FILED, Clerk of the Supreme Court, 01 Aug 2024, **089641**

	:	SUPREME COURT OF NEW JERSEY
DONALD WHITEMAN,	:	DOCKET NO. 089641
PATRICIA A. DOLOBACS,	:	
JUDITH A. ERDMAN AND 282	:	CIVIL ACTION
OTHER PETITION SIGNERS OF	:	
SOUTH SEASIDE PARK	:	ON APPEAL FROM THE FINAL
HOMEOWNERS & VOTERS	:	JUDGEMENT OF THE SUPERIOR
ASSOCIATION,	:	COURT, APPELLATE DIVISION
	:	
Plaintiffs,	:	Docket No: A-003786-21
vs.	:	
	:	SAT BELOW:
TOWNSHIP COUNCIL OF	:	
BERKELEY TOWNSHIP OF	:	Hon. Thomas W. Sumners, Jr, P.J.A.D.
BERKELEY, JOHN DOES 1-10,	:	Hon. Lisa Rose, J.A.D.
ABC CORPS. 1-10,	:	Hon. Lisa Perez Friscia, J.A.D.
Defendants.		

BRIEF ON BEHALF OF PLAINTIFFS/RESPONDENTS, DONALD WHITEMAN, PATRICIA A. DOLOBACS, JUDITH A. ERDMAN AND 282 OTHER PETITION SIGNERS OF SOUTH SEASIDE PARK HOMEOWNERS & VOTERS ASSOCIATION

O'MALLEY, SURMAN, & MICHELINI
17 Beaverson Boulevard
Brick, New Jersey 08723
Tel:(732) 477-4200 Fax: (732) 477-5554

On the Brief:
JOSEPH MICHELINI, ESQ.
Attorney ID# 022951984
E-MAIL: jmichelini@osm-law.com
Attorneys for Plaintiffs/Respondents

Date Submitted: August 1, 2024

FILED, Clerk of the Supreme Court, 01 Aug 2024, **089641**

TABLE OF CONTENTS FOR PLAINTIFFS/RESPONDENTS

PAGE

TABLE OF AUTHORITIES

CASES

PAGE

STATUTES and COURT RULES

PAGE

PRELIMINARY STATEMENT

This Court should deny the Appellants' requests for certification for one simple reason: the indefensible conduct of Appellants was so egregious, biased and was found to be collusion aimed at facilitating Berkeley Township's pre-determined result to deny deannexation.

Appellants' Brief[1] suggests there was a major overhaul of the deannexation statute in 1982 and therefore this Court should finally use this opportunity for review. This cannot be further from the truth. When the statute was amended in 1982, the singular, minor change was the shift of the burden of proof from one party to the other on the third element of the statute. Under the prior deannexation statute, N.J.S.A. 40:43-26, the municipality bore the initial burden of proof regarding the unreasonableness of the requested deannexation in that it would negatively impact the municipality. Now, under N.J.S.A. 40A:7-12.1, it is up to the petitioners for deannexation to prove three (3) elements: (1) that the refusal to consent to the petition was arbitrary or unreasonable; (2) that refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land and (3) that the annexation will not cause a significant injury to the well-

[1] Appellant's Petition for Certification shall be referred to as a brief throughout so as not to cause any confusion with the Petition for Deannexation at issue in this matter.

being of the municipality in which the land is located. Despite this limited statutory modification of the burden of proof, the caselaw which predates the statutory amendment remains good law - so long as the revised burden on the final element of the statute is properly applied. There is no reason to discount the cases which came before this limited statutory revision which goes only to burden of proof. Moreover, both lower courts did apply the correct legal standard, including the Respondents' burden of proof on all statutory subparts, and both courts properly found the Respondents met that burden.

STATEMENT OF FACTS

Almost ten (10) years ago on September 22, 2014, Appellants—residents and taxpayers residing in South Seaside Park filed a Petition for Deannexation. Da401[2]. South Seaside Park is a community located on the Barnegat Peninsula and is completely separated by as much as 16.2 miles from mainland Berkeley by the waters Barnegat Bay and seven (7) other municipalities. Pa0136. These lands are bordered to the north by Seaside Park—the municipality Appellants wish to join. The geography of the lands at issue and the facts of this case are so unique which both lower courts correctly recognized.

[2] Appellants' Appellate Appendices are cited as Daxxx, 3 digits. Respondents' Appellate Appendices are cited as Paxxxx, 4 digits, as opposed to reference to the Appellate Division Opinion attached to Appellants' brief which are cited as Paxxx, 3 digits.

STANDARD OF REVIEW

New Jersey Court R. 2:12-4 provides for a discretionary grant of certification under three (3) limiting circumstances: (1) where the appeal "presents a question of general public importance which has not been but should be settled by the Supreme Court"; (2) where the decision below conflicts with the precedent of a same or a higher court "or calls for an exercise of the Supreme Court's supervision"; and (3) in any other situation "if the interest of justice requires."

With regard to the first option, there can be no unsettled question of public importance where the Appellate Division merely applied an established statute and caselaw to the specific facts of this case. See Bandel vs. Friedrich, 122 N.J. 235, 237 (1991). As to the second option, cases generally do not implicate exercise of the Court's "supervisory powers" unless they conflict with another decision of an appellate court or otherwise "transcend ... the immediate interest of the litigants". See Mahony v. Danis, 95 N.J. 50, 51 (1983). Finally, appeals do not warrant "invocation of the Court's certification authority in the interest of justice" unless the decision below is "palpably wrong, unfair or unjust." Bandel, supra, 122 N.J. at 237. "Typically, a case for certification encompasses several of the relevant factors controlling the exercise of the court's discretionary appellate jurisdiction." Mahony, supra, 95 N.J. at 53.

Here, no facts are present which warrant review by this esteemed Court under any of these options. The Appellate Division applied the long standing precedential cases and the deannexation statute, N.J.S.A. 40A:7-12.1, to decide whether the deannexation petition should be granted. Though there has not been a ruling by this Court pertaining to the current version of the deannexation statute, that is not relevant as the facts of this case. The rationales of the decisions of both lower court rulings are based on the specific facts of this unique deannexation case. Accordingly, there is no issue of general importance that must be resolved by this Court. Appellants have not established that the Appellate Division's decision is in any way "palpably wrong, unfair or unjust." Bandel, supra, 122 N.J. at 237. For the reasons argued below, certification should be denied. Furthermore, certification should be denied where a case involves an "intensely factual situation, in no way implicating 'unsettled question of general public importance.' " Bandel, supra 122 N.J. at 237-238 (In re Route 280 Contract, 89 N.J. 1 (1982)).

Appellants' brief in this matter is largely a restatement of the arguments made below. Appellants' mere dissatisfaction with the Appellate Division's application of the law to this specific set of facts does not warrant review by this Court because the decision cannot be said to be "palpably wrong, unfair, or unjust." Bandel, supra 122 N.J. at 237-238. In deciding whether to grant the

Petition for Deannexation, both lower courts engaged in the required deannexation analysis and cautiously weighed and considered each prong of the statute, along with the appropriate burden of proof.

Appellants' attempt to broaden the scope of Appellate Division's decision, arguing that it sets a new due process standard in deannexation matters. The "interest of justice" mandates review by this Court. The Appellate Division made clear, however, that its decision was based upon the "respective consequences of deannexation to the residents of South Seaside Park and the Township." Pa036. Thus, the Appellate Division's decision does not have widespread consequences or binding effect that might create a floodgate for litigation. This case was decided on these unique facts, including the very unsettling fact of collusion of Appellants. Appellants argument that four (4) appellate level cases in the last 20 years is a "notable increase" in the scheme of litigation is not persuasive. The reality is these deannexation cases are exceedingly rare and very fact sensitive. Not one of these four (4) prior cases involve anywhere close to the distance Appellants are from their mainland municipality. There have been no deannexation cases, regardless of result, with the distance approaching that between South Seaside Park and mainland Berkeley (16.2 miles). Pa0136. In fact, the distance in this matter is far greater than in West Point Island Civic Ass'n v. Township Comm. of Dover Twp., 54

N.J. 339 (1969) and Bay Beach Way Realignment Comm., LLC v. Twp. Council of Toms River, 2009 N.J. Super. Unpub. LEXIS 1792 (App. Div. July 9, 2009) (Pa0258-0260); two (2) reported cases in which the court ordered deannexation were where distances were 7.5 miles and 10 miles respectively.

Notably, the Appellate Division issued its decision as an unpublished opinion, which has no binding effect on any future litigants involved in any deannexation matter.

Furthermore, it would, in fact, be "palpably wrong, unfair and unjust" for this Court to favorably consider this request for certification given the significant findings of fact by both courts below of the egregious due process violations including collusion, bias and patent prejudgment of the Petition for Deannexation; all compounded by the fact the process has consumed ten (10) years. Justice delayed is justice denied, particularly when Appellants comes before this Court with unclean hands in the proceedings below.

LEGAL ARGUMENT

POINT I

THE APPELLATE DIVISION PROPERLY FOUND THAT APPELLANTS VIOLATED RESPONDENTS' DUE PROCESS RIGHTS

The lack of due process and fundamental fairness in the hearing procedures established by the Berkeley Planning Board, as well as the bias against and prejudgment of the Petition for Deannexation was overwhelming.

The Appellate Division found it to be "cumulative evidence of bias and collusion" toward a "pre-determined conclusion". Pa028.[3] By way of examples specifically set forth in the Appellate Opinion:

1) Biased conduct of the Planning Board and Township Council who had meetings the purpose of which was to achieve their joint, pre-determined result, denial. Pa014-016, Pa027.[4]
2) The email sent by Township Administrator Reid to numerous Township officials, the Planning Board attorney and the Planning Board expert, Mr. Wiser, noting their prior communication to set up a meeting to "create a strategy" for the Township to "refute" the applicants' testimony. Pa015.[5]
3) Collusion of the Planning Board and Township Council through Planning Board's hired gun, Mr. Wiser, who actively participated in these joint meetings and wrongfully assisted in preparing Township witnesses. Pa016, Pa027.
4) Evidence of improper bias against deannexation during the hearings by Planning Board Members Callahan, Bacchione, and Mackres. Pa016-017, Pa027.

---

[3] Much of Respondents' brief to the Appellate Division focused on the numerous details in the record of all facts evidencing bias, prejudgment, lack of due process, etc. as this is and remains one of the unique facts of this case. Given the page limitations of this submission all of their egregious conduct cannot all be included herein.

[4] Even Berkeley Township Planning Board expert, Mr. Wiser, admitted that Appellants' conduct gave the appearance of bias. Pa0297.

[5] The Appellate Division found this email (sent only 4 months into hearings) to be of such importance that it is cited in its entirety in their Opinion. Pa015.

5) Evidence of bias by Township Administrator Camera who, during the hearings, referred to Respondents as "elitist" and gave negative opinions of the proposed deannexation. Pa017. Pa027.

Despite the plethora of evidence in the record, and the findings of both lower courts, Appellants astonishingly continue to argue they provided sufficient due process. The Appellate Division stated it succinctly, and correctly, when they held, "[w]e are unpersuaded." Pa026.

POINT II

THE DUE PROCESS STANDARD HAS NOT BEEN EXPANDED BY THE APPELLATE DIVISION AND THE MATTER SHOULD NOT BE REMANDED

The Appellate Division ruling did not expand or establish any new due process standard or requirement for the deannexation process. Contrary to the Appellant's brief the Appellate Division did not find "that even more due process is required" compared to any previous deannexation case.[6] What the Appellate Division did was make findings of fact on numerous, serious, due process violations committed by Appellants. Pa026-028.

The Appellate Division ruling does not, in any way, cause confusion on the simple procedural requirements for how deannexation should proceed. Appellants simply miss the mark on understanding and accepting the due

[6] It is notable that the Appellants' brief has no citation to the Opinion below which sets forth any such finding.

process violations they committed. Respondents are not complaining that they did not have a sufficient number of hearings. Respondents were able to put on all witnesses within thirteen (13) hearings. Da467-468. Appellants then took in excess of twenty (20) hearings to complete their essentially scripted and coordinated case. Da468. Objection is taken to the manner in which the hearings were conducted, along with the prejudgment of the Petition, their biased behavior and negative comments of the Appellants which were of crucial importance to Respondents, the Trial Judge and the Appellate Division.

While it is true that the deannexation statute is silent as to the process by which a Petition for Deannexation is to be considered by a planning board, the caselaw is clear. In the caselaw, hearings on deannexation matters have been held. Planning Board Attorney McGuckin was experienced with the process as he was a Township Councilman during at least part of the time in Bay Beach Way Realignment Comm., LLC v. Twp. Council of Toms River, 2009 N.J. Super. Unpub. LEXIS 1792 (App. Div. July 9, 2007). Pa0258. Furthermore, the Planning Board's expert, Mr. Wiser, testified he was personally involved as an expert in two (2) prior deannexation cases. T. 10/3/07, 9:17 to 10:11. Pa0287-0288. It is clear that both Counsel and the Planning Board's own expert were familiar with the existing caselaw[7] and the hearing process.

[7] Mr. Wiser's 399 page report summarized all New Jersey caselaw over 43 pages. Da013 to Da056.

Appellants ask "[h]ow is the planning board supposed to discharge its responsibility to report to the governing body and the impact of deannexation if its planning expert cannot discuss with township employees and officials whether statements made by the petitioners are true or not? How can the board make a recommendation without attempting to obtain that information?" Ab11. These questions illustrate Appellants' continuing inability to understand and appreciate the distinction between the two bodies – the Township Planning Board and the Township Council – which are to be independent.[8] This despite the fact Planning Board expert, Mr. Wiser, stated that "a Board's role in the deannexation context is to function as an independent information-gather, fact finder ...." Da012.

It was the Township's obligation if it chose to bring evidence forward in these hearings. It was the Planning Board's role to hear that evidence; not to participate in generating it, creating it, or strategizing with the Township to refute the testimony of the Appellants and their experts. The Appellate Division made this correct assessment and found that this clearly did not happen. Pa035.

[8] Respondents' brief to the Appellate Division at pages 8-10 contained extensive discussion about the separate and independent functions of the Planning Board and Municipal Body in these deannexation cases. Pa0261 to 0283. In the Law Division decision in Citizens for Strathmere & Whale Beach v. Township Committee of Upper, 2010 N.J. Super. Unpub. LEXIS 3152 (Law Div. Oct. 25, 2010) Judge Armstrong eloquently stated that "[m]aintaining the separate and independent functions of a planning board and current governing body, as provided for in the current Annexation Statute, allows for a better, as well as unbiased, record than if the entities were to commingle their functions." Pa0277.

Regardless of the fact that planning boards may hire and utilize experts to assist them, no statutory allowance entitles such a professional for a planning board in a deannexation case to prepare witnesses with overtly biased commentary in annotated hearing transcripts such as occurred in this case. Pa016. No law is cited by Appellants in their brief which would, even arguably, allow this.

Contrary to what Appellants argue, municipal planning boards are, in most instances, quasi-judicial[9]. Planning boards make deliberated decisions all the time after contested hearings and testimony on matters such as site plans and subdivision applications. Even the New Jersey Practice section cited by Appellants states that the functions of a planning board "may" be considered ministerial, not that they are in all instances. Ab7.

Appellants are inappropriately requesting this Court to establish how future deannexation proceedings should be conducted which would be, essentially, an amendment to the statute. As this esteemed Court is aware it not the role of this or any other court, but rather should be left up to the Legislature if it deems necessary.

The affirmed findings of egregious bias, prejudgment and collusion by Respondents makes remand an illogical, inequitable remedy. Pa035-036.

[9] Mr. Wiser admits Planning Boards typically operate as quasi-judicial tribunals. Da012.

There is no reason to believe that next time (if remand was ordered, which we contend it should not be) would produce a different result. In fact, it would likely be far worse for Appellants as they are now viewed as having caused so much money and aggravation to the Township of Berkeley in counsel fees and expert fees and time spent on meetings and appeals over the last ten (10) years. It is a vain hope to believe the Berkeley Township Planning Board could ever, in this case, be a neutral fact finder on a remand of this Petition for Deannexation. All four judges below, including the Trial Judge, agreed that remand is not a viable or equitable remedy in this case. Pa035-036. Da461.

It would be inequitable for the Appellant wrongdoers to be rewarded with another bite at the apple in light of their egregious prior conduct. The remedy of remand would do just that, and penalize the prevailing Respondents.

We submit that the doctrine of "fundamental fairness" in Doe vs. Poritz, 142 N.J. 1, 108 (1995) cited by the Appellate Division was properly applied in this case given the unique facts and the exhaustive list of due process violations cited by both lower courts. Remand would only subject the Respondents to a renewed deprivation of their rights to a fair public hearing.

This case was decided on its unique and specific facts. It is preposterous to argue that "every municipality which receives a deannexation petition will be hamstrung" if this decision stands. Ab13. Existing cases set forth the procedure

of hearings and, if anything, the unpublished opinion below only demonstrates what not to do.

POINT III

DESPITE THE FINDING OF A DETRMIMENT TO THE TOWNSHIP OF BERKELEY, THE LOWER COURTS PROPERLY GRANTED CONSENT TO DEANNEXATION

The municipality from which deannexation is being sought will sustain a loss in ratables in every case. However, the projected tax ratable percentage to be lost is NOT the determinative factor as Appellants would hope. If that were the case, then certainly 38 hearings over 5 years would have not been necessary.

We agree that Respondents had the burden to prove (in addition to other statutory requirements) that the deannexation will not cause a significant injury to the well-being of the municipality. N.J.S.A. 40A:7-12.1. Both the Trial Court and Appellate Division found Respondents did meet their burden, regardless of the projected loss in tax ratables. In Point III of their argument Appellants again refer to a loss of "nearly 11%" of tax ratables. Appellants improperly present this gross figure which does not account for cost savings of municipal services the township will no longer need to provide. Appellants argue the lost ratables will have a "devastating" impact. Ab16. This is another gross exaggeration when the Township CFO provided uncontroverted testimony that Berkeley could recover from deannexation in "probably less than five (5) years." T.

3/1/18, 97:15-98:23. Pa0357. Respondents' financial expert testified that there would be "no real impact at all" using his own data. T. 10/4/18, 27:1-28:24. Pa0969. The Trial Court found that the analysis by the Township does not include cost savings realized by the Township if it were relieved of the obligation to provide municipal funded services to South Seaside Park." Da457.

It is undisputed that all middle and high school children in South Seaside Park will continue to attend the Central Regional School District. Only elementary students will attend school in a new district, resulting in a minor decrease in school tax revenue received by Berkeley Township. The statement that residents of Berkeley Township will see a first-year post-deannexation school tax increase of $121.18 is misleading. Ab16. Respondents' financial expert, Mr. Moore, submitted several scenarios of tax impact analysis, two (2) of which demonstrated the potential impact to the remaining municipality assuming cost savings associated with the loss of one (1) versus two (2) police cars. Clearly the evidence cited to by Appellants demonstrates there was analysis, charts, etc. as to school taxes all of which is in the record. (Pa0235-0244). Mr. Moore's computations found that if Berkeley Township cuts two (2) police cars following deannexation, there is be $0.00 increase in the Local Purpose Tax and an inconsequential increase of $0.34 per day to the average taxpayer for the school tax. Pa0241.

Simply because each and every fact considered by the Appellate Division was not mentioned in its opinion, does not belie the conclusion same was not considered. The Appellate Division had a very extensive record before it, numbering thousands of pages. Not every fact could possibly, ever, be mentioned in its opinion. Berkeley Township's own Resolution is silent on school taxes. Da464-479. Moreover, this entire argument is contrary to the Appellants' separate Resolutions that the total tax increase in the event of deannexation will be $19.00 for $100,000.00 of assessed value. Da478, Da481.

In considering the complete record, both courts below found that the Respondents would benefit, among many other benefits, from joining the town next door instead of continuing to belong to one almost 16 miles and 7 municipalities away – a fact which singularly distinguishes this case from any prior New Jersey deannexation case.

POINT IV

THE APPELLATE DIVISION DECISION IS NOT IN CONFLICT WITH THE PRIOR RULING IN SEAVIEW HARBOR REALIGNMENT COMMITTEE V. EGG HARBOR TOWNSHIP

The unanimous Appellate Division panel correctly recognized and distinguished the opinion Seaview Harbor Realignment Comm., LLC v. Twp.

Comm. of Egg Harbor Twp, 470 N.J. Super. 71 (App. Div. 2021), certif. denied, 252 N.J. 189 (2022)[10]

Each case involving deannexation is based upon unique facts. The facts in Seaview are clearly distinguishable from this case and their disparate results can be naturally reconciled. Both lower courts cited the Seaview opinion, and properly distinguished it.

First, Seaview did not involve lands that were approximately sixteen (16) miles away from the mainland municipality nor did the petitioners therein have to travel through seven (7) other towns to get to their mainland municipality. This critical distinction alone would be sufficient basis to justify the Appellate Panel in this matter arriving at a different decision than the panel in Seaview.

The Planning Board Resolution[11] in this case states that deannexation would increase property taxes to Berkeley Township residents at the rate of $19.00 per $100,000.00 of assessed value. Da478. In Seaview, the tax increase was projected to be much more significant, $122.78 for every $208,100.00 of assessed value. Seaview, supra., at 99. The Appellate Division in Seaview also found there were significant economic consequences which compounded the

[10] It is notable this Court denied the Petition for Certification in Seaview. This could have been the first case to reach this Court on deannexation since the legislature amended the Annexation Statute, N.J.S.A. 40A:7-12 et seq. However, the Supreme Court elected not to accept certification even though the statute had been amended forty (40) years earlier. Thus, the passage of time alone since the revision of the New Jersey deannexation statute is not a basis for this Court to grant certification in this matter.

[11] The Planning Board Resolution was specifically relied upon the Berkeley Township in its own Resolution Da481.

municipality's state of economic stress due to New Jersey state fiscal mandates. Seaview, supra., at 99-100. On the contrary, in this case there was no evidence produced that the Township of Berkeley was in any degree of fiscal crisis and their own CFO testified they would recover from deannexation in "probably less than five (5) years." T. 3/1/18, 97:15-98:23. Pa0357.

These numerous disparate facts form more than a rational basis for the Appellate Court to have come to a different conclusion in this case as opposed to the panel in the Seaview case. Although there were allegations of bias presented in Seaview[12], the bias, prejudgment and due process violations were far more egregious in this matter.

Appellants emphasize that in Seaview there would be a potential loss of 2.4% of its tax ratables, and in Avalon Manor Improvement Ass'n, Inc. v. Township of Middle, 370 N.J. Super. 73 (App. Div. 2004) it would be 2.6%, wherein Berkeley Township stands to lose more than 10% of its tax ratables. However, Appellants fail to explain that these percentages represent gross figures and do not take into account the net effect to each municipality of any related cost savings. There was unrebutted testimony in the instant matter by Respondents' financial expert that simply by eliminating two (2) police cars there is "zero cost in the de-annexation with regard to the local purpose tax." T.

[12] Notably, Mr. Wiser was also the expert hired by the Planning Board in the Seaview case.

2/4/16 25:14-16. Pa0406. Again, loss of tax ratables will occur in every deannexation case. Simply comparing the gross tax ratables to be lost from one case to another is not what the statute provides. The Appellate Division was clear in its opinion why it found the grant of consent to deannexation was necessary in this case.

As a result of the distinguishing facts of each case the Appellate Division decisions in this matter and Seaview can be reconciled and do not directly contradict each other and do not form a basis for this Court to grant certification.

POINT V

BERKELEY WAS AWARE OF THE POTENTIAL LOSS OF THREE BLOCKS OF PUBLIC BEACH FROM THE OUTSET OF THE HEARINGS

Appellants leave their weakest argument for their final point likely because they realize this claim simply has no basis in the record.

Respondents' Petition for Deannexation included two (2) maps clearly delineating the lands sought to be deannexed from the Township of Berkeley. Da405-406. This was clear notice to Berkeley Township from day one that White Sands Beach was within the lands sought to be deannexed. Whether they want it or not, if deannexation and annexation occur the public beach will be included in the lands to be annexed, will be under the control of Seaside Park and managed for the benefit of the public.

Berkeley Township Planning Board's Resolution states: "De-annexation could result in the loss of this township amenity if the beach follows the petitioners …" (emphasis added) Da473. The Council's Resolution also refers to the "loss of the Township's precious beachfront properties." Da480. The Trial Judge also stated that the proofs showed "…. deannexation would effect a loss of that public beach." Da459. Despite these clear acknowledgements, Appellants disingenuously argue to this Court this is a novel issue not considered below[13].

As noted by the experts and the lower courts, there are several other public beaches that are even closer for the residents of mainland Berkeley to go to than White Sands Beach, including Ortley Beach, Seaside Heights and Seaside Park. Pa021, Pa028. Just as determined by Judge Addison in the first effort to deannex South Seaside Park from Berkeley Township in 1978, and demonstrated in the record below, the Appellants will continue to have closer ocean beaches than White Sands Beach and within their municipal border many, many miles of pristine shoreline in Island Beach State Park, as well as several municipal and county public beaches along the Barnegat Bay on the mainland. Pa021, Pa0128, Pa0233. The loss of ocean beach, under the circumstances, was fully considered below and is of little or no impact to the residents of Berkeley Township.

[13] This argument also presumes neighboring Seaside Park accepts annexation, therefore this issue is speculative.

CONCLUSION

For the foregoing reasons, certification should be denied.

Respectfully submitted,
O'MALLEY SURMAN & MICHELINI
Attorneys for Plaintiffs/Respondents
By: */s/ Joseph Michelini*
JOSEPH MICHELINI, ESQ

Dated: August 1, 2024