State. Millburn and its public officials used to set the gold standard for the State. Today, Millburn is a "rogue" creature of State law.

This Appeal arises, in part, from the January 5, 2021 unilateral (without any prior public input) removal, abridgment and suppression of plaintiff's constitutional, statutory and common law right to be heard on all posted agenda action items prior to consideration and official action.

Procedurally, this Appeal arises, in part, from the pre-discovery summary judgment dismissal of plaintiff's **5** Counts **309** paragraphs hybrid prerogative writ/declaratory judgment/civil rights act violations test case complaint. This Appeal highlights the sharp elbow "deny, delay and deflect" war of attrition smear litigation tactics employed by municipal defendants and their retained professionals to hinder and to delay judicial review of patently wrongful municipal behavior.

This Appeal, however, is a procedural "dumpster fire." Ministerial defaults were entered and then vacated against all defendants-fiduciaries of a public trust.

Defendants replaced their original counsel-the municipal attorney-with attorneys appointed by its JIF Insurer. Twice the trial court denied defendants' pre-amended answer frivolous and vexatious Rule 4:6-2 (e) motions to dismiss with prejudice on the pleadings.

Plaintiff prevailed in this hybrid action. Plaintiff effected change. After the first motion to dismiss denial, defendants restored plaintiff's right to be heard on all posted agenda action items prior to consideration and official action. On the eve of the second pre-amended answer motion to dismiss, defendants filed a false and misleading certification alleging that the contested capital bond ordinance had been rescinded by a resolution.

Despite the belated filing of an amended answer asserting **116** denials and **23** affirmative defenses, the trial court denied plaintiff a level litigation playing field. At the request of defendants, the trial court stayed any pre-summary judgment expedited and limited discovery and permitted defendants not to respond to all of plaintiff's counterstatement of material facts.

But the Rule of Law still applies in our democracy. The governed still have the right to challenge authority. Accordingly, this Appeal presents the following repetitive substantive issues of public importance: (1) whether discretionary municipal legislative action is subject to or immune from judicial review; (2) whether defendants suppressed plaintiff's political free speech and right to petition;

(3) whether a municipality can repeal or amend a municipal capital bond ordinance by resolution; (4) whether Millburn required and paid "prevailing wages" in connection with its discretionary Flex Parking Removal Capital Bond Project; (5) whether defendant Tara B. Prupis had a disqualifying Flex Parking Removal conflict of interest and appearance of impropriety due to the location of her downtown business within the confined flex parking removal area; (6) whether the filing of a complaint within a statutory 20 days estoppel period stayed the effective date of a municipal capital bond ordinance; and (7) whether residents are entitled to an accounting as to how certain completed Flex Parking Removal and 911 Memorial Capital Bond Projects were ultimately funded without capital bond proceeds.

BASIS FOR APPELLATE JURISDICTION

This Rule 2:2-3 "As of Right" Appeal arises from: (i) a Rule 4:69-4 Case Management Order filed May 17, 2023 (Pa79), (ii) a Dispositive Summary Judgment Dismissal Order filed September 22, 2023 (Pa80) and (iii) a Reconsideration, Amendment, Alteration and Vacation Denial Order dated March 5, 2024 (Pa82).

STANDARDS OF JUDICIAL REVIEW

Different standards of appellate review apply in this Appeal. The dispositive summary judgment dismissal order is reviewed de novo, using the same standard

that governed the trial court's decision. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). Summary judgment may be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (quoting Rule 4:46-2 (c)); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "When no issue of fact exists, and only a question of law remains," the reviewing court owes no special deference to the trial court's decision. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 190 (2016).

"To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Marinez, 242 N.J. 449, 472 (2020) (alteration in original). "A dispute of material fact is 'genuine only, if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021).

On the other hand, the trial court's expedited discovery, reconsideration, alteration, amendment and vacation denial orders are subject to deferential abuse

of discretion review. A trial court abuses its discretion when its decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002).

Moreover, in Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021), Presiding Appellate Judge Fisher, together with Judges Gilson and Moynihan, explained:

> But some reconsideration motions-those that argue in good faith a prior mistake, a change in circumstances, or the court's misappreciation of what was previously argued-present the court with an opportunity to either reinforce and better explain why the prior order was appropriate or correct a prior erroneous order. Judges should view well-reasoned motions based upon Rule 4:42-2 as an invitation to apply Cromwell's rule: "I beseech you . . . think it possible you may be mistaken." The fair and efficient administration of justice is better served when reconsideration motions are viewed in that spirit and not as nuisance to be swatted away.

In a Rule 4:50-1 motion to alter or amend the judgment, a party must show "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice." Lazaridis v. Wehmer, 591 F. 3d 666, 669 (3d Cir 2010) (per curiam). The new evidence must (1) be material to the issue and not merely cumulative or impeaching, (2) have been discovered since the trial and must be such as by the exercise of due diligence could not have been discoverable prior to the expiration of the time for moving for a new trial; and (3) be of such nature as to have been likely to have changed the

result if a new trial had been granted. Quick Chek Food Stores v. Springfield Tp., 83 N.J. 438 (1980).

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

This Appeal cannot be reviewed in a vacuum. Context matters. This Appeal arises, in part, from the January 5, 2021 unilateral (without any prior public input) abridgment, impairment and suppression of our State's strong public policy in favor of "robust informed civic participation" and a competitive marketplace of competing ideas. This Appeal also involves the validity of a Flex Parking Removal/911 Memorial Capital Bond Ordinance adopted June 15, 2021. (Pa191).

THE PARTIES

Plaintiff

Plaintiff Jeffrey S. Feld resides in the Township of Millburn ("Millburn"). (Pa1-Compl. #26; Pa219-SJCS #1, #2; Pa234-SJ Opp Cert #3, #4). Plaintiff is also an attorney duly authorized to practice law in the State of New Jersey. (Pa1-Compl. #27; Pa219-SJCS #3; Pa234-SJ Opp Cert #5)). As such, plaintiff is a

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[1] To facilitate his presentation and narrative of this odd hybrid prerogative writ/declaratory judgment/civil rights act violations case, plaintiff has combined and merged his statement of facts and procedural history sections.

In addition, for purposes of this Brief, 1T refers to the May 17, 2023 Rule 4:69-4 Case Management Conference Hearing Transcript, 2T refers to the September 22, 2023 Dispositive Summary Judgment Dismissal Hearing Transcript and 3T refers to the March 5, 2024 Reconsideration, Alteration, Amendment and Vacation Denial Hearing Transcript.

"public citizen" and an officer of the court with an overriding professional obligation to preserve trust and confidence in our democratic institutions. (Pa1-Compl. #28; Pa234-SJ Opp Cert. #6).

Plaintiff is a zealous local watchdog. Plaintiff advocates robust informed civic participation. Plaintiff advocates enhanced local transparency, accountability, and adherence to the rule of law. (Pa1-Compl. #29)

Plaintiff prevailed in this action. In January 2022 and shortly after the trial court denied defendants' first motion to dismiss on the pleadings, defendants restored plaintiff's right to be heard on all agenda action items prior to consideration and official action. (Pa1-Compl #13; Pa295; Pa326-Def SJCSR #36, #37).

Defendants

Defendant Township of Millburn ("Millburn") is a creature of State law located in Essex County. (Pa48-Answ #51). Defendant Millburn is not yet governed under the Faulkner Act. (Pa48-Answ #54). Millburn residents lack the direct democracy right of initiative and binding referendum. Millburn does not require its local elected officials to attend basic municipal law courses and training. (Pa48-Answ #118).

Defendant Alexander McDonald is Millburn's statutory business administrator. (Pa48-Answ #105)

As of the July 13, 2021 commencement date of this hybrid prerogative writ/declaratory judgment/civil rights act violations test case, defendants Tara B. Prupis, Richard Wasserman, Dianne Eglow, Maggee Miggins and Sanjeev Vinayak were all members of Millburn's local governing body. (Pa48-Answ #62, #82, #94, #98, #103). However, since the commencement of this action, Mr. Wasserman's and Mrs. Eglow's terms of office ended on December 31, 2022. Mr. Vinayak's and Mrs. Miggin's terms of office ended on December 31, 2023. Ms. Prupis' term of office will end on December 31, 2024. (Pa219-SJCS #13).

On January 5, 2021, defendant Prupis (with the tacit consent of all other individual defendants) unilaterally (and without any prior public input) altered Millburn's public meetings policy and procedure. Defendants suppressed plaintiff's prior right to be heard on all non-ordinance agenda action items until after consideration and official action. (Pa48-Answ #13). In January 2022 and shortly after the trial court denied defendants' first motion to dismiss with prejudice on the pleadings, defendants (under the watch of Mayor Miggins) reversed course and restored plaintiff's right to be heard on all posted agenda action items prior to consideration and official action. (Pa48-Answ #13; Pa295; Pa326-SJCSR #36, #37).

Defendant Prupis also had a disqualifying conflict of interest and appearance of impropriety. Defendant Prupis owned and operated a business located adjacent

to and within 200 feet of the contested Flex Parking Removal Capital Bond Project. (Pa48-Answ, #65, #66, #,68, #69). After the June 15, 2021 adoption of the contested Flex Parking Removal Captial Bond Ordinance, defendant Prupis' landlord contributed to her CY 2021 reelection campaign. (Pa219-SJCS #16; Pa319). On July 18, 2023, defendant Prupis publicly acknowledged and admitted that her business "benefitted" from the contested Main Street Pedestrian Mall Closure and expanded appointed 5 district special improvement district. (Pa219 - SJCS #61).

Defendant Miggins was the prime proponent of the 911 Memorial Capital Bond Project. (Pa1-Compl #101; Pa48-Answ-#101). But defendant Miggins pledged that no public trust funds monies would be used to fund the 911 Memorial Project and the expanded appointed 5 district special improvement district. (Pa48-Answ #102). While this hybrid action was pending, defendant Miggins abused her position of power. Defendant Miggins filed a retaliatory private citizen municipal criminal complaint against a vocal dissident without a dated and executed probable cause finding. (Pa219-SJCS #64, #65, #66, #67; Pa320; Pa324).

All individual defendants were fiduciaries of a public trust subject to a heightened standard of care. (Pa219-SJCS #62). Each individual defendant took an oath of office swearing to execute and to enforce the law. According to defendant Vinayak, Millburn had a policy of litigating and not mediating all disputes with

residents. (Pa219-SJCS #8). Defendants declined to disclose how the contested Flex Parking Removal and 911 Memorial Capital Bond Projects were funded without bond proceeds. (Pa219-SJCS #57). Defendants refused to disclose whether prevailing wages were paid in connection with the Flex Parking Removal Project. Despite the explicit RPC 4.2 political free speech comment carveout, defendants refused to meet with plaintiff to discuss non-litigation matters of public importance. (Pa219-SJCS #55).

PROCEDURAL HISTORY

The July 13, 2021 5 Counts 309 Paragraphs Hybrid Prerogative Writ/Declaratory Judgment/Civil Rights Act Violations Complaint

On Tuesday July 13, 2021, plaintiff filed a **5** counts **309** paragraphs hybrid prerogative writ/declaratory judgment/civil rights act violations test case complaint. (Pa1-Compl; Pa219-SJCS #9). Plaintiff sought compensatory, declaratory and injunctive relief. In his hybrid complaint, plaintiff challenged the unilateral (without any public input) January 5, 2021 change in policy and procedure suppressing plaintiff's right to be heard on any posted agenda action items until after consideration and official action. Plaintiff also sought to invalidate a certain $855,000 Flex Parking Removal/911 Memorial Capital Bond Ordinance 2579-21 adopted June 15, 2021. (Pa191).

Plaintiff questioned whether Mayor Tara Prupis (due to the location of her business within the one block limited Millburn Avenue flex parking removal area) had a **per se** disqualifying conflict of interest and appearance of impropriety on all flex parking removal related matters. Plaintiff also questioned whether Maggee Miggins had broken her promise not to use taxpayers' trust fund monies to pay for her "pet" 911 Memorial Project.

In addition, plaintiff sought nominal monetary damages arising from a prepared pre-consent agenda retaliatory, defamatory, smearing, "gaslighting" and impugning statement read by Mayor Prupis with the tacit consent of all defendants. (Pa188, Pa198).

Plaintiff captioned his 5 Counts as follows:

> Count One-Voiding $855,000 Capital Improvement Bond Ordinance 2579-21 Adopted June 15, 2021
>
> Count Two-Impairment of our Robust Marketplace of Competing Ideas and Violations of Our State Public Policies In favor of Open Transparent Accountable Local Representative Democratic Government
>
> Count Three-Failure to Supervise
>
> Count Four-State Created Danger
>
> Count Five-New Jersey Civil Rights Act Violations (Pa326-DSJCSR #11).

In his hybrid test case complaint, plaintiff explicitly set forth the following repetitive issues of public importance:

> (1) Whether the 200 feet municipal land use **per se** conflict of interest and the Local Government Ethics Law prohibited Mayor Tara B. Prupis from participating in any matter involving the public funding of the flex parking removal in front of her place of business? . . .
>
> (3) Whether the public has a constitutional, statutory and common law right to be heard prior to consideration and official action on any agenda action item involving the expenditure of taxpayers' trust fund monies? and
>
> (4) Whether local elected officials have a constitutional, statutory and common law duty to respond to pertinent second reading public hearing written and oral questions prior to consideration and official action on a discretionary legislative ordinance? (Pa1-Compl #14; Pa219-SJCS #11).

The First Cursory CRA Violations Notice Response Letter

On Thursday July 15, 2021, plaintiff served all defendants. (Pa219 - SJCS#23). Two days later, on Saturday July 17, 2021, plaintiff received an after-the-fact cursory civil rights act violations response letter dated July 13, 2021 from Millburn's Labor Attorney (and defendants' current counsel in this action) regarding plaintiff's June 15, 2021 procedural due process/Open Public Meetings Act/political free speech/right to petition violation allegations. (Pa115). Millburn's Labor Attorney acknowledged possible June 15, 2021 Open Public Meeting Act Violation Issues.

On Monday July 19, 2021, plaintiff responded to the cursory response letter. (Pa117). Plaintiff advised Labor Counsel of the commencement of this hybrid action.

The July 30, 2021 Stealth Global Fair Share Housing Litigation Settlement

This hybrid test case has broad unanticipated political free speech violation adverse consequences. On Friday July 30, 2021-just seventeen days after the commencement of this hybrid action, defendants attempted to approve a global fair share housing litigation settlement on less than 45 minutes shortened and limited notice. (Pa219-SJCS#24). Defendants Prupis and Miggins asserted disqualifying conflicts of interests and fled townhall at the commencement of the 10:00 am special meeting.

Plaintiff was the only resident who appeared at this special meeting. (Pa219- SJCS#25). After a two-hour closed executive session and approval of a stealth settlement without any prior public input, plaintiff questioned the procedural due process/OPMA validity of this special meeting. (Pa219-SJCS#26). Plaintiff suggested that the settlement be ratified upon proper notice at the next regular August 17, 2021 TC meeting. (Pa219-SJCS #26). Plaintiff demanded that defendants disclose the final terms of the negotiated global fair share housing settlement prior to reconsideration and ratification.

On Monday August 9, 2021, Millburn's JIF insurance carrier supplied Millburn's labor counsel with a copy of plaintiff's hybrid complaint. (Pa95-Cert. #8). Counsel never sought from plaintiff a professional courtesy extension of time to respond.

On Tuesday August 17, 2021, defendants again declined to disclose the final terms of the global fair share housing settlement agreement prior to consideration and official ratification action. (Pa219-SJCS#27). On Tuesday August 17, 2021, defendants asserted that the trial court (Judge Robert Gardner) and the special master had prohibited the disclosure of the final settlement terms until after consideration and official action. (Pa219-SJCS#28; Pa135). On Tuesday August 17, 2021, the municipal attorney also concealed a Fair Share Housing Center email consenting to the disclosure of the settlement terms prior to consideration and official ratification action.

On Tuesday August 17, 2021 and after consideration and official action, defendants finally disclosed increased zoning overlay densities, a 150 units inclusionary Annie Sez Project on Millburn Avenue, a 200 units inclusionary Woodmont project adjacent to the Canoe Brook Reservoir, and a 75 units 100% affordable housing project with a promised long term tax exemption on Millburn 's contaminated DPW site. But in June 2021, Millburn promised not to develop its contaminated DPW site without any prior citizen input.

On Tuesday August 17, 2021 and at the close of the public TC meeting, defendant Eglow chastised residents (including plaintiff) for uniting, contesting and defeating a Jersey Mike's zoning board application the night before.

The Ministerial Defaults and Original Consensual Agreement to File An Answer Out-of-Time

Plaintiff did not slumber upon his rights. Despite proper service, defendants failed to respond timely to plaintiff's hybrid complaint. (Pa93; Pa95; Pa99)). On Saturday morning August 21, 2021, plaintiff requested the entry of ministerial defaults against each defendant. Plaintiff simultaneously (via email) advised defendants and the municipal attorney of his ministerial default entry requests. Shortly thereafter, the municipal attorney e-filed an answer out-of-time on behalf of all defendants. Later that afternoon while visiting an outdoor New York sculpture park with his wife, plaintiff consented (via email) to the out-of-time filing. Plaintiff directed the municipal attorney to prepare a consensual stipulation. (Pa99 -Motion to Vacate Defaults Opposition Certification and Exhibits).

The August 23, 2021 New Substituted Counsel and Consensual Standstill Agreement

Early Monday morning August 23, 2021, plaintiff emailed the municipal attorney about the consensual stipulation. Plaintiff reserved certain rights about the filed out-of-time answer.

Later that afternoon and prior to the filing of a substitution of counsel, Attorney Mary Anne Groh contacted plaintiff for the first time. Attorney Groh advised plaintiff that she was new substitute special counsel in this hybrid action. Attorney Groh requested but plaintiff refused to withdraw his ministerial default

requests prior to the simultaneous filing of an amended answer. (Pa95). Because of certain patent errors and omissions contained in the municipal attorney's out-of-time filed answer, plaintiff agreed to standstill until September 30, 2021 so that new substitute counsel could conduct her own independent Rule 1:4-8 reasonable due diligence inquiry before being bound by the municipal attorney's out-of-time answer. Plaintiff reserved all his disqualifying conflict of interest representation issues.

Later that afternoon, Attorney Groh prepared and plaintiff executed a September 30, 2021 Standstill Stipulation. (Pa98).

Notwithstanding defendants' requests, the clerk entered ministerial defaults against all defendants. (Pa93; Pa95).

Continued Local Watchdog Efforts

Plaintiff never stopped questioning the validity of the July 30, 2021 fair share housing settlement under State law. Plaintiff filed another notice of civil rights act violation notice with defendants. (Pa123; Pa125; Pa219-SJCS# 29). Plaintiff also contacted Judge Robert Gardner questioning whether he had in fact prohibited the disclosure of the final settlement terms until after consideration and official action. Plaintiff claimed that defendants violated the Whispering Woods

Doctrine[2]. Plaintiff also claimed that defendants violated our State's strong public policy in favor of robust informed civic participation and the implied covenant of good faith and fair dealing contained in all New Jersey contracts. Plaintiff advised Judge Gardner of the June 2021 broken promise not to develop the contaminated DPW site without any prior citizen input. Plaintiff suggested that defendants hold a Whispering Woods Doctrine public hearing to ratify the July 30, 2021 fair share housing settlement.

On Friday September 17, 2021 ("Constitution Day"), Essex County Civil Presiding Judge Thomas M. Moore and Judge Robert Gardner both admonished Millburn for asserting that residents had no right to monitor virtual case management conferences. On September 17, 2021, Essex County Civil Presiding Judge Moore admonished Millburn to mediate and not to litigate the validity of its expanded appointed 5 district SID under State law.

On Friday September 17, 2021, Millburn' s Labor Attorney responded to plaintiff's August 17, 2021 TC meeting civil rights act violation allegations. (Pa123). This cursory response letter shifted the false and misleading prohibited

[2] See, Whispering Woods at Bamm Hollow v. Twp. of Middletown, 220 N.J. Super. 161, 172-173 (law Div. 1987) (requiring any public land use related settlement to be subject to public presentation, a public hearing thereon and a public vote.)

disclosure representations liability to Attorney Edward Buzak-Millburn's planning board/special fair share housing litigation counsel. (Pa123;Pa219-SJCS #31).

Defendants' September 30, 2021 Joint Motions for Vacation, Leave and Rule 4:6-2 (e) Dismissal With Prejudice

On Thursday September 30, 2021 and in lieu of filing an amended answer, defendants filed a joint Rule 4:43-3 Vacation and Leave and Rule 4:6-2 (e) Motion to Dismiss with Prejudice. (Pa93).

On Wednesday January 5, 2022, the trial court entertained virtual public oral argument. On January 5, 2022, the trial court denied defendants' motion to dismiss without prejudice, vacated the ministerial defaults entered against defendants, and granted defendants twenty days either to file an amended answer or to file an amended pre-answer pre-discovery Rule 4:6-2(e) motion to dismiss on the pleadings. (Pa126).

Defendants' January 21, 2022 Second Rule 4:6-2(e) Motion to Dismiss with Prejudice

On Friday, January 21, 2022, defendants filed their "second" pre-amended answer pre-discovery Rule 4:6-2(e) Motion to Dismiss with Prejudice. (Pa128).

As instructed by the trial court on January 5, 2022, plaintiff filed a cross-

motion to determine certain preliminary procedural and representation issues. (Pa130).

Judge Gardner Admonishes Millburn

On January 28, 2022 and during the initial fair share housing declaratory judgment settlement fairness hearing, Judge Gardner scolded defendants for suggesting and implying that he had prohibited the disclosure of the July 30, 2021 final fair share housing settlement terms until after consideration and official action. (Pa219-SJCS #38; Pa135). But on January 28, 2022, Judge Gardner denied plaintiff-an interested party- the opportunity to question the special master and Millburn's special outside planner under oath and penalty of perjury. Judge Gardner delayed ruling on the procedural due process and contractual invalidity of the July 30, 2021 fair share housing settlement under State law. (Pa219-SJCS#39, #40).

While their second pre-answer motion to dismiss was pending, defendants restored plaintiff's right to be heard on all agenda action items prior to consideration and official action. (Pa293, Pa295, Pa326-SJCSR #36, #37). Municipal attorney Christpher Falcon retired. (Pa219-SJCS#12). In or about October 2022, defendants terminated their relationship with their fair share housing declaratory judgment special outside counsel Attorney Edward Buzak. (Pa219-

SJCS#14). Attorney Buzak continued to represent the local planning board until January 2024.

On October 18, 2022 and during a public TC meeting, plaintiff asked former Governor/State Senator Richard Codey whether residents were entitled to know the final terms of the fair share housing settlement prior to consideration and official action. Former Governor/State Senator Richard Codey responded: "It's the Law." (Pa219–SJCS#41).

Defendants continued to defame, to smear, to impugn and to stifle local dissenting voices. During her unsuccessful independent CY 2022 reelection campaign, defendant Eglow blamed plaintiff and his minions for fermenting distrust throughout the community. (Pa219-SJCS# 57). On January 4, 2023, defendant Miggins filed a petty disorderly person private citizen municipal criminal complaint against a vocal dissenting resident. (Pa219-SJCS#64, #65; Pa320). On March 7, 2023, defendant Miggins alleged that plaintiff was responsible for the township's failure to hire additional uniform police officers.[3] (Pa219-SJCS #58).

[3] On July 19, 2023, defendant Miggins filed a police incident report against another dissenting resident regarding public comments made the night before during a public TC meeting challenging the CY 2023 Main Street Pedestrian Mall Closure. (Pa SJCS#67; Pa328).

On March 7, 2023, rather than adopting an ordinance, defendants attempted to moot this hybrid action by adopting a resolution cancelling the contested June 15, 2021 Flex Parking Removal/911 Memorial Capital Bond Ordinance Appropriation. (Pa154). Defendants refused to tell residents how the completed Flex Parking Removal and 911 Memorial Capital Projects were funded without bond proceeds and whether prevailing wages were paid in connection with these two publicly funded projects. (Pa219-SJCS#57).

The March 24, 2023 Second Motion to Dismiss Virtual Public Hearing

Prior to considering defendants' second motion to dismiss and upon the directive of the court, the parties each provided a summary of factual and legal issues to the court. (Pa137; Pa149).

On Thursday, March 24, 2023, the trial court held another virtual public motion hearing. The trial court denied defendants' second Rule 4:6-2(e) motion to dismiss with prejudice on the pleadings. (Pa157). The trial court denied plaintiff's disqualifying conflict of interest motion. (Pa159). The trial court granted defendants thirty days to file an amended answer.

Defendants' Premature Pre-Discovery Summary Judgment Motion

On April 25, 2023, defendants filed an Amended Answer with Affirmative Defenses. Defendants asserted **116** denials and **23** affirmative defenses. (Pa48).

On Wednesday May 17, 2023, the trial court held a mandatory Rule 4:69-4 virtual case management conference. (Pa79,1T). At the request of defendants, the trial court stayed all limited and expedited discovery by plaintiff. The trial court granted defendants leave to file a dispositive pre-discovery summary judgment motion limited to Count One on or before July 31, 2023. (1T, 16, ln 17-17, ln23; 30, ln 20-21, ln 3).

On July 31, 2023, defendants filed their premature pre-discovery summary judgment motion. (Pa162). Defendants relied upon the allegations contained in plaintiff's hybrid complaint. (Pa164). Defendants relied upon the supporting certification of counsel. (Pa169). No individual defendant filed a supporting certification under oath and penalty of perjury. Defendants claimed litigation/legislative privileges and qualified immunity. Defendants ignored clear and unambiguous OPRA and OPMA statutory purposes language. Defendants cited no contrary developing intervening case law. Despite post commencement curative remediation actions, defendants still denied that they violated our State's strong public policy in favor of robust informed civic participation.

Plaintiff did not file a cross-motion. However, plaintiff filed an opposition certification under oath and penalty of perjury and a **72** paragraphs counterstatement of material facts. (Pa219; Pa234). Defendants declined to respond to **67** paragraphs, claiming lack of relevancy. (Pa326; 2T). In his Opposition

Certification, plaintiff incorporated by reference his earlier prior certifications and exhibits. (Pa234-SJ Opp Cert. #13). To assist the court, plaintiff also prepared a highlighted complaint indicating defendants' admission by **bold** font and their denials by *italicized underlined* font. (Pa234–SJ Opp Cert. #23-25; Pa241-Exhibit DD).

On September 23, 2023 and after hearing virtual public oral argument, the trial court granted defendants summary judgment and dismissed plaintiff's entire hybrid **5** counts **309** paragraphs complaint with prejudice. (Pa80; 2T).

During the September 22, 2023 oral argument, defendants attacked plaintiff's character, integrity and professional competence even though credibility was not a proper summary judgment issue. (2T, 6, ln. 6-9; 8, ln. 4-6; ln.13-14; ln 21-22; 9, ln 24-10, ln 3; 11, ln. 3-7; 11, ln. 24- 12, ln 1). On September 22, 2023, defendants also concealed material intervening facts from the trial court. On September 22, 2023, defendants misstated the law to the trial court.

Plaintiff's Reconsideration, Alteration, Amendment and Vacation Motion

On October 3, 2023, plaintiff filed a motion for the entry of an Order (pursuant to Rules 1:1-2, 1:4-8(a), 1:6-5, 1:7-4, 1:13-1, 4:5-3, 4:9-2, 4:9-3, 4:9-4, 4:49-2, 4:50-1(b), (c) and (f), the Judiciary's Mission Statement[4] and the court's

[4] "We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to

inherent equitable powers) reconsidering, altering, amending and vacating the September 22, 2023 Pre-Discovery Final Summary Judgment Dismissal in favor of all defendants and granting such other further relief as the trial court deemed just and equitable. (Pa350).

Plaintiff sought entry of an amending and superseding Order:

(1) Dismissing Count One on the grounds of mootness.

(2) Granting Summary Judgment in favor of all defendants on all Counts Two to Five claims or causes of actions arising from or relating to the June 15, 2021 capital bond ordinance and statements made by defendants about plaintiff on June 15, 2021.

(3) Due to post commencement curative actions taken by defendants, dismissing all Counts Two to Five CY 2021 claims or causes of actions arising from or relating to defendants denying plaintiff his right to be heard on all non- ordinance agenda action items prior to consideration and official action on the grounds of mootness.

(4) Explicitly stating and clarifying that the trial court did not consider or rule on the procedural due process and Whispering Woods validity of the July 30, 2021 fair share housing settlement under State law.

Defendants and the reconstituted CY 2024 TC rejected plaintiff's proposal. On March 5, 2024, the trial court declined to "squeeze Justice out of the Law." (Pa82; 3T). On March 5, 2024, the trial court denied plaintiff's motion. But on

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protect the rights and liberties guaranteed by the Constitution and laws of the United States and this State."e

March 5, 2024, the trial court acknowledged that plaintiff had effected change restoring his right to be heard on all posted agenda action items prior to consideration and official action. Also on March 5,2024, plaintiff caused the trial court to rule on his post final judgment Rule 4:50-1(b), (c) and (f) alteration, amendment and vacation arguments. (3T, 88, ln 8-95, ln 2).

The Instant Appeal

On April 18, 2024, plaintiff filed this Appeal. (Pa84). On May 16, 2024 and upon its receipt of all transcripts, the clerk entered a Notice of Docketing. Despite certain constitutional violation allegations, the State Attorney General declined to participate.

LEGAL ARGUMENT

I. The Trial Court Improperly Placed Its Thumbs Upon the Scales of Justice. (Pa79,Pa80,Pa82,1T,2T,3T)

Our judicial system and court rules are predicated upon due process and resolution of disputes based upon the merits. A trial is the search for truth, not the illusion of truth. Implicit in a judge's fact-finding responsibilities is the judge's obligation to decide all critical issues. A judge cannot decline to do so because the issue is novel and thus, in the judge's view, should be first addressed by an appellate court. See State v. Roper, 362 N.J. Super. 248, 252 (App. Div. 2003).

Here, the trial court acted manifestly unjustly under the circumstances. Here, the trial court punted its judicial obligation and duty. Here, the trial court erred

when it denied plaintiff limited and expedited discovery and permitted defendants not to respond to **67** counterstatements of material facts. But plaintiff was entitled to expedited and limited discovery and a "fuller and fairer opportunity to make their case." See, Mary A. Botteon v. Borough of Highland Park, A-1227-22 (App. Div. May 1, 2024)(slip op. at p. 24-25)(Pa427) (Judge Sabatino, together with Judges Chase and Vinci, reversing and remanding plaintiff's remaining non-preemption state law claims, which were dismissed without an opportunity for discovery and without a possible evidentiary hearing).

Botteon is not an outlier. Botteon is consistent with federal case law recognizing the importance of discovery in civil rights violations cases. See, Bennett v. Schmidt, 153 F.3d 516, 519 (7th Cir. 1998) (litigants "are entitled to discovery before being put to their proof."); Colburn v. Upper Darby Township, 838 F.2d 663, 666 (3d Cir. 1988) ("[I]n civil rights cases 'much of the evidence can be developed only through discovery' of materials held by defendant officials.").

Here, the lack of expedited and limited pre-summary judgment discovery blocked plaintiff's path to relief. Here, plaintiff never waived his right to expedited and limited discovery. (Pa326-DSJCSR #72). Here, plaintiff never filed a cross-motion conceding the lack of disputed material facts and that the matter was ripe for pre-discovery summary judgment. Here, the trial court delegated its fact-

finding, evidentiary and discovery responsibilities to defendants. The trial court condoned and permitted defendants' public wrongdoing.

II. Defendants Obfuscated the Facts and the Law. (Pa79,Pa80,Pa82,1T,2T,3T)

Despite defendants' best efforts, plaintiff's 5 Counts cannot be lumped together. Claims, causes of actions and remedies must be differentiated. With respect to the validity of the $855,000 Flex Parking Removal/911 Memorial Capital Bond Ordinance adopted June 15, 2021 Count One, there were genuine disputed arbitrary, capricious and unreasonable related issues of material facts regarding: (1) whether the filing of this hybrid complaint stayed the effective date of the contested capital bond ordinance[5]; (2) whether Tara Prupis had a void ab initio disqualifying conflict of interest and appearance of impropriety; (3) whether defendant Miggins pledged that no taxpayer trust fund monies would be used to fund the 911 Memorial Capital Project[6]; (4) whether defendants recklessly and intentionally failed to disclose to residents the non-bond proceeds sources of funding the completed Flex Parking Removal and 911 Memorial Projects; (5)

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[5] See, In re Petition for Referendum to Repeal Ordinance 2354-12 of the Twp. Of West Orange, 233 N.J. 589 (2015) (explaining inability of attorney to deliver a clean bond opinion if lawsuit filed within statutory bond estoppel period); Pa219-SJCS #44; #45).

[6] See, N.J.S.A. 2C:30-4 "Disbursement of Money or Incurring of Obligations by Public Officials in Excess off Appropriations or Limit."

whether Millburn paid "prevailing wages" in the Flex Parking Removal Project[7]; (6) whether defendant Prupis received a quid pro quo campaign contribution from her landlord after the adoption of the contested capital bond ordinance; and (7) whether the March 7, 2023 appropriation rescission resolution was a sham mooting cover-up artifice and device.[8]

Although plaintiff voluntarily waived his nominal "Side Show Bob" defamation "gaslighting" monetary damage claims, plaintiff preserved his reckless/intentional and "willful blindness" political free speech suppression civil rights act violation claims, causes of actions and remedies. Defendants obfuscated this factual and legal political free speech suppression issue. This is not a Tort Claims Act case. This is a political free speech suppression Civil Rights Act violation action. See, New York Times Co. V. Sullivan, 376 U.S. 254 (1964) ("[W]e consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."); Stanley v. Georgia, 394 U.S. 557, 564 (1969) ("It is now well established that the

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[7] See, N.J.S.A. 2C:21-34 "Penalty for False Payment Claims, Representations, for a Government Contact; Grading."

[8] As a general rule, the term "ordinance" embodies matters that are legislative in character, while the term "resolution" embodies matters that are administrative. A resolution cannot vacate or amend an ordinance.

Constitution protects the right to receive information and ideas."); New Jersey State Constitution, Article I, paragraphs 1, 2a, 5, 6, 18 and 21.

Less than two years ago, in Kumar v. Piscataway Twp. Council, 473 N.J. Super. 463 (App. Div. 2022)- a case ignored by defendants- Appellate Presiding Judge Currier explained:

> The CRA "is intended to provide citizens of New Jersey with a State remedy for deprivation of or interference with the civil rights of an individual." Tumpson, 218 N.J. at 473. (emphasis in original). In order to prevail on a claim under the CRA, a plaintiff must show that: (1) they have "been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State," or their "exercise or enjoyment of those substantive rights, privileges or immunities have been interfered with or attempted to be interfered with," (2) "by threats, intimidation or coercion", and (3) "by a person acting under color of law." N.J.S.A. 10:6-2 (c). The Act "does not define substantive right, nor is the term self-explanatory." Tumpson, 218 N.J. at 473. A prevailing party under the Act is entitled to reasonable attorney's fees and costs. Id. at 472 (quoting N.J.S.A. 10:6-2(f)).

473 N.J. Super at 475. Also see, Winberry Realty v. Rutherford, 247 N.J. 165 (2021) (Justice Albin setting forth the 3 elements of a CRA claim: (1) a substantive right conferred by our State constitution or other laws of the State, (2) a municipal official deprived plaintiff of that right; and (3) the municipal official was "acting under color of law" when he or she did so.)

Here, the core CRA and declaratory judgment issue is and has always been whether defendants recklessly and intentionally violated our State's strong public policy in favor of robust informed civic participation and a competitive marketplace of competing ideas. Cf: Gonzalez v. Trevino, 602 U.S. __ (June 20, 2024) (Alito, J. concurring) (slip op. at p. 4-5) ("[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including prosecutions, for speaking out."); National Rifle Association of America v. Vullo, 602 U.S. __, __(May 30, 2024)(slip op at p. 8)("At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society."); Justice Stephen Breyer, Reading the Constitution: Why I Chose Pragmatism, Not Textualism (2024)(at p.142) ("[T]he First Amendment is in part a transmission belt, assuring the development, through the marketplace of ideas, of public thought that is not simply speech for the sake of speech, but speech for the sake of political action.")

Plaintiff prevailed on this political free speech violation issue. Shortly after the trial court denied defendants' first motion to dismiss on the pleadings in January 2022, defendants changed course. Defendants restored plaintiff's right to be heard on all posted agenda action items prior to consideration and official action. (Pa295, Pa326-DSJCSR #71, #72).

Here, plaintiff litigated in good faith. To expedite adjudication, to mitigate costs and to cut off any further diversionary attacks on his professional integrity, character, and competence, plaintiff waived his claim for nominal defamation monetary damages and reasonable prevailing party civil rights act violation attorney's fees. Cf: New Jerseyans for a Death Penalty Moratorium v. NJ Dept. of Corrections, 185 N.J. 137 (2005) (awarding OPRA fee shifting fees to prevailing pro se attorney-Kevin Walsh); Kumar v. Piscataway Twp. Council, 473 N.J. Super. 463 (2022) ("In enacting the CRA, and specifically N.J.S.A. 10:6-2(f), the Legislature implicitly acknowledged the difficulty a citizen might have in retaining competent counsel to litigate and preserve their substantive right[s].").

Moreover, this "robust informed civic participation" impairment issue shrouds the validity of Millburn's July 30, 2021 fair share housing settlement. Upon the advice of former counsel, defendants concealed the final settlement terms (increased zoning overlay densities, a 200 units inclusionary Woodmont Project adjacent to the Canoe Brook Reservoir, a 150 units Annie Sez inclusionary housing project and a 75 units 100% affordable housing project on the township's contaminated DPW site with a promised long term tax exemption) until after reconsideration and ratification. Indeed, no tribunal wants to touch this patent "robust informed civic participation," Whispering Woods Settlement and Implied Covenant of Good Faith and Fair Dealing Violations Radioactive Third Rail.

Finally, this Appeal case arises in a peculiar COVID 19 context. Defendants-fiduciaries of a public trust-failed to cite the State Executive Branch Guidance relating to virtual public meetings during this pandemic. See, Local Finance Notice 2020-21 "New Remote Public Meeting Regulations" (September 24, 2020) (Pa285)("In crafting standard procedures and requirements for public comment, local bodies are strongly encouraged to consult with their legal counsel to ensure any such restrictions comply with the Open Public Meetings Act **and do not infringe upon constitutional rights**.") (emphasis supplied).

Plaintiff's political free speech rights under the New Jersey State Constitution are more expansive than under our Federal Constitution. Usachenok v. State of New Jersey, Dept. Of the Treasury, __N.J.__ (May 6, 2024) (New Jersey's Constitution provides broader protection for free expression than the Federal Constitution and practically all others in the nation).

Today there is a sharp distinction between school board employment decisions and local governing body discretionary legislative decisions involving the use of taxpayers' trust fund monies without any prior public comments and explanation. Indeed, State law has dramatically changed since the issuance of Local Finance Notice 2002-4 on September 24, 2002. See, Tarns v. Borough of Pine Hill, 189 N.J. 497 (2007) (permitting residents to record public meetings);

Besler v. Board of Educ. of West Windsor-Plainsboro Reg'l School Dist., 201 N.J. 544 (2010) (finding school board violated resident's First Amendment rights).

III. Defendant Prupis Had a Disqualifying Flex Parking Removal Conflict of Interest and Appearance of Impropriety. (Pa80,Pa82,2T,3T)

All parties are obligated to cite and to disclose all contrary case law to a tribunal. RPC. 3.3. In their moving summary judgment brief, defendants cited Grabowsky v. Twp. of Montclair, 211 N.J. Super 536 (2015) for the uncontested proposition that all municipal action is subject to a rebuttable presumption of validity and reasonableness. But defendants failed to discuss Grabowsky's "within 200 feet" on all fours' binding and precedential disqualifying conflict of interest common law and statutory holdings.

The Local Government Ethics Law ("LGEL") codified the common law. In N.J.S.A. 40A:9-22.2, our State Legislature declared:

> a. Public office and employment are a public trust;
>
> b. The vitality and stability of representative democracy depend upon the public's confidence in the integrity of its elected and appointed representatives;
>
> c. Whenever the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled. . . .

In N.J.S.A. 40A:9-22.5(d), our State Legislature provided:

> No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

Under common law, residents are entitled to fair and impartial decision making. See, Panitch v. Panitch 339 N.J. Super 63, 67 (App. Div. 2001) ("An objectively reasonable belief that the tribunal is not impartial will suffice to constitute a constitutional deprivation."); In re Adoption of Child ex rel M.E.B., 444 N.J. Super. 83, 88 (App. Div. 2016) (the right to due process encompasses the right to a fair hearing).

Municipal disqualification case law has drastically changed since Wyzykowski v. Rizas, 132 N.J. 509 (1992). Defendants cannot feign ignorance of this developing ultra vires conflict of interest and appearance of impropriety case law. Piscitelli v. City of Garfield Zoning Board of Adjustment, 237 N.J. 333, 349-51 (2019); Seaview Harbor Realignment Committee LLC v. Township Committee of Egg Harbor Township, 470 N.J. Super. 71 (App. Div. 2021) (citing Piscitelli and explaining that public officials must not participate in decisions where they stand to receive a financial or personal benefit or detriment and that "[t]he overall objective of conflict of interest laws is to ensure that public officials provide disinterested service to their communities and "to promote confidence in the integrity of governmental operations."); Mollica v. Township of Bloomfield, A-

2467-14T3(App. Div. Oct 17, 2016) (Pa407) (invalidating municipal bond issuance due to a within 200 feet disqualifying conflict of interest.

In Piscitelli, Justice Barry Albin-who Judge Eugene Codey called the conscience of our State Supreme Court-summarized the municipal conflict of interest standard as follows:

> The overlapping conflict-of-interest codes that apply to this case can be distilled into a few common sense principles. A citizen's right to "a fair and impartial tribunal" requires a public official to disqualify himself or herself whenever "the official has a conflicting interest that may interfere with the impartial performance of his duties as a member of the public body." ... The question is not "whether a public official has acted dishonestly or has sought to further a personal or financial interest; the decisive factor is 'whether there is a potential for conflict.'" ... "The question will always be whether the circumstances could reasonably be interpreted to show that [conflicting interests] had the likely capacity to tempt the official to depart from his sworn public duty."
>
> A conflict of interest arises whenever a public official faces "contradictory desires tugging [him or her] in opposite direction." ... This objective inquiry into whether a disqualifying conflict is present dispenses with any probing into an official's motive because the ultimate goal is to ensure not only impartial justice but also public confidence in the integrity of the proceedings. . . . Our conflict-of-interest rules, however, do not apply to "remote" or "speculative" conflicts because local governments cannot operate effectively if recusals occur based on ascribing to an official a conjured or imagined disqualifying interest. ... Requiring recusal when appropriate does not discourage public-spirited citizens from serving on boards. Dedicated public servants-given proper guidance-will not want to sit in judgment if they are encumbered by a potential conflict. (citations omitted).

237 N.J. at 352-53.

Plaintiffs disqualifying conflict of interest and appearance of impropriety allegations were neither speculative nor remote. Here, defendant Prupis owned and operated a business known as "Green Nectar" adjacent to and within 200 feet of the Flex Parking Removal Project. (Pa48-Answ #65, #66, #68 #69; Pa219-SJCS #61). A major plank of defendant Prupis' CY 2018 and CY 2021 municipal campaigns was flex parking removal. Defendant Prupis received a campaign contribution from her landlord after the adoption of the contested capital bond ordinance.[9] On July 18, 2023 defendant Prupis admitted and acknowledged that she and her business benefitted from the contested Main Street Pedestrian Mall Closure (and implicitly from the flex parking removal project). (Pa219-SJCS #61).

Ironically, on July 30, 2021-just 45 days after adoption of the contested capital bond ordinance- defendants Prupis claimed a disqualifying conflict of interest and fled townhall prior to the 2 hours closed executive session and the original consideration and approval of the July 30, 2021 fair share housing settlement on shortened and limited public notice.

Under both the Local Government Ethics Law and the common law, defendant Prupis had a disqualifying conflict of interest and appearance of

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[9] On August 7, 2023, our State Supreme Court diverted from federal law and held that our State bribery criminal laws applied to campaign contributions to unsuccessful non-incumbent municipal candidates. State v. O'Donnell, 255 N.J. 60 (2023).

impropriety. Her participation tainted the capital bond ordinance and the entire flex parking removal process. The disqualifying conflict of interest/appearance of impropriety remedy is, however, quite draconian. The Flex Parking Removal/911 Memorial Capital Bond Ordinance was void ab initio. See, Piscitelli v. City of Garfield Zoning Board of Adjustment, 237 N.J. 333 (2019); Grabowsky v. Twp. of Montclair, 211 N.J. Super 536 (2015); Kane Properties, LLC v. City of Hoboken, 214 N.J. 199 (2013); Thompson v. City of Atlantic City, 190 N.J. 359 (2007); Mollica v. Township of Bloomfield, A-2467-14T3 (App. Div. Oct 17, 2016)(Pa407); Diamond Chip Realty, LLC v. Township of Sparta Planning Board, SSX-L-399-23 (Law Div. March 28, 2024) (Pa413).

IV. The Trial Court Committed a Series of Patently "Manifestly Unjust" Reversible Errors and Omissions Supporting Reconsideration, Vacation, Amendment and Alteration of the September 22, 2023 Pre-Discovery Dispositive Summary Judgment Dismissal In Favor of All Defendants. (Pa79,Pa80,Pa82,1T,2T,3T)

On May 17,2023, September 22, 2023 and March 5, 2024, the trial court made a series of "manifestly unjust" reversible errors. The trial court denied plaintiff a level litigation playing field and equal protection under the law. There are boundaries of legitimate legal advocacy. The trial court permitted defendants to transcend these boundaries.

The trial court permitted defendants not to respond to certain Complaint and Counterstatement allegations. Rule 1:4-8, Rule 4:5-3. The trial court denied plaintiff expedited and limited discovery as to defendants' **116** complaint denials and **23** affirmative defenses. (Pa48, Pa326).

The trial court permitted defendants to attack the professional character, integrity and competency of plaintiff while credibility was not a summary judgment issue. (2T). The trial court failed to grant all summary judgement inferences in favor of the non-movant. Rule 4:46-2; C.V. v. Waterford Twp. Bd. Of Educ., 255 N.J. 289 (2023)(reversing post-discovery summary judgment in favor of defendant while restating rules and principles governing summary judgment motions); Brill v. Guardian Life Ins. Co. of Am. 142 N.J. 520, 528-29 (1995). Also see, Soltero v. M2M Ventures Group, Inc., A-1806-22 (App. Div. July 9, 2024) (Pa453) (harshly reversing summary judgment due to trial court's failure to consider certified counterstatement of facts).

The trial court failed to apply the mootness doctrine.

With respect to Count One, the trial court applied the wrong State governing statute. N.J.S.A. 40:49-2(b) (and not the Open Public Meetings Act) governed the Count One statutory dispute.

The trial court excused defendants from ever accounting how they funded the contested flex parking removal and 911 memorial projects without bond

proceeds and answering whether they paid prevailing wages. Dobco, Inc. v. Bergen County Improvement Authority, 250 N.J. 396 (2022) (per curiam); N.J.S.A. 2C:21-34; N.J.S.A. 2C:30-4.

The trial court only considered the statutory conflict of interest benefits prong; the trial court did not consider whether Mayor Prupis had a "within 200 feet" disqualifying appearance of impropriety under developing case law. See, Grabowsky v. Township of Montclair, 221 N.J. 536 (2015); Mollica v. Township of Bloomfield, A-2467-14T3 (App. Div. Oct. 17, 2016)(Pa407). Also see, Diamond Chip Realty, LLC v. Township of Sparta Planning Board, SSX-L-399-23 (Law Div. March 28, 2024) (Pa413).

The trial court also ignored the after-the-fact campaign contribution made to Mayor Prupis by her landlord after the adoption of the contested capital bond ordinance. (Pa319); State v. O' Donnell, 255 N.J. 60 (2023).

With respect to the Counts Two to Five claims and causes of actions relating to suppressing plaintiff's political free speech right to be heard on all posted agenda action items prior to consideration and official action, the trial court erroneously ignored the January 2022 change in policy and procedure and erroneously found that plaintiff had not prevailed on these civil rights act violations claims and causes of actions. (Pa295, Pa326-DSJCSR #36, #37).

The trial court ignored clear and unambiguous language contained in plaintiff's Complaint and two filed objections to defendants two frivolous and vexatious motions to dismiss on the pleadings. The trial court ignored exhibits previously filed by plaintiff and incorporated by reference in his summary judgment opposition and reconsideration submissions.

The trial court failed to provide substantial deference to the Administrative Procedures Act and Local Finance Notice 2020-21 "New Emergency Regulations: Remote Public Meetings Held During a Declared emergency" (September 24, 2020) (Pa285). The trial court failed to consider how today the State Executive Branch provides interested parties the right to be heard prior to consideration and official action on noticed agenda action items.

Because Counts Two to Five implicated constitutional and common law bedrock competitive marketplace of competing ideas free speech rights, the trial court failed to strictly construe defendants' violative state action. S.B.B. v. L.B.B., 476 N.J. Super. 575, 596-607(App. Div. 2023) (applying stricter scrutiny of trial court protective order ruling when free expression under the First Amendment implicated).

The trial court failed to consider developing expansive state constitutional rights persuasive case law. See, Barron v. Kolenda,491 Mass. 408(2023) (invalidating as unconstitutional local public meeting comment restrictions); Belin

v. Reynolds, 989 N.W. 2d 166 (Iowa 2023)(rejecting governor's narrow interpretation of public records access); Khan v. Yale University, 347 Conn. 1(2023)(finding student denied right to cross-examine witnesses in quasi-judicial disciplinary matter). Also see Eyal Press "States of Play: Can advocates use state courts to preserve-and perhaps expand-constitutional rights" The New Yorker (June 10, 2024) (Pa473).

Rather than mitigating future litigation, the trial court created a host of unanticipated and avoidable future issue preclusion and entire controversy doctrine issues relating to claims and causes of action arising or relating to this hybrid prerogative writ/declaratory judgment/civil rights act violations action.

Finally, both the trial court and all sworn officers of the court had a professional and ethical duty to report and to refer public wrongdoing up the reporting ladder. See, State v. Brady, 452 N.J. Super. 143 (App. Div. 2017); In the Matter of Carlia M. Brady, 243 N.J. 395 (2020) (per curiam); Loigman v. Twp. Comm. of Middletown, 185 N.J. 566 (2006).

Accordingly, the "totality of the circumstances," including post August 30, 2023 developments and the interests of justice, supported reconsideration, vacation, amendment, and alteration of the "manifestly unjust" September 22, 2023 Pre-Discovery Summary Judgment in Favor of All Defendants.

V. The Doctrine of Mootness Applied Here.

(Pa80,Pa82,2T,3T)

The trial court failed to exercise its inherent equitable powers. The trial court controlled its own docket. At the second March 2023 motion to dismiss hearing, defendants argued (on shortened and limited notice) that the trial court should dismiss Count One on the grounds of mootness. At that time, plaintiff asserted that a resolution could not repeal an ordinance and that Count One would become moot once the contested bond ordinance was repealed.

On September 22, 2023, the trial court inquired whether it still had jurisdiction to grant Count Two to Five Relief after defendants took post-commencement remediation action and restored plaintiff's right to be heard prior to consideration and official action on all posted agenda action items. On September 22, 2023, plaintiff did not fully appreciate the procedural and jurisdictional mootness nuances of the trial court's questioning-a line of argument not fully briefed by the parties prior to the September 22, 2023 virtual hearing.

Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm. Jackson v.Dep't of Corr., 335 N.J. Super. 227, 231 (App. Div. 2000). "A case is technically moot when the original issue presented has been resolved at least concerning the parties who initiated the litigation." DeVesa v. Dorsey, 134

N.J. 420, 428 (1993). Courts normally will not decide issues when a controversy no longer exists, and the disputed issue has become moot. Id.

An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For reasons of judicial economy and restraint it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976) ("Therefore, when there has been a change in circumstances that raises doubt concerning the immediacy of the controversy, courts will ordinarily dismiss cases as moot, regardless of the state to which litigation has progressed.") Cf: State v. Mastrongolo, __ N.J. Super.__ (App. Div. July 3, 2024)(rejecting mootness argument).

On further post summary judgment argument reflection, plaintiff agreed that the doctrine of mootness applied to this hybrid prerogative writ/declaratory judgment/civil rights act violations action and its application would foster judicial economy and efficiency. A dismissal based upon mootness is not a preclusive ruling upon the merits. A dismissal based upon mootness is a procedural jurisdictional ruling, kicking certain substantive issues down the road.

This was not a novel solution. In Feld XVIII (ESX-L-6887-18), Judge Robert Gardner (at plaintiff's urging) availed himself of this solution. Judge

Gardner kicked a repetitive issue of public importance down the road. Bankruptcy Judge Danial J. Moore used to warn all counsel: Pigs who become hogs get slaughtered. Also Essex County Civil Presiding Judge Thomas M. Moore repeatedly admonished defendants to mediate and not to litigate statutory interpretation disputes. It was in the best interests of all parties and the trial court to revisit both Judges Moore's admonishments and to reconsider whether dismissals of certain claims and causes of action based upon mootness was in the best interests of all parties and the judicial system.

VI. The Doctrines of Equitable Estoppel and Turning Square Corners Supported Reconsideration, Vacation, Amendment and Alteration of the September 22, 2023 Pre-Discovery Dispositive Summary Judgment Dismissal Entered In Favor of all Defendants. (Pa79,Pa80,Pa82,1T,2T,3T)

Equitable estoppel "is a doctrine 'founded in the fundamental duty of fair dealing imposed by law.'" Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 86 (2012) (quoting Knorr v. Smeal, 178 N.J. 169, 178 (2003)). Also see, Scago v. Bd. Of Trustees, Teachers' Pension and Annuity Fund, __N.J. __ (May 22, 2024)(setting forth the factors to be considered when determining whether to apply equitable principles in the "interests of justice").

"[T]he doctrine is designed to prevent injustice by not permitting a party to repudiate a course of action on which another party has relied to his [or her] detriment," and it is "invoked in the interests of justice, morality and common

fairness." Winters, 212 N.J. at 86 (quoting Knorr, 178 N.J. at 178). "[T]o establish equitable estoppel, [a party] must show that [the other party] engaged in conduct, either intentionally or under circumstances that induced reliance, and that [the first party] acted or changed [its] position to [its] detriment." Knorr, 178 N.J. at 178.

"Equitable estoppel may be invoked against a municipality 'where interests of justice, morality and common fairness clearly dictate that course.'" Middletown Twp. Policemen's Benevolent Ass'n Local No. 124 v. Twp of Middletown, 162 N.J. 361, 367 (2000) (quoting Gruber v. Mayor & Twp. Comm. of Raritan, 39 N.J. 1, 13 (1962)).

Public entities-fiduciaries of a public trust-must also turn square corners. Here, defendants engaged in unconscionable behavior. There are boundaries to legitimate legal advocacy. Defendants transgressed these boundaries.

Moreover, the September 22, 2023 Pre-Discovery Dispositive Summary Judgment Dismissal undermined our State's constitutional separation of powers. Judicial review is a fundamental constitutional guardrail against governmental abuses of power. The Judiciary is a co-equal branch of government with the ultimate judicial review check and balance authority to invalidate and to constrain arbitrary, capricious and unlawful legislative and executive action or inaction.

The Judicial System can no longer condone such behavior by officers of the court with a sworn duty to enforce and to execute State law. See, In re IMO Town

of Harrison and Fraternal Order of Police Lodge No. 116, 440 N.J. Super. 268, 299 (App. Div. 2015) ("[W]hether a state agency is abiding by a valid state law 'is a fundamental concern of the Attorney General both in his capacity to the agency and in his capacity and responsibility as protector of the public."). Also see, Sanford Jaffe, "Op-Ed: We must call out lawyers who don't honor their oath" The Star Ledger (May 6, 2023) (Pa 469) ("Beyond representing clients, lawyers take an oath that holds them responsible for being "officers of the court," which means they have an obligation to tell the truth and obey court rules, to promote justice and uphold the law.")

VII. The Trial Court Failed to Exercise Its Powers and Jurisdiction Under the Prerogative Writs Clause and Rule 4:69. (Pa79,Pa80,Pa82,1T,2T,3T)

Here, the trial court and defendants extinguished an aggrieved party's constitutional "as of right" to judicially challenge municipal action. The Prerogative Writs Clause (Article VI, Section 6, paragraph 4) applies "as of right" to all levels of government: State, County or Municipal.

A Rule 4:69 action in lieu of prerogative writ serves as an adequate constitutional means for aggrieved third party taxpayers to seek judicial review of and relief from alleged ultra vires actions. See, Alexander's v. Paramus Bor., 125 N.J. 100 (1991) (holding that the scope of statutory jurisdiction accorded to the

Council on Affordable Housing did not extinguish an aggrieved party's constitutional right to judicially challenge municipal action).

But to bring an action in lieu of prerogative writs, a plaintiff must show that the appeal could have been brought under one of the common law prerogative writs: eg. mandamus, quo warranto, prohibition, and certiorari. Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011); Loigman v. Tp. Com. of Middletown, 297 N.J. Super. 287 (App. Div. 1997); Ward v. Keenan, 3N.J. 298, 303 (1949). Here, plaintiff met that burden of proof. Accordingly, plaintiff had a constitutional "as of right" for judicial review of the contested June 15, 2021 capital bond ordinance and the CY 2021 suppression of his right to be heard prior to consideration and official action on all noticed agenda action items.

Municipal entities are creatures of State law. Municipal entities must comply with the Law. In sum, this Appeal highlights the Olmstead v. United States, 277 U.S. 438, 465 (1928) dissenting warnings of Justice Louis Brandies made more than ninety-five years ago.

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commanded to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. **If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself, it invites anarchy.** (emphasis supplied).

CONCLUSION

For all the foregoing reasons, plaintiff Jeffrey S. Feld, Esq. respectfully requests this appellate tribunal to reverse the three pre-expedited and limited discovery dispositive summary judgment dismissal related orders, to remand this hybrid.

Dated: July 22, 2024 (Original)
July 24, 2024 (Amended)

/s/Jeffrey S. Feld
Jeffrey S. Feld (018711983)

JEFFREY S. FELD, ESQ., Plaintiff-Appellant, v. THE TOWNSHIP OF MILLBURN; MAYOR TARA B. PRUPIS; DEPUTY MAYOR RICHARD WASSERMAN; COMMITTEE-PERSON DIANE THALL-EGLOW; COMMITTEEPERSON MAGGEE MIGGINS; COMMITTEEPERSON SANJEEV VINAYAK; and BUSINESS ADMINISTRATOR ALEXANDER MCDONALD; INDIVIDUALLY AND IN THEIR OFFICAL CAPACITIES, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Appellate Docket No. A-002494-23 CIVIL ACTION On Appeal from Superior Court of New Jersey Law Division, Civil Part Passaic County Docket No. ESX-L-5448-21 Sat Below: Hon. Russell J. Passamano, J.S.C.

BRIEF AND APPENDIX OF RESPONDENTS

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PRELIMINARY STATEMENT

This is an appeal by Plaintiff Jeffrey Feld from (1) an order granting summary judgment in favor of the Defendants – namely, the Township of Millburn ("the Township"), its Business Administrator and the individual members of the Township Committee in 2021 – dismissing Plaintiff's claims arising from the Township's adoption of a Bond Ordinance on June 15, 2021 ("the Bond Ordinance") and (2) an order denying Plaintiff's motion for reconsideration. It is ironic that Plaintiff claims that Defendants hindered and delayed the adjudication of the litigation, when Plaintiff argued specious, unpled claims in opposition to Defendants' motion for summary judgment in an effort to prolong the litigation and avoid judgment and then filed a motion for reconsideration for a judgment in favor of Defendants, but on different grounds to possibly allow for new litigation on some of the issues raised herein.

Plaintiff argues on appeal that the case involves issues as to a settlement in a separate affordable housing litigation, the validity of a resolution adopted in 2023, and other Township Committee actions after adoption of the Bond Ordinance, including payments for the projects, but the present litigation did not include any such claims. The present litigation included Plaintiff's claims challenging the Bond Ordinance on the grounds that there was an alleged conflict of interest and that he was denied his constitutional rights in connection with the Township's consideration

of the Bond Ordinance specifically and, generally, in 2021.

Yet, it was undisputed that Plaintiff and other members of the public were given a right to provide public comment at the Township Committee meetings in 2021 generally and specifically regarding the adoption of the Bond Ordinance. In fact, Plaintiff exercised his right to provide public comments regarding the Bond Ordinance when it was introduced, and before it was adopted. Plaintiff's First Amendment rights were never violated. Indeed, Plaintiff admits that he was heard, but argues in his appeal that there were issues of material facts. There were no issues of material facts and, contrary to Plaintiff's characterization, the trial court did not bar discovery. Rather, the court recognized that the case was brought as a prerogative action to challenge the adoption of the Bond Ordinance and for alleged violations of the New Jersey Civil Rights Act ("NJCRA"), N.J.S.A. 10:6-2, based on Defendants' conduct at public meetings. The trial judge stipulated at the case management conference that Plaintiff could defend Defendants' summary judgment motion by identifying specific discovery allegedly needed to prove his claims; however, Plaintiff did not do so in his opposition to Defendants' motion.

Because the record was clear and undisputed, there was no need for any discovery, and the matter was ripe for summary judgment. The trial court properly entered summary judgment and denied plaintiff motion for reconsideration, and its decisions should be affirmed.

SUPPLEMENTAL PROCEDURAL HISTORY

In the Complaint, which Plaintiff styled as an action in lieu of prerogative writ based on his challenge to the adoption of the Bond Ordinance, Plaintiff also alleged violation of his civil rights under the NJCRA and named the Township, the individual members of the Township's governing body known as the Township Committee, and the Business Administrator as defendants. (Pa1.)

Defendants sought to dismiss the action for failure to plead viable claims. That motion was pending for over a year before the trial court denied the motion on March 24, 2023, noting the indulgent standard of review on a motion to dismiss a complaint while expressly recognizing that its ruling did not preclude a subsequent summary judgment motion based on facts outside the pleadings.

Thereafter, on April 25, 2023, Defendants filed an Answer (Pa48) and, on May 17, 2023, the trial court conducted a case management conference. (1T)[1] At that conference, Plaintiff explained his complaints to the trial judge regarding the Bond Ordinance,

> This is an adoption of an ordinance where I'm challenging the validity of that ordinance. There – and that question is

[1] Consistent with Plaintiff's treatment, Defendant utilizes the following references for the transcripts in this matter:

1T - transcript of a case management conference on May 17, 2023
2T - transcript of the summary judgment motion on September 22, 2023
3T – transcript of motion for reconsideration on March 5, 2024

> what is the record. When you look at the record that they – they made to approve it, they just said we're adopting this bond ordinance, they didn't answer the questions that I put on the record at that date. And we have videos of that.

(1T15-6:12.) The trial judge later raised the question, "But what are the factual issues?" (1T17-23.) and then determined:

> Or maybe another way of approaching the whole discovery issue - - and when you say have a complete record, Mr. Feld, maybe the complete record would be this: Ms. Groh files her motion for summary judgment and if there is some motion or application for discovery, then a complete record would be the litigant seeking that [discovery] lays out what exactly is required, what they need, how that might impact on the summary judgment with respect to the issues that the summary judgment seeks to address, and then the Court would have a complete – or be able to make a decision on a complete record with sort of the ability to look at and see how specific discovery requests relate to a specific summary judgment motion[.]

(1T17-24:18-13.) The trial judge further explained:

> [T]hen the Court could look at the specific issues that are being raised in the summary judgment motion and have a way of saying whether or not the Court finds that there is issues of fact that might have to be addressed in discovery or otherwise?

(1T19-19:23.) When the Court asked Mr. Feld at the Case Management Conference for his thoughts on proceeding in that manner, he replied "Your Honor, I defer to

you, how you want to handle the matter." (1T19-25:20-3.)

Because there were no facts or law to support Plaintiff's claims, Defendants moved for summary judgment. (Pa162) In response, Plaintiff admitted all of the statements of material facts (Pa215) while summarily disputing the law; although, Plaintiff could point to no binding precedent that was contrary to the binding precedent cited by Defendants. Plaintiff purported to proffer additional facts, but those additional facts were either not material to Plaintiff's claims or were not properly before the Court pursuant to the requirements of R. 4:46-2.

The court conducted oral argument on September 22, 2023. (2T) During oral argument, Plaintiff asserted legal arguments based on facts and claims not set forth in the Complaint and offered new legal theories to try to avoid a ruling in favor of Defendants. In particular, Plaintiff argued that his challenge to the Bond Ordinance would be "moot" if Defendants took certain actions. Yet, Plaintiff had provided no factual or legal basis in his written opposition to the motion for summary judgment or even at the time of oral argument to support such claims. In addition, at oral argument, Plaintiff argued that his civil rights were violated by the Township's settlement in 2021 of fair share housing claims, while specifically admitting there were no such claims contained in the Complaint at issue.

For reasons stated on the record, this Court granted summary judgment in favor of Defendants on all five counts. In its ruling, this Court found that Plaintiff's

purported claims challenging the fair share housing settlement were not articulated in the Complaint; and Plaintiff had admitted as much. (2T91-20:92-5.) Indeed, in response to a direct question by this Court "Where is the Fair Share issue mentioned in your complaint?" Plaintiff answered "It doesn't, Your Honor." (2T50-10:12.)

As to Plaintiff's claims that his constitutional right to be heard was violated by the way the governing body conducted its meetings in 2021, the Court found that the only claims asserted by Plaintiff were based on his right to be heard on the Bond Ordinance and, as to those, there was no violation based on the fact that Plaintiff was heard. The Court properly rejected Plaintiff's claim that he had a right to engage in colloquy with the governing body based on New Jersey Supreme Court precedent in Kean Federation of Teachers v. Morrell, 233 N.J. 566 (2018) and Besler v. Board of Educ. of West Windsor-Plainsboro Reg'l School Dist., 201 N.J. 544 (2010).

As to Plaintiff's alternative challenge to the Bond Ordinance based on an alleged conflict of interest, the Court ruled that a conflict of issue is to be determined under N.J.S.A. 40A:9-22.5 and, more particularly, whether there was a benefit to a member of the governing body greater than could reasonably be expected to accrue to other members in the community and there was none. (2T92-24:93-11.) Because the Court found there were no violations of Plaintiff's civil rights, the Court did not consider whether or not the claims were barred by absolute or qualified immunity.

Thereafter, Plaintiff asked the trial court to reconsider its decision to enter

summary judgment and to enter a modified order that dismissed all five counts, but on qualified terms to seemingly avoid the application of the doctrines of *res judicata* and/or collateral estoppel in any future civil rights challenge by Plaintiff. Because Plaintiff did not demonstrate that the trial court had overlooked a controlling decision, legal argument, or probative and competent evidence, the trial court properly denied Plaintiff's motion for reconsideration. Plaintiff filed the instant appeal, which Defendants hereby oppose.

STATEMENT OF FACTS

The Millburn Township Committee is Millburn's governing body. (Pa164 at ¶2.) The Bond Ordinance was offered for introduction and authorized for a first reading and publication at a meeting of the Township Committee on June 1, 2021. (Id. at ¶3.) On June 1, 2021, the Township Committee introduced the Bond Ordinance without hearing public comment prior to introduction. (Id. at ¶4.) Before the close of the June 1, 2021 meeting, the Township Committee opened the meeting to the public for comments on any matters and at such time members of the public had an opportunity to comment on the introduction of the Bond Ordinance. (Id. at ¶5.) As reflected in the Minutes, Plaintiff offered comments at such time at the June 1, 2021 meeting. (Id. at ¶6.) The Bond Ordinance was duly published on June 3, 2021. (Id. at ¶8.)

On June 15, 2021, the Township Committee offered the Bond Ordinance for a second reading and opened the meeting to the public for comments on the subject ordinance. (Id. at ¶13.) Members of the public were limited to three (3) minutes of comments. (Id. at ¶14.) Plaintiff questioned the three-minute limit at that meeting. (Id. at ¶15.)

As to the subject Bond Ordinance, Plaintiff alleged in his Complaint that he questioned whether Defendant Prupis had a disqualifying conflict of interest and appearance of impropriety as to the Flex Parking Removal Project; why the costs of that Project were not being specially assessed against the Downtown Millburn Avenue property owners and businesses directly benefitting from the capital improvement; how the costs of that Project had been determined; whether the local elected officials had a duty to respond to questions on a second reading of an ordinance; the source of funding for the 9-11 Project and the funding options for the Projects authorized in the Bond Ordinance; and whether the governing body had received a written legal opinion regarding the validity of the Bond Ordinance. (Id. at ¶16.)

Plaintiff did not provide a transcript of the hearing on the Ordinance to the trial court. (Id. at ¶17.) The official minutes were the only written record of the meeting. (Id. at ¶18.) According to the minutes, Plaintiff stepped forward to be heard on the Bond Ordinance and made comments and recommendations as follows:

> Jeffrey Feld, of 11 Alexander Lane, stated his concerns on Ordinance 2579-21. He offered several recommendations to the Committee for consideration. He voiced his concern of the removal of flex parking and asked if the Committee members who owned businesses in the area, where the flex parking was located, could vote on the ordinance in question.

(Id. at ¶19.) No other members of the public sought to be heard on the Ordinance and the public hearing was closed. (Id. at ¶20.) Thereafter, the Township Committee proceeded with a vote to adopt the Bond Ordinance after it was duly moved and seconded for adoption and passed unanimously despite Plaintiff's concerns. (Id. at ¶21.) Notice of adoption of the Bond Ordinance was published on June 24, 2021. (Id. at ¶23.)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT DID NOT COMMIT ANY ERROR IN ITS DETERMINATION THAT DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT SINCE THERE WERE NO MATERIAL FACTS IN DISPUTE AS TO PLAINTIFF'S CLAIMS AND PLAINTIFF DID NOT ESTABLISH ANY MATERIAL FACTS IN DISPUTE NOR THE NEED FOR DISCOVERY AS TO ANY MATERIAL FACT.

Plaintiff contends the trial court erred "when it denied plaintiff limited discovery and expedited discovery." (Pb26) However, Plaintiff did not and could not proffer any specific discovery that was necessary as to any specific factual issues when opposing Defendants' motion for summary judgment. That is because the

facts material to Plaintiff's claims in his Complaint regarding alleged violations of various laws in the adoption of the Bond Ordinance and the conduct of public meetings of the Township Committee were known and undisputed.

A. The Material Facts Were Not In Dispute.

Plaintiff never identified any issues of facts material to his claims. He did not do so in his submission to the trial court pursuant to R. 4:69-4 (Pa137), nor his summary judgment opposition. (Pa215, 219, 234 and 2T) That is because there were no issues of material fact regarding the adoption of the Bond Ordinance and the way the Township Committee conducted the meetings in 2021, which afforded public comment prior to adoption of all ordinances, including the subject Bond Ordinance and as to the Township's other business during a public comment period after adoption of resolutions. Indeed, Plaintiff admitted 27 of the 28 Statement of Facts proffered by Defendants in support of their motion for summary judgment. (Pa217-218) Plaintiff purported to deny the following single statement.

> 12. In that [written] statement, Defendant Prupis never uses the word misogynist.

However, Plaintiff did not and could not point to the written statement for his denial; instead he pointed to his Certification generally without reference to any particular paragraph and argued that "recorded pre and post commencement posted YouTube Milburn TC meeting videos provide a different historical context[.]" Plaintiff's response did not refute the proffered Statement of Fact No. 12 (Pa217) Accordingly,

SOF No. 12 was deemed admitted because it was not refuted by any evidence in the motion record. See R. 4:46-2(b) (all material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact.) In any event, as to the proffered fact as to lack of an oral or written statement by Defendant Prupis that Plaintiff was a misogynist, in this appeal Plaintiff has abandoned any claim of defamation. (Pb28) In sum, the material facts in the motion record were undisputed and summary judgment was appropriate.

B. The Proposed Counterstatements Of Facts Were Not Supported By The Record And/or Were Not Material.

Plaintiff argues in this appeal that the trial court did not consider the 72 Counterstatements of Fact he proffered. (Pa219); however, those counterstatements did not conform to the Rules of Court and could not be considered. Firstly, Plaintiff did not cite to precise portions of the motion record, nor cite to any competent evidence to support those statements. (Id.) More particularly, while Plaintiff generally pointed to his Certification dated August 30, 2023 to support certain counterstatements, he failed to point to a particular paragraph of testimony in his Certification to support the alleged statements or even a document that was part of the motion record in contravention of R. 4:46-2(b). Secondly, Plaintiff's

Certification did not include any contrary facts regarding the conduct of the Defendants as relates to their adoption of the Bond Ordinance or the interactions with Plaintiffs that were the basis for his Complaint. (Pa234) Instead, the Certification is all about Plaintiff. (Id.) Indeed, only one (1) of the seven (7) defendants was mentioned in that Certification and that was in the context of establishing that Plaintiff served/s as *pro bono* counsel to a resident in defense of a complaint filed by Defendant Maggee Miggins. Thirdly, the documents attached to that Certification did not establish any material facts that that would establish a basis for liability of the Defendants.

Because Plaintiff's Counterstatements did not comply with the plain requirements of R. 4:46-2 and the holdings in Lyons v. Township of Wayne, 185 N.J. 426, 435 (2005) (mere annexation to a motion response of an exhibit list or even the exhibits themselves, without more, does not constitute compliance with R. 4:46-2) and Polzo v. County of Essex, 196 N.J. 569, 586 (2008) (the party opposing a summary judgment motion has the affirmative duty of responding in accordance with the R. 4:46-2(b)), the counterstatements should not have been considered by the trial court. In any event, the proffered counterstatements were no more than self-serving assertions to attempt to defeat the motion, but self-serving assertions do not alone create a question of material fact sufficient to defeat a summary judgment motion. Fargas v. Gorham, 276 N.J. Super. 135 (Law Div. 1994).

Finally, and most significantly, the proffered statements were immaterial, which was clear given that Plaintiff did not cite to a single one of his proffered counterstatements in his Brief. A disputed issue of an immaterial fact does not preclude the grant of a motion for summary judgment. Prant v. Sterling, 332 N.J. Super. 369, 377 (Ch. Div.), aff'd o.b., 332 N.J. Super. 292 (App. Div. 2000); Investors Bank v. Torres, 457 N.J. Super. 53, 64-65 (App. Div. 2018), aff'd, 243 N.J. 25 (2020); MEMO v. Sun National Bank, 374 N.J. Super. 556, 563 (App. Div. 2005), appeal dismissed, 217 N.J. 591 (2006).

Consistent with the foregoing, the trial court properly found that the counterstatements were not material to the issues raised by the motion. (2T91-8:19)

C. There Was No Need For Discovery.

As noted, the trial court conducted a case management conference wherein the trial judge determined to allow Defendants to file a motion for summary judgment without discovery, but allowed the Plaintiff to oppose the motion on the grounds that certain discovery was necessary as to an element of his case. (1T17-24:18-13; 19-19:23.) When the Court asked Mr. Feld at the conference for his thoughts on proceeding in that manner, he replied "Your Honor, I defer to you, how you want to handle the matter." (1T19-25:20-3.) As such, even though the trial court did not allow discovery as of right, it allowed Plaintiff to proffer the need for certain specific discovery as to material facts in opposition to Defendants' motion

for summary judgment, but Plaintiff did no such thing. In this appeal, Plaintiff does not cite to any part of the summary judgment record showing a claimed need for particular discovery.

When rendering its decision on the record on September 22, 2023, the trial court judge noted that the summary judgment rules and case law do not preclude a party from seeking summary judgment even without discovery and before the end of a discovery period citing to Wellington v. Estate of Wellington, 359 N.J. Super. 484 (App. Div. 2003) and Badiali v. New Jersey Mfrs. Ins. Group, 220 N.J. 544, 555 (2015), wherein the Supreme Court held that for incomplete discovery to be an issue in a summary judgment motion, the party asserting or advancing that argument must demonstrate with some degree of particularity the likelihood that the discovery would supply the missing elements of a cause of action. (2T89-11:25).

Plaintiff doesn't even bother to mention those cases in his appellate brief. Instead, Plaintiff cites to Botteon v. Borough of Highland Park, A-1127-22 (App. Div. May 1, 2024) (Pa427), an unpublished opinion by the Appellate Division to support his contention that he should have been afforded an opportunity to conduct unspecified discovery; however, even that unpublished decision is consistent with the trial court's handling of this matter. In Botteon, where this court reversed the dismissal of the complaint on a motion to dismiss - as opposed to a motion for summary judgment - the panel recognized that a trial court has the power to limit

discovery to reasonable discovery only as necessary to the issues in the case. (Pa450.) In this case, the trial court recognized, as Plaintiff admitted, Plaintiff's claims were based on the record of how the Township noticed and conducted its public meetings as reflected in the public records, including the public notice, agenda, meeting minutes and video recordings as to what transpired at the meetings where Plaintiff claimed his civil rights were violated. There was no need for discovery as the relevant facts were matters of public record and admitted by Plaintiff.

Plaintiff also cites to federal cases involving civil rights claims under Section 1983 as to the supposed requirement for discovery before adjudication; however, those federal court decisions on motions to dismiss are neither binding nor persuasive as to the need for discovery.

The bottom line is that Plaintiff was afforded the opportunity to identify discovery necessary to prove facts supporting his claims, but he did not because the material facts were known and undisputed. The trial court properly granted summary judgment based on the undisputed facts in the motion record.

POINT II

DEFENDANTS DID NOT OBFUSCATE THE FACTS AND LAW REGARDING PLAINTIFF'S CLAIMS.

Plaintiff suggests that Defendants somehow misrepresented his claims to the trial court in the motion for summary judgment. That argument has no basis whatsoever in reality. Indeed, Defendants addressed each of the five counts set forth in the Complaint in their motion and despite Plaintiff's contentions in the trial court prior to entry of summary judgment that all of his claims were viable, he admitted in his motion for reconsideration and now this appeal, that he is no longer pursuing many of the claims previously argued. More particularly, Plaintiff has stated he is waiving defamation claims[2] (Pb28). He also has indicated that "plaintiff waived … reasonable prevailing party civil rights act violation attorney's fees" (Pb31). It also seems that Plaintiff has abandoned any claim of "Failure to Supervise" (Count Three) and "State Created Danger" (Count Four) since, according to Plaintiff in this appeal, he is only challenging "the validity of the $855,000 Flex Parking Removal/911 Memorial Capital Bond Ordinance adopted June 15, 2021 Count One" (Pb27) and his "reckless/intentional and 'willful blindness' political free speech

[2] In Plaintiff's word "plaintiff voluntarily waived his nominal "Side Show Bob" defamation "gaslighting" monetary damage claims[.]" (Pb28)

suppression civil right act violation claims, causes of actions and remedies" (Pb28), which appear to be his claims in Count Two captioned "Impairment of our Robust Marketplace of Competing Ideas and Violations of Our State Public Policies in favor of Open Transparent Accountable Local Representative Democratic Government and Count Five captioned "New Jersey Civil Rights Act Violations.

Plaintiff argues in this appeal that there were issues regarding the impact of the adoption of the Bond Ordinance, whether the projects were funded by the Bond Ordinance or otherwise, whether contractors were paid prevailing wages on any contracts awarded for any project, and whether a Resolution that was adopted on March 7, 2023 to cancel the "appropriations" in the budget that had been made pursuant to the Bond Ordinance was a sham. (Pb28) Yet, those subsequent actions that Plaintiff argues were in issue in the litigation were not in issue, because there was never a challenge in any Amended Complaint to any resolution awarding any contract for any project originally contemplated by the Bond Ordinance, any resolution authorizing payment to any contractor for wages on any contract, or the specific resolution referenced by Plaintiff that cancelled the budget appropriations originally made in contemplation of the projects. (See Pa1.) The only official action by the Township Committee that was challenged by Plaintiff in this appeal was the adoption of the Bond Ordinance. (Pa1)

Plaintiff also argues that Defendants obfuscated the "factual and legal political

free speech suppression issued" (Pb28), but that is not the case. Rather, it was Plaintiff who was unclear in his expression of those claims in the Complaint and obfuscated the pertinent facts on that claim. More particularly, in opposition to the summary judgment motion, Plaintiff asserted that there was an alleged unilateral action by Defendant Prupis in January 2021 to reorder the time for public comment at the meetings to after the close of regular business; however, there was no unilateral action by the Mayor. Rather, the Township Committee took official action on February 9, 2021 by adoption of a Resolution that reordered the time for public comment. (Da12)[3] Plaintiff never filed any claim to challenge that Resolution even though he spoke against its adoption at the meeting where adopted. (Da10) Any claim of alleged suppression of his right to public comment based on the re-ordering of the time for public comment by the Township Committee on February 9, 2021 is time barred. R. 4:69-6. Moreover, Plaintiff did not and could not point to any facts showing his right to public comment was ever violated.

The fact that the Township Committee changed its rules in January 2022 to allow for public comment prior to consideration of official action does not establish that the Township Committee protocols established on February 9, 2021, were unconstitutional. Rather, as the trial court recognized, it is the law of this State that

[3] The subject Resolution was not included in the underlying proceedings because Plaintiff never asserted any challenge thereto.

a governing body may establish the procedure for and place limits on public comments at its meetings. Since the only claims asserted by Plaintiff were based on his right to be heard on the Bond Ordinance and he was so heard, there was no violation based on the fact that Plaintiff was heard. The trial court also properly rejected Plaintiff's claim that he had a right to engage in colloquy with the governing body based on New Jersey Supreme Court precedent in Kean Federation of Teachers v. Morrell, 233 N.J. 566 (2018) and Besler v. Board of Educ. of West Windsor-Plainsboro Reg'l School Dist., 201 N.J. 544 (2010) (2T93-5:95-11). It is ironic that Plaintiff contends that Defendants obfuscated the facts and the law, while failing to discuss -- let alone mention -- the case law cited by the trial court in support of its decision to enter summary judgment including Kean, supra, Wellington, supra, and Badiali, supra. On the other hand, Defendants discussed and addressed the relevant law and alternate legal theories raised by Plaintiff including Local Finance Notice 2020-21. There is absolutely no basis for Plaintiff's bombastic claims that Defendants obfuscated the law and facts.

POINT III

THE TRIAL COURT PROPERLY RULED THAT DEFENDANT PRUPIS DID NOT HAVE A DISQUALIFYING CONFLICT OF INTEREST IN THE VOTE ON THE BOND ORDINANCE.

The trial court properly ruled that a conflict of issue is to be determined under

N.J.S.A. 40A:9-22.5 and, more particularly, whether there was a benefit to a member of the governing body greater than could reasonably be expected to accrue to other members in the community and there was none. (Tr. 92:24-93:11.)

The trial court properly rejected Plaintiff's argument that the court was required to go beyond the criteria established by the New Jersey Legislature in N.J.S.A. 40A:9-22.5 and to consider whether there was an appearance of a conflict of interest based on the holding in Grabowsky v. Township of Montclair, 221 N.J. 536 (2015) and an unpublished opinion. The ruling in Grabowsky, which involved an alleged conflict of interest of a land use board member, does not govern the determination of whether there is a conflict of interest of a member of the governing body voting on an ordinance that is governed by the Local Government Ethics Law adopted in 1991. Defendants did not cite Grabowsky in its moving brief in support of the motion for summary judgment because it was not the applicable standard; when Plaintiff argued Grabowsky in opposition, Defendants discussed Grabowsky in reply. Plaintiff's suggestion that Defendants' counsel violated the Rules of Professional Conduct because they did not cite Grabowsky in the moving brief as to the alleged conflict of interest is inappropriate and ironic given the fact that Plaintiff has not even bothered to discuss in this appeal cases expressly cited by the trial court in its decision. In any event, the mere fact that Defendant Prupis operated a business within 200 feet of the flex parking removal project did not create a conflict of interest

prohibiting her participation in the adoption of the bond ordinance.

In 1991 when the Local Government Ethics Law was enacted, the Legislature specifically declared that the purpose of the Law was as follows:

> to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees shall be clear, consistent, uniform in their application, and enforceable on a Statewide basis, and to provide local officers or employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties.

N.J.S.A. 40A:9-22.2. The Legislature recognized that public officers cannot and should not be expected to be without any personal interest in the decisions and policies of government. N.J.S.A. 40A:9-22.4. The Legislature then went on to set forth what is and is not allowed in N.J.S.A. 40A:9-22.5 and provided in relevant part as follows:

> i. No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group[.]

[Emphasis added.]

At the time of adoption of the Bond Ordinance, Defendant Prupis owned and operated a business known as "Green Nectar Market" located at 358 Millburn Avenue, Millburn, New Jersey. (Pa164 and Pa215 at ¶25.) The Flex Parking Removal Project that was authorized by the Bond Ordinance included flex parking in front of Defendant Prupis' business in Millburn's downtown and within 200 feet of the Project. (Id. No. 26.) Plaintiff alleges that Defendant Prupis made many campaign promises in 2018 related to the revitalization of the downtown where she operates her business. (Id. No. 27.) Plaintiff contends that Mayor Prupis had a disqualifying conflict of interest in the Flex Parking Removal Project and should have abstained from voting thereon. (Id. No. 28.)

Defendant Prupis's operation of a business in proximity to the public street improvement project did not *ip so facto* create a conflict of interest. As clearly stated by the New Jersey Legislature in the language of N.J.S.A. 40A:9-22.5, there is no conflict if there is no material or monetary gain that accrues to a government officer to any greater extent than any gain could be reasonably be expected to accrue to any other tenant on Millburn Avenue. There were no facts showing that Mayor Prupis had a material or monetary gain as a tenant on Millburn Avenue let alone one that was any greater than any gain of any other tenant on Millburn Avenue. As such, Plaintiff could not establish that the Mayor had a conflict of interest when voting to approve the Bond Ordinance, which in part, funded the removal of elevated "flex"

parking spots on Millburn Avenue that are available to all motor vehicle operators – whether Millburn residents or not - along Millburn Avenue even those visiting Town Hall which is the down the street.

Plaintiff argues that because the Mayor's business was within 200' feet of the project, she was an "interested party" as that term is defined under the Municipal Land Use Law with regard to applications and hearings under that Law, not public improvement projects by a municipality as in this case. The Local Government Ethics Law is the controlling statute and, as noted, it expressly permits the Mayor's participation in the vote for road work on Millburn Avenue that equally benefited the property owners and tenants on Millburn Avenue in the surrounding area and members of the travelling public. Cf. Miscoski v. Local Finance Board, 2008 WL 2788225 *5 (App. Div. 2008) (Da18) (reversing finding that deputy mayor violated the LEGL when voting on a bond ordinance to purchase open farmland because his mother and business partner benefitted thereby because, if there was any benefit, all farmland property owners enjoyed the benefit, not just the deputy mayor's relations) . Plaintiff argues that an unpublished Appellate Division decision and dicta in a published Appellate Division decision supports his claims that Mayor Prupis was disqualified. (Pb34) Plaintiff completely misrepresents the holding of the unpublished case and fails to recognize that the statement by the Appellate Division in the published decision was dicta. In Seaview Harbor Realignment Committee

LLC v. Township Committee of Egg Harbor, 470 N.J. Super. 71 (App. Div. 2021), certif. denied, 252 N.J. 189 (2022) this court quoted Piscitelli in dicta when rejecting an argument that the governing body's vote was improperly affected by the Mayor and a member of the governing body who had recused themselves due to bias against the proposed annexation of a neighboring community.[4] That case does not support Plaintiff's claims in this case. As to the unpublished decision, in Mollica v. Township of Bloomfield, A-2467-17 (App. Div. Oct. 17, 2016) (Pa407), the Appellate Division found that a council member should not have participated in a vote on an Ordinance adopted by the governing body of the Township of Bloomfield because the council member owned property immediately adjacent to a park that was preserved by the Ordinance and his interest was not shared in common with any other members of the public. In this case, there were no such facts; rather any benefit inuring to Defendant Prupis as a tenant on Millburn Avenue was the same benefit enjoyed by any other tenant in the area where flex parking existed. The fact that a governing body member campaigned in support of a project that comes to fruition and requires legislative action by the governing body is not barred by the LEGL or any other law. Such would defy common sense, not to mention the candidate's constitutional rights to advocate for the public good.

[4] Governing body members can recuse themselves without providing a reason and often do so on thorny issues to avoid accountability with the voters. The fact that someone recuses themselves does not mean there is a conflict; it just means that the member does not wish to participate in the consideration of the issue.

Plaintiff also argues that Piscitelli v. City of Garfield Zoning Bd. of Adj., 237 N.J. 333, 329-351 (2019) supports his position. It does not, as that case involved a zoning board of adjustment member and the fact that the board was acting as a tribunal in its adjudication of the plaintiff's development application and, hence, why the 200 foot disqualification rule created a conflict of interest.

In sum, the undisputed facts established that there was no disqualifying conflict of interest and, thus, summary judgment dismissing the challenge to the Bond Ordinance on such grounds was properly granted.

POINT IV

THE TRIAL COURT DID NOT MAKE ANY ERRORS IN DENYING PLAINTIFF'S MOTION TO RECONSIDER, VACATE, AMEND AND/OR ALTER THE ORDER GRANTING SUMMARY JUDGMENT.

Although Plaintiff's point heading in Point IV of his Brief takes issue with the trial court's denial of his motion for reconsideration, vacation, amendment and alteration of the order granting summary judgment (hereinafter at times referred to as "motion for reconsideration"), Plaintiff argues there were errors by the court throughout the litigation. Of course, he does not and cannot establish any error by the trial court to justify a reversal of the Order denying Plaintiff's motion for reconsideration.

R. 2:6-2(a)(1) mandates that an appellant identify in his point heading the

"place in the record where the opinion or ruling in question is located". Plaintiff cites to a the case management order (Pa79), the summary judgment order (Pa80), the order denying the motion for reconsideration (Pa82) and the transcripts to the hearings related to those orders (1T, 2T and 3T) without any specific citation to the record as required. There are no specific citations to the record in the actual arguments in Point IV either.

Instead, Plaintiff rants about supposed errors in the trial court's consideration of the summary judgment in supposedly allowing Defendants to not respond to "Counterstatement allegations", supposedly permitting Defendants to attack his character, supposedly failing to grant all summary judgment inferences in favor of Plaintiff, supposedly failing to apply the mootness doctrine, and supposedly applying the wrong law as to Plaintiff's claims in Count One (Pb38). Plaintiff also argues that the trial court should have required Defendants to provide an accounting of how they funded projects originally intended to be funded by the challenged Bond Ordinance and "answering whether they paid prevailing wages." (Pb38-39) Plaintiff also argues that the trial court failed to consider his arguments that Defendant Prupis had a conflict of interest using criteria in the Municipal Law Use Law and failed to consider alleged "after-the-fact campaign contribution made to Mayor Prupis by her landlord after the adoption of the contested capital bond ordinance." (Pb39) Plaintiff further argues that the trial court ignored a change in

policy in January 2022 in ruling that Defendants did not violate Plaintiffs' constitutional rights. (Id.) Plaintiff argues that the trial court ignored papers previously filed by Plaintiff in connection with other motions that he did not file in opposition to the summary judgment record. (Pb40) Plaintiff further argues that the trail court failed to provide substantial deference to a Local Finance Notice and failed to apply a strict scrutiny standard in evaluating Plaintiff's allegation of violation of his First Amendment right to free speech. (Id.) Plaintiff also argues that the trial court failed to consider case law from other states. (Pb40-41). Plaintiff suggests that the trial court and "all sworn officers of the court" had a duty to report public wrongdoing "up the reporting ladder. (Pb41). Plaintiff concludes his mishmash arguments in Point IV by arguing "the 'totality of circumstances' including post August 30, 2023 developments and the interests of justice, supported reconsideration, vacation, amendment, and alteration of the 'manifestly unjust' [order granting summary judgment]." (Id.)

The standard of review of an order denying reconsideration is abuse of discretion. AC Ocean Walk, LLC v. Blue Ocean Water, LLC, 478 N.J. Super. 515, 523 (App. Div. 2024) *citing* Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). "An abuse of discretion arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J.

Super. 378, 382 (App. Div. 2015) (internal quotation marks omitted) (*quoting* Flagg v. Essex County Prosecutor, 171 N.J. 561, 571 (2002)). Plaintiff does not establish, let alone argue, how the trial court abused its discretion in denying the motion for reconsideration.

Even if this Court were to indulgently read Plaintiff's criticisms under the standard of review of a summary judgment motion, Plaintiff has not established any basis for reversal of summary judgment. Indeed, even under a *de novo* standard of review, Plaintiff does not point to any material facts that were in dispute or a misapplication of law. While he asserts that the trial court misapplied the law as to a governing a public body's obligation to consider public comment and failed to give "substantial deference" to a Local Finance Notice providing guidance on the conduct of meetings during the COVID-19 pandemic, Plaintiff does not and cannot establish that the trial court ignored any governing law. Rather, the trial court recognized the Plaintiff's right to be heard on agenda items and the Bond Ordinance prior to adoption, noting that there was no dispute that Plaintiff was afforded an opportunity to make public comments on the Bond Ordinance at the meeting where it was introduced and at the second meeting before it was considered for adoption and Plaintiff admitted as much. (See Pa164 and Pa 215 at ¶¶3, 4-6, 13-21) As noted in Point I, supra, Plaintiff can point to no law that mandates that the public be heard prior to action by a public body except as to the adoption of an Ordinance, as was

done in this case. The trial court did not misapply the governing law and properly ruled that there was no violation of Plaintiff's First Amendment rights and no basis to void the Bond Ordinance.

POINT V

THE DOCTRINE OF MOOTNESS FIRST ARGUED BY PLAINTIFF AT ORAL ARGUMENT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DID NOT DICTATE A DIFFERENT RESULT ON RECONSIDERATION.

Plaintiff argues that the trial court was required to dismiss his challenge to the Bond Ordinance on the grounds of mootness on Plaintiff's motion for reconsideration. (Pb42) Plaintiff argues "on summary judgment argument reflection" his claims in Count One could be deemed moot. (Pb43) He now argues that his claims should have been adjudged moot – despite not having made any such argument prior to his motion for reconsideration – to allow him to kick the can down the road on "certain substantive issues." (Id.)

The trial court was not obligated to consider Plaintiff's mootness argument giving him a second bite at the apple. Moreover, Plaintiff was estopped to argue his claims were moot when he argued to the trial court at oral argument on the summary judgment motion that his challenge to the Bond Ordinance was not moot by virtue of the cancellation of the appropriations made pursuant to the Bond Ordinance. See Winters v. North Hudson Reg'l Fire & Rescue, 212 N.J. 67, 86 (2012). Indeed,

Plaintiff complained that there had to be an ordinance rescinding the Bond Ordinance in order to make the matter moot, not just a resolution cancelling the appropriations thereunder. (2T17-1:15). Yet, at the hearing on his motion for reconsideration, Plaintiff argued that the challenge to the Bond Ordinance was moot because the projects were completed and funded without relying on the Bond Ordinance. (3T12-18:13-4) Defendants noted the inconsistency of Plaintiff's positions during argument of the motion for reconsideration. (3T32-18:24)

Notwithstanding, the trial court did entertain Plaintiff's mootness arguments and ruled that his challenge to the Bond Ordinance was not moot at the time of the court's consideration of the summary judgment motion because there was a live controversy as to the validity of the Bond Ordinance and that he was not entitled to argue mootness after the fact to avoid the preclusive effect of the ruling on that challenge. (3T64-6:23; 66-16:67-16 and 68-7:23) The trial court properly denied Plaintiff's motion for reconsideration.

POINT VI

THE TRIAL COURT CORRECTLY RULED THAT PLAINTIFF DID NOT PROVIDE A BASIS TO VACATE, ALTER AND/OR AMEND THE ORDER GRANTING SUMMARY JUDGMENT AND IT WAS NOT REQUIRED TO DO SO UNDER EQUITABLE ESTOPPEL PRINCIPLES.

Plaintiff suggests that the trial court was obligated to reconsider its summary

judgment order based on equitable estoppel principles to prevent injustice based on the preclusive effect of that order on any claim that the Bond Ordinance should be set aside or that Defendants violated his constitutional rights in 2021. (Pb44) However, equitable estoppel should only be applied to a municipality to prevent manifest unjustice, which does not apply here. O'Malley v. Dep't of Energy, 109 N.J. 309, 316 (1987).

Even if there was some obligation for the trial court to carve out its judgment to prevent any preclusive effect, which there was not, that issue is moot since any claim for a violation of Plaintiff's constitutional rights in 2021 was required to be raised by the end of 2023 given the two-year statute of limitations for claims under 42 U.S.C. § 1983 and the NJCRA[5] and any challenge to official action in 2021 was required to be challenged within 45 days of the action. If any such claims were made in any litigation prior to the end of 2023, the court handling that litigation can evaluate whether the summary judgment ruling in this case precludes a claim in another case if raised therein. The trial court properly denied Plaintiff's motion for reconsideration on equitable grounds.

[5] See N.J.S.A. 2A:14–2; Montells v. Haynes, 133 N.J. 282 (1993); and Brown v. Foley, 810 F.2d 55, 56 (3d Cir.1987).

POINT VII

THE TRIAL COURT PROPERLY DENIED PREROGATIVE WRIT RELIEF TO PLAINTIFF.

Municipal ordinances are afforded a presumption of validity and reasonableness. Grabowsky, supra, 221 N.J. Super. at 551. An ordinance will not be overturned unless the objector can prove that the governing body's action was arbitrary, capricious or unreasonable. Ibid. A municipality is free to exercise business judgment in making decisions that accomplish valid municipal objectives. Ott v. Township of West New York, 92 N.J. Super. 184, 198 (Law Div. 1966). The Court found no basis to set aside the Bond Ordinance and denied Plaintiff's request for a prerogative writ because Plaintiff was heard on the Bond Ordinance and there was no conflict of interest. Plaintiff suggests that he was entitled to prerogative writ relief in connection with the change in protocol for the Township Committee meetings, yet Plaintiff never filed any challenge to the Resolution adopted by the Township Committee on February 8, 2021, whether within 45 days as required or at any time before summary judgment was entered.

CONCLUSION

For the foregoing reasons, Plaintiff's appeal should be denied and the trial court's orders granting summary judgment and denying Plaintiff's motion for amendment should be affirmed.

Respectfully submitted,

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Dated: September 19, 2024

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET # A-002494-23

JEFFREY S. FELD, ESQ.
Plaintiff-Appellant

v.

THE TOWNSHIP OF MILLBURN, MAYOR TARA B. PRUPIS, DEPUTY MAYOR RICHARD WASSERMAN, COUNCILPERSON DIANNE THALL-EGLOW, COUNCILPERSON MAGGEE MIGGINS, COUNCILPERSON SANJEEV VINAYAK AND BUSINESS ADMINISTRATOR ALEXANDER MCDONALD, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,
Defendants-Respondents

On Appeal from the Superior Court of New Jersey Law Division, Essex County

Docket No. ESX-L-5448-21

Civil Action

Sat Below: Hon. Russell J. Passamano, J.S.C.

PLAINTIFF'S/APPELLANT'S REPLY BRIEF

On the Brief: Jeffrey S. Feld, Esq.

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Plaintiff/Appellant Jeffrey S. Feld, Esq. respectfully submits this Brief in Reply to Defendants'/Respondents' Joint Brief and Appendix dated September 19, 2024.

PLAINTIFF'S REPLY

I. Justice Delayed Is Justice Denied.

Public entities and officials-fiduciaries of a public trust- are not immune from judicial scrutiny and remedies. More than 221 years ago, our United States Supreme Court established the fundamental constitutional doctrine of judicial review. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). No one is above the law. Public entities and officials are not infallible. Public entities and officials make mistakes.

Presumptions of validity are rebuttable by clear and convincing evidence. See, New Jersey Realtors v. Township of Berkeley, _N.J. Super. __ (App. Div. July 31, 2024) (invalidating a local ordinance restricting ownership at certain senior housing communities). Government decisions must satisfy standards of legitimate authority, valid process, good faith, pertinent consideration, proportionately, non-arbitrariness and antidiscrimination. Ultra vires actions are voidable. See, James Meyers v. State Health Benefits Commission, 256 N.J. 94, 101 (2023) (per curiam) ("The law distinguishes between actions otherwise within an entity's authority but marked by procedural irregularity and actions that are beyond the entity's authority."); 257-261 20th Avenue Realty, LLC v. Alessandro

Roberto, 477 N.J. Super. 339, 360 (App. Div. 2023) ("[J]udicial power is to be exercised to strike down governmental action only at the instance of one who is himself harmed, or immediately threatened with harm, by the challenged conduct . . . .")

Indeed, our State Constitution is premised upon the sovereignty of the people. Article I, paragraph 2a. Our State Constitution recognizes the right of the people to speak, to challenge, to petition and to question arbitrary, capricious, wrongful ultra vires governmental actions. Article I, paragraphs 5, 6 and 18; Article VI, Section V, paragraph 4.

But here, defendants uniformly claim that their alleged ultra vires actions are not subject to judicial review and remedies. Here, defendants and the trial court blurred and merged plaintiff's distinct public wrongdoing allegations, claims and causes of actions. The crux of plaintiff's 5 Counts 309 paragraphs hybrid prerogative writ/declaratory judgment/civil rights act violations action is whether defendants in CY 2021 suppressed, violated, altered and impaired plaintiff's and others' fundamental constitutional right to be heard on all agenda action items prior to consideration and official action. Due to its possible preclusive impact on Millburn's contested Mount Laurel Declaratory Judgment July 30, 2021 Stealth Settlement Agreement, defendants evade this "robust informed civic participation" issue. Defendants neither confirm nor deny the CY 2021 continuous violations of

plaintiff's fundamental rights and our State's public policy in favor of robust informed civic participation.

Defendants conflate this political free speech and right to petition for redress of grievance issue. Plaintiff did not challenge the validity of the Flex Parking Removal/911 Memorial Capital Bond Ordinance on this issue. Plaintiff has always acknowledged that he was provided a second reading public hearing opportunity to be heard. However, plaintiff asserted that Tara Prupis had a disqualifying statutory and common law conflict of interest and appearance of impropriety, thereby contaminating the validity of the contested discretionary legislative capital bond ordinance. Plaintiff also alleged that defendants violated our State public policies in favor of robust informed civic participatory and long range capital budgeting. Plaintiff claimed that defendants were required to respond to his pertinent second reading public hearing questions and comments prior to adoption of the contested capital bond ordinance.

Plaintiff would later argue that the flex parking removal project violated our State public policy in favor of paying prevailing wages. Plaintiff would later argue that defendants-fiduciaries of a public trust-used taxpayers trust fund monies as their personal piggy banks for personal projects. Plaintiff contended that he and other local taxpayers were entitled to know the line-item source of funding the flex parking removal and 911 memorial capital projects after the contested bond ordinance appropriation was rescinded by resolution (and not by ordinance). Cf:

Lisa Pesci v. Township of Parsippany, A-0952-23 (App. Div. Sept 20, 2024) (Pra107) (slip op at p. 10-11) ("[A] municipality may not enter into a contract absent compliance with N.J.S.A. 40A:4-57. The statute requires a municipality to appropriate money for municipal expenditures associated with specific contractual obligations. The statute expressly provides "[a]ny contract made in violation hereof shall be null and void. . . .")

Here, the trial court erroneously granted defendants global summary judgment. The trial court dismissed plaintiff's entire 5 Counts 309 paragraphs hybrid prerogative writ/declaratory judgment/civil rights act violations complaint without providing plaintiff limited and expedited discovery on all his "colorable" civil rights act violation claims and causes of actions. In their joint opposition brief, defendants assert a disingenuous "shield and sword" argument. Defendants opposed and denied plaintiff expedited and limited discovery. But on the other hand, defendants usurped the trial court's evidentiary umpire function and declared plaintiff's summary judgment counterstatement of material facts to be not relevant and lacking any evidentiary support.

In addition, the trial court avoided the substantive merits of plaintiff's civil rights act violation claims. The trial court never issued specific Rule 1:7-4(a) findings of fact and conclusions of law relating to each of plaintiff's civil rights act violation counts, claims and remedies.

Moreover, summary judgment on Count One was not yet ripe for adjudication. Whether the adoption of the contested flex parking removal/911 memorial capital bond ordinance was arbitrary, capricious, and unreasonable hinged, in part, upon whether Tara Prupis had a disqualifying statutory or common law conflict of interest and appearance of impropriety. This issue presented a contested material fact that could not be resolved in the context of a summary judgment motion. See, Town of Morristown v. Morris County Board of Taxation, __ N.J. Tax__ (Tax July 24, 2024) (finding whether adoption of the 2024 final Morris County equalization tabled was arbitrary, capricious, unreasonable, incorrect, or plainly unjust and impressed upon Morristown a substantially excessive share of the county tax was a disputed material fact, not ripe for summary judgment) (slip op at p. 14 n12.); Bear Properties Management v. Township Committee of Millburn, ESX-L-1933-21 (Ch. Div. Jan. 14, 2021) (denying without prejudice defendant's summary judgment motion regarding another Tara Prupis' alleged disqualifying conflict of interest and appearance of impropriety) (Pra1; Pra3).

II. Tara Prupis Had a Statutory and Common Law Disqualifying Conflict of Interest and Appearance of Impropriety.

Oddly, in their Brief and Appendix, defendants undermine their own legal argument. Defendants cited and attached Miscoski v. Local Finance Board, 2008 WL 2788225 (App. Div. July 21, 2008) (Da018). Miscoski is distinguishable. Miscoski was not a prerogative writ matter. Miscoski involved a Local Finance Board Ethics Complaint and a $500 fine. Miscoski did not involve a public official who voted on municipal legislation that could and would benefit his own local business. Miscoski involved a public official who voted on municipal legislation that could conceivably benefit his mother.

Miscoski involved statutory interpretation. Miscowski involved whether a public official's mother fell within a prohibited affiliated benefit group. Indeed, in footnote 3 buried at the end of this persuasive opinion, the Miscoski panel noted: "This, in fact, may signify a potential area where a disqualification under common law precedent may be required if raised in a prerogative writs action, even though there is not a statutory violation." (Da023).

Here, plaintiff clearly argued that Tara Prupis had both a statutory and common law disqualifying conflict of interest and appearance of impropriety, However, both the trial court and defendants focused solely upon the statutory prohibition.

In addition, defendants failed to cite and discuss two recent intervening conflict of interest cases: State v. Dana Kearney, __N.J. Super.__ (App. Div. Sept. 18, 2024) and SJ 660 LLC v. Borough of Edgewater, A-0788-22 (App. Div. Aug.

13, 2024) (Pra50) . In Borough of Edgewater, Judges Gilson, DeAlmeida and Berrdote Byrne affirmed a bench trial judgment finding no alleged ethical violations and dismissing the prerogative writ complaint with prejudice. But Borough of Edgewater restated the following governing legal principles:

> The Ethics Law creates a statutory code of ethics that governs when a disqualifying conflict of interest arises for a local government official. So, the Ethics Law and the common law guide courts in evaluating when conflicts arise. See, Piscitelli v. Garfield Zoning Bd. of Adjustment, 237 N.J. 333, 349-50 (2019); Grabowsky v. Township of Montclair, 221 N.J. 536, 552 (2015). "The overall objective 'of conflict-of-interest laws is to ensure that public officials provide disinterested service to their communities' and to 'promote confidence in the integrity of governmental operations.'" Piscitelli, 237 N.J. at 349 (quoting Thompson v. City of Atlantic City, 190 N.J. 359, 364 (2007). . . .[statutory citation omitted]
>
> "We must construe N.J.S.A. 40A-9-22.5(d) to further the Legislature's expressed intent that '[w]henever the public perceives a conflict between the private interests and the public duties of a government officer,' 'the public's confidence in the integrity 'of that officer is 'imperiled.'" Piscitelli, 237 N.J. at 351 (alteration in original) (quoting N.J.S.A. 40 A:9-22.2(b) to (c)). Disqualification is required when a public official has (1) a direct pecuniary interest; (2) an indirect pecuniary interest; (3) a direct personal interest; or (4) an indirect personal interest. Grabowsky, 221 N.J. at 553 (quoting Wyzykowski v. Rizas, 132 N.J.509, 525 (1993)).
>
> "'[A] court's determination "whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of the particular case."'" Piscitelli, 237 N.J. at 353 (quoting Grabowsky, 221 N.J. at 554). "A conflicting interest arises when the public official has an interest not shared in common with the other members of the public." Wyzykowski, 132 N.J. at 524. Accordingly, "[t]he ethics rules must be applied with caution, as '[l]ocal governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official." Grabowsky, 221 N.J. at 554

> (second alteration in original) quoting Wyzykowski, 132 N.J. at 523). "It is essential that municipal offices be filled by individuals who are thoroughly familiar with local communities and concerns." Ibid. Consequently, conflict-of-interest rules "do not apply to 'remote' or speculative' conflicts because local governments cannot operate effectively if recusals occur based on ascribing to an official a conjured or imagined disqualifying interest." Piscitelli, 237 N.J. at 353. (slip op at p. 38 –40).

Thirty-six days later, Judge Sabatino, together with Judges Berdote Byrne and Jacobs, issued State v. Dana Kearney, __N.J. Super.__ (App. Div. Sept. 18, 2024). Although Kearney involved an attorney's purported ineffective representation of a criminal defendant, the public policies and legal analysis underlying that opinion apply here. Tara Prupis owed plaintiff and other Millburn local taxpayers "undivided loyalty," "unimpaired" by "conflicting interests[1]" The bar against public officials is higher than the bar against attorneys. Unlike judges and other public officials, attorneys are no longer subject to an appearance of impropriety test.

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[1] At the commencement of this hybrid prerogative writ/declaratory judgment/civil rights act violations action, plaintiff claimed that the same JIF insurer appointed counsel could not simultaneously represent the municipal entity defendant and the individual public official defendants. (Pa130 to 136). The trial court punted this issue on mootness grounds. (Pa159). However, since the mootness denial, the New Jersey Advisory Committee on Professional Ethics issued two opinions supporting plaintiff's arguments that a board attorney's client is the board and not the board members and that a pro se attorney is not prohibited from speaking to local public officials. See, NJ Advisory Committee on Professional Ethics Op 746 "Application of RPC 4.2 to Layers Who Are Proceeding Pro Se in Legal Matters" (March 14, 2024) (Pra38); NJ Advisory Committee on Professional Ethics Docket 07-2024 (July 9, 2024) (Pra45).

Consequently, one must first examine whether a per se bar applied. Here, plaintiff contended that that a Grabowsky municipal land use law 200 feet radius bar applied. Second, if there were no per se bar, the court then must apply an objective reasonable person test. Here, the trial court misapplied this objective reasonable person test. Cf: The Ridge at Back Brook, LLC v. The East Anwell Township Planning Board, A-3710-19 (App. Div. July 20, 2021) (Pra6)(disqualifying mayor's participation due to prior adverse comments made by him). Accordingly, due to her ownership of a business within the flex parking removal one block area and her campaign pledge to remove flex parking, Tara Prupis had a disqualifying conflict of interest and appearance of impropriety. Therefore, the contested capital bond ordinance was void ab initio.

III. Plaintiff Is Entitled to a Level Litigation Playing Field.

This is a David v. Goliath situation. No one is above the law. In their opposition brief, defendants attempt to raise a substantive limitations of actions legal argument not subject to plaintiff's notice of appeal and not part of the summary judgment record. (Pa84; Pa480). Indeed, defendants' joint opposition brief is not the proper mechanism for raising this substantive issue before this appellate tribunal. See, Rules 1:36-3; 2:5-4(a); 2:6-1(a)(1); 2:6-3.

In Point VI and Point VII of their joint brief, defendants assert for the first time an out-of-time limitations of actions argument. Defendants claim that plaintiff

failed to assert a civil rights act violation claim within 2 years of accrual. Defendants also claim that plaintiff failed to challenge Res. 21-064 adopted February 9, 2021 (Da001) within 45 days of adoption. This out-of-time limitations of actions argument was not raised below in the trial court by defendants, nor was it ruled upon by the motion judge.

Moreover, with respect to plaintiff's civil rights act violations and invasion of privacy/defamation claims and causes of action, plaintiff clearly asserted these claims and causes of actions within the respective 1 and 2 year statutory limitations of actions. (Pa1). In fact, plaintiff sought distinct civil rights act violations monetary, declaratory and injunctive relief. In January 2022, shortly after the trial court denied defendants' first joint motion to dismiss, defendants changed course. Defendants restored plaintiff's prior right to be heard on agenda action items prior to consideration and official action. (Pa295).

The Res. 21-064 prerogative writ limitations of actions argument is a just another diversionary "deny, delay and deflect" litigation tactic. Defendants ask this court to kick a preclusive effect issue down the road, even though another Mount Laurel Declaratory Judgment trial court has declined to address this issue. In CY 2021, a constitutional civil rights act violation occurred at each meeting when plaintiff and others were denied the right to be heard on all agenda action items prior to consideration and official action. This was akin to a continuous and

ongoing constitutional tort with a new cause of action arising with each successive violation.

Ironically, Res. 21-064 buttresses and strengthens plaintiff's civil rights act violation claim. Res. 21-064 supports plaintiff's claim that defendants "engaged in a policy, pattern, or custom of unlawful activity that violated his federal and constitutional rights." See, Jeremy Baratta v. City of Perth Amboy, A-3560-21 (App. Div. Sept. 6, 2024) (Pra94) (Judges Gilson and DeAlmeida noting: "A governmental policy can be established "when a 'decisionmaker possess[ing] final authority to establish a municipal policy with respect to the action' issues an official proclamation, policy or edict.")

In addition. defendants' Rule 4:69-6(a) limitations of actions argument is faulty. Typically, the Rule 4:69-6(a) limitations of actions commence upon published notice of adoption of a legislative discretionary ordinance and not an administrative ministerial resolution. Moreover, Rule 4:69-6 (c) contains an enlargement provision, which courts exercise in the interests of justice. See, Botteon v. Borough of Highland Park, 478 N.J. Super. 452, 461-62 (App. Div. 2024) (Judge Sabatino, together with Judges Chase and Vinci, reversing trial court and enlarging time to file prerogative writ facial action challenge beyond 45 days and acknowledging in an accompanying unpublished opinion plaintiffs' surviving right to allege individual civil rights act violations as municipal legislation applied to them).

IV. Defendants Failed to Turn Square Corners.

Millburn is a creature of State law. Defendants are fiduciaries of a public trust. Defendants must "turn square corners." See, FMC Stores v. Borough of Morris Plains, 100 N.J. 418 (1985) (in dealing with the public, public entities must "turn square corners," "comport itself with compunction and integrity" and not "conduct itself so as to achieve or preserve any kind of bargain or litigation advantage" over a member of the public); CBS Outdoor Inc. v. Borough of Lebanon Planning Bd/Bd of Adjustment, 414 N.J. Super. 563, 586-87 (App. Div. 2010) (To invoke the "turn square corners doctrine," citizens need not prove that they were blameless or that the government acted in bad faith").

No one is above the law. As former Essex County Designated OPRA Judge Rachel Davidson advised me and others more than thirteen years ago, there is a fine line between cute and egregious municipal behavior. Indeed, there are boundaries of legitimate legal advocacy. Here, defendants and their counsel transgressed these boundaries. See, Geler v. Akawie, 358 N.J. Super. 37, 463 (App. Div. 2003) ("[O]ur jurisprudence has long ago set boundaries for advocacy, and unequivocally defined conduct that, by its potential to cause injury, will not be tolerated.") Also see, Rule 1:4-8, N.J.S.A. 2A:15-59.1, RPC 3.1 Meritorious Claims and Contentions, RPC 3.2 Expediting Litigation, RPC 3.3 Candor Toward

the Tribunal, RPC 3.4 Fairness to Opposing Party and Counsel, RPC 8.3 Reporting Professional Misconduct, and RPC 8.4 Misconduct.

Just over thirteen years ago and prior to his reassignment to the appellate division, Judge John C. Kennedy reminded plaintiff and other Feld VI and Feld VIII attorneys that they were and remained officers of the court with an overriding professional and ethical obligation of candor towards the tribunal. This is a continuous ongoing duty.

This has always been a "fox guarding the henhouse" litigation. Defendants and their retained professionals refused to admit, to cure and to then move on from their mistakes. Courts abhor strong arm war of attrition "deny, delay and deflect" gaslighting litigation tactics.

Here, defendants filed two frivolous and vexatious motions to dismiss on the pleadings. Here, defendants opposed and denied plaintiff expedited and limited discovery. Here, defendants failed to cite and to discuss Article I, paragraphs 1, 2a, 5, 6, 18 and 21 of our State Constitution. Here, defendants failed to cite and to discuss the purpose and function of Article VI, Section V, paragraph 4 of our State Constitution. Here, defendants failed to cite intervening contrary case law.

Enough is enough. Judicial review is a fundamental constitutional guardrail against governmental abuses of power. Our Judiciary is a co-equal branch of State government with the ultimate judicial review check and balance authority to invalidate and to constrain arbitrary, capricious and unlawful legislative and

executive action or inaction. See, Judiciary's Posted Mission Statement.[2] The Judicial System can no longer condone wrongful behavior by fiduciaries of a public trust who swore to enforce and to execute State law.

Indeed, plaintiff has returned to his original Feld VI December 10, 2014 lack of third-party taxpayer standing appellate oral argument before Judges Fuentes, Ashrafi and O'Connor when he caused Judge Ashrafi's face to turn beet red and Judge Asrafi to blurt out "Where was our State AG?" But see, In re IMO Town of Harrison and Fraternal Order of Police Lodge No. 116, 440 N.J. Super. 268 299 (App. Div. 2015) ("[W]hether a state agency is abiding by a valid state law 'is a fundamental concern of the Attorney General both in his capacity to the agency and in his capacity and responsibility as protector of the public.")

Today, no one is above the law. Public officials must honor their oaths of office to enforce and to execute the law faithfully and uniformly. Public officials can no longer shirk their sworn public statutory and fiduciary duties and obligations. In sum, "When law ends, tyranny begins!"

CONCLUSION

[2] "We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution and laws of the United States and this State."

For all the foregoing reasons, plaintiff/appellant Jeffrey S. Feld, Esq. respectfully requests this appellate tribunal to reverse the two final pre-discovery summary judgment dismissal and reconsideration denial orders, to remand this hybrid 5 Counts 309 paragraphs prerogative writ/declaratory judgment/civil rights act violations action back to another trial court judge and to grant such other relief that the appellate tribunal deems just and equitable.

Dated: September 29, 2024

/s/Jeffrey S. Feld
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(018711983)