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

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

Dear Judge of the Superior Court of New Jersey:

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

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

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

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

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

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

Article VIII, Section II, paragraph 2 of the Constitution of the State of New Jersey, the “Appropriations Clause”, holds that “[n]o general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

s/ Michael L. Testa, Jr.

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