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And Michael Smith

SUPREME COURT OF NEW JERSEY
M-1291 September Term 2019
Docket No. 084731

NEW JERSEY REPUBLICAN STATE
COMMITTEE a/k/a NJGOP, et als.

Plaintiffs

BRIEF FOR AMICUS CURIAE
LIBERTY AND PROSPERITY 1776
AND MICHAEL SMITH

vs.

PHILIP D. MURPHY, etc.

Defendant

PENDING BEFORE THE SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION, IN MERCER COUNTY AS DOCKET NO. MER-L-1263-20

Certified for review by the Supreme Court
on its own motion pursuant to Rule 2:12-1

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INTRODUCTION

Amici curiae LIBERTY AND PROSPERITY 1776, INC. (hereinafter referred to as "LIBERTY") is a non-profit corporation of New Jersey recognized by the IRS as a tax-exempt 501(c)(3) educational charity. It was incorporated in 2003 and has approximately 150 members, most of whom reside in or around Atlantic County, New Jersey. Its core message is:

"When we understood and respected our Constitution and founding principles of liberty, Americans brought more wealth, opportunity, and justice to more people than any other nation in history. That is the meaning of "Liberty and Prosperity", New Jersey's motto since 1776."

MICHAEL E. SMITH is a resident and taxpayer of Hamilton Township in Atlantic County, New Jersey. He is also a member and director of LIBERTY.

On July 21, 2020, LIBERTY and MICHAEL SMITH filed an action in the Law Division of Superior Court in Mercer County. That action is entitled Liberty and Prosperity 1776, Inc. vs. State of New Jersey, Philip D. Murphy, Elizabeth Maher Muoio, and Communications Workers of America, AFL-CIO. Its Docket Number is MER-L-001284-20. A copy of Plaintiffs' complaint is attached as Attachment A. Said action seeks *inter alia* the following relief:

FIRST COUNT: Declare that the so-called "New Jersey COVID-10 Emergency Bond Act" enacted on July 16, 2020 is null and void until such time as it is submitted to and approved by the people of New Jersey at a general election pursuant to Article VIII, Section II of the New Jersey Constitution.

SECOND COUNT: Enjoin and restrain STATE OF NEW JERSEY Defendants from spending any moneys in either the adjusted 15 month Fiscal Year 2020 (ending on September 30, 2020), or the adjusted 9 month Fiscal Year 2021 (ending June 30, 2020), which exceed the amount reasonably expected to be received by the State during each of those adjusted fiscal years.

THIRD COUNT: Declare that the "No Layoff" Memorandum of Agreement (MOA) made by and between the STATE OF NEW JERSEY and Defendant COMMUNICATIONS WORKERS OF AMERICA on or about June 23, 2020 is NOT an enforceable agreement unless STATE OF NEW JERSEY has sufficient revenue to meet its obligations without borrowing, unless voters approve such borrowing.

ARGUMENT

I. THE CONSTITUTIONAL REQUIREMENT OF VOTER APPROVAL OF STATE GOVERNMENT DEBT IS AS IMPORTANT TODAY IN REDUCING THE RISK OF SYSTEMIC CORRUPTION AND UNSUSTAINABLE STATE GOVERNMENT DEBT AS IT WAS IN 1844.

In 1844, New Jersey adopted a new state constitution that required voter approval of all significant new state government debt. One of the delegates to that State Constitutional Convention was the remarkable and sophisticated visionary, Dr. Jonathan Pitney, who created Atlantic City ten years later.

Most other states adopted similar restrictions at this time. That provision, with minor modifications, was kept in the 1947 State Constitution as Article VIII, Section II.

This provision was added to our State Constitution and those of ten of the other twenty-five states in response to the economic disaster that began with the “Panic of 1837”. The “Panic of 1837” was a series of bank failures. It triggered a six year nationwide economic depression, and years of state tax increases to payoff massive state government debts. (“The Fiscal Provisions of American State Constitutions”, undated paper by Columbia Law Professor Richard Briffault at page 2).

According to Professor Briffault, many of these banks failed when state governments were “unable to pay their loans” because “many infrastructure projects failed to generate projected revenues”. Nine states “defaulted on interest payments and four repudiated all or part of their debts”. There was

also a “resulting wave of tax increases to pay off the state debts blithely assumed in prior years. . .” Briffault, supra at 2.

Economic History Professor John J. Wallis observed that in 1841, the 26 states then in the United States had an aggregate debt \$198 million, while the total federal government debt that year was \$5.25 million. (See “The Concept of Systematic Corruption in American Political and Economic History”, John Joseph Wallis, National Bureau of Economic Research (December 2004) page 25 as to state debt, “Historical Debt Outstanding – Annual 1790 – 1849” <https://www.treasurydirect.gov> (2020) as to federal government debt.)

These years of widespread failure, poverty, and hunger in a nation that had previously known success and prosperity had a profound emotional impact on America that lasted for years. This was captured by the popular song “Hard Times Come Again No More”, written by Stephen Foster ten years later.

Professor Wallis claimed that this unsustainable state government debt was created by “systematic corruption” in most state governments at that time.

According to Wallis, elected state government officials had enormous power to grant monopoly privileges, corporate charters, and loans to whichever selected business owners they chose. At the same time, business owners could and did use their resources to elect and reward politicians who favored them over competitors in getting these favors. (Wallis, supra at 30-31)

During the 1840’s, New Jersey and most states adopted new state constitutions or constitutional provisions to address the twin problems of

systemic corruption and unsustainable debt. Professor John J. Wallis found their solutions “simple” and “ingenious”.

“First, states eliminated the pressure to create special corporate privileges by enacting constitutional provisions requiring legislatures to pass general incorporation laws allowing unlimited entry into corporate status via an administrative procedure. Second, states passed constitutional provisions requiring that all state borrowing required a bond referendum mandating that the higher taxes necessary to service the bonds be approved by voters before the bonds were issued. Third, most states forbade state and local investment in private corporations”. Wallis, supra at Page 31.

By 1902, New Jersey had eliminated its bonded debt and abolished its state property tax. (Wallis, supra, at Footnote 65, Page 50)

New Jersey did not have a state sales tax until 1963. It did not have a state income tax until 1976. It had the lowest motor fuels taxes in America until 2017.

- II. THE “NEW JERSEY COVID-19 EMERGENCY BOND ACT” PURPORTS TO CREATE, WITHOUT VOTER APPROVAL, THE BIGGEST DEBT INCREASE IN NEW JERSEY HISTORY, SECURE IT WITH A MANDATORY STATE PROPERTY TAX THAT IS A FIRST MORTGAGE ON EVERY PARCEL OF REAL ESTATE IN NEW JERSEY, AND ADD IT TO MORE THAN \$200 BILLION OF “CONTRACT DEBT” WHICH IS ALREADY UNSUSTAINABLE.

In 1951, State Legislature attempted to borrow money without voter approval by creating and using a state government “authority” as a conduit. It created an “independent” “New Jersey Building Authority”. This “authority” was authorized to borrow large sums of money to build government buildings without voter approval. The state would then repay those loans by paying rent through long term leases with the Authority. This Court rejected that effort as a violation of the Voter Approval of Debt section of the State Constitution in McCutcheon vs. State Building Authority 13 NJ 46 (1953).

This court's deference to voters on state public debt issues ended in 1968. Since then, this Court has consistently permitted State Government use such authorities and other "evasive techniques"* or "backdoor financing"* to borrow money without voter approval. * (Terms used by *Briffault* in first paragraph at Page 4)

In 1968, this court in Clayton vs. Kervick 52 NJ 516 (1968) allowed the state to create a state Educational Facilities Authority to borrow money for new college facilities without voter approval. Clayton held that voter approval was not needed because (a) the state was not legally required to repay the debt, and (b) the Authority had an independent source of income to pay back the loans, namely tuition and dormitory rent collected from students.

In 1971, this Court in Holster vs. Passaic County College, 59 NJ 60 (1971) let the Legislature make long term contracts to pay large sums of money to county governments, without voter approval, to finance new community college buildings.

In 1971, this Court in Bulman vs. McCrane, 64 NJ 105 (1973) allowed the state legislature to acquire a building on credit through a 25 year lease-purchase agreement without voter approval—essentially the same arrangement that had been rejected by McCutcheon, supra, in 1953.

In 1982, this Court in Enourato vs. N.J. Building Authority 90 NJ 396 (1982) approved long term contracts made without voter approval. Here, state government agreed to pay all debt service obligations of \$250 million borrowed by the N.J. Building Authority to construct buildings for state government.

Enourato approved this borrowing even though the Building Authority had no independent source of income to pay back the debt, and relied entirely on future appropriations of tax moneys by future state legislatures. Enourato, supra, expressly overruled the majority opinion of the 1953 McCutcheon decision, and adopted the dissenting views of Justices Jacobs and Brennan.

In Lonegan v. State of New Jersey I, 174 NJ 435 (2002), this Court ruled that state government could borrow one billion dollars without voter approval for the sui generis purpose of building new schools previously ordered by the court in the Abbott V case. Until the enactment of the “New Jersey COVID-19 Emergency Bond Act”, this was the biggest single borrowing package enacted by New Jersey State Government with or without voter approval.

In Lonegan vs. New Jersey II 176 NJ 2 (2003), this Court broadly ruled for the first time that any debt incurred by any state government authority which was not legally guaranteed by the full faith and credit of New Jersey state government, and which could therefore be rejected and repudiated by future state legislatures, did not require voter approval.

This Court in 2003 articulated the following reasons for its decision:

“(T)he variety of functions assumed by the government since the 1800s, and the sophisticated means now used to finance those functions, make it difficult if not impossible to differentiate among acceptable and unacceptable types of twenty-first century appropriations-backed debt under a nineteenth-century paradigm. See Book v. State Office Bldg. Comm'n, 238 Ind. 120, 149 N.E.2d 273, 281 (1958) (opining that interpretation of debt limitation provision “constantly [must] be adapted to new questions and conditions which arise because of an ever-expanding economy and the progress of society”); In re Okla. Capitol Improvement Auth., 958 P.2d 759, 771 (Okla.) (observing that “the framers of Oklahoma’s debt limitation provisions cannot be presumed to have anticipated a financially sophisticated society in which goods and services are purchased ... without a pledge of the full faith and credit of the

state"), cert. denied, Fent v. Okla. Capitol Improvement Auth., 525 U.S. 874, 119 S.Ct. 174, 142 L.Ed.2d 142 (1998). Even the plaintiffs concede that the Clause does not require the State to obtain voter approval each time appropriations-backed bonds are issued. They fail, however, to draw principled distinctions between structured lease payments and revenue bonds, and the types of appropriations-backed debt they find objectionable. Lonegan II 176 NJ 2 (2003), at _____

It is puzzling that Lonegan II cited an Oklahoma case referring to New Jersey's Voter Approval of Debt Requirement as a "nineteenth-century paradigm". That requirement debated at the 1947 Constitutional Convention, and specifically included in our new State Constitution!

Events since Lonegan II have shown this Court's serious mistake in embracing "financially sophisticated" Wall Street regulators and bond rating agencies to protect the public, while dismissing as a "nineteenth-century paradigm" the fundamental right of voters to protect themselves.

The financial crisis of 2008 was one such event. For years before, "financially sophisticated" Wall Street regulators and bond rating agencies approved billions of dollars of worthless, mortgage-based securities which caused a worldwide financial collapse.

Another was the explosion of state government "contract" debt since 1968. This debt was recognized as unsustainable by former Governor John Corzine even before the 2008 financial crisis.

In his State of the State Message to the Legislature on January 8, 2008, Corzine warned:

"With \$32 billion in bonded debt, New Jersey's citizens have a higher debt burden than virtually all other states. Every man, woman, and child in New Jersey personally owes \$3,700 of that debt—about three times higher than the

national average. The first \$860 our citizens pay in State taxes doesn't go to fund school aid or public safety—it goes for interest and debt payments. . .

“The public must be put back in charge of the State's credit card. . . For nearly 200 years, our State Constitutions have explicitly barred borrowing without voter approval. Somewhere along the line, the meaning of that requirement got totally lost. The State, under both Democratic and Republican leadership, has made an end run around the voter approval requirement by issuing billions in contract debt without that approval.

“Since 1990, approximately \$24 billion in contract debt has been issued, while “voter approved” debt has stayed flat at \$3 billion—a timeframe that coincides precisely with the sharp deterioration in our State's finances. . .”

That contract debt is much bigger and more unsustainable today.

According to a summary of New Jersey's 2018 audited Comprehensive Annual Financial Report and retirement plans' reports prepared by TruthInAccounting.org, New Jersey had \$234.7 billion of public debt. Those numbers do not distinguish between “full faith and credit” debt approved by voters and other contract debt. However, those numbers can be quickly obtained through limited discovery.

This Court should also recognize that protecting New Jersey taxpayers from future tax increases is only one of several purposes of the Voter Approval of Debt Requirement.

The framers of both the 1844 and 1947 New Jersey State Constitutions knew that the most devastating effect of unsustainable state government debt in the 1830's was the failure of banks that invested in state government bonds which later became worthless.

It appears that Lonegan II never contemplated the catastrophic effects of New Jersey state government being unwilling or unable to make direct pension or health benefit payments to some 554,000 active or retired public employees. It appears that

Lonegan II never contemplated the effect that default or repudiation of “contract” debt bonds would have on the many institutional pension and retirement funds or individuals that purchase them.

It seems that a default in the payment of those obligations will be just as devastating to the state and national economy as the defaults by state governments in their bond payments which caused widespread bank failures in 1837.

Finally, this \$9.9 Borrowing is ten time larger than the debt proposed in Lonegan I, binds the full faith and credit of the state, and has the effect of a first mortgage lien on every parcel of real estate in New Jersey.

According to Section 22 of the Act:

“If at any time, funds necessary to meet the interest, redemption premium, if any, and any principal payments on outstanding bonds are insufficient or not available, there shall be assessed, levied, and collected annually in each of the municipalities of the counties of this State, a tax on the real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to meet the interest on all outstanding bonds issued hereunder and on the bonds proposed to be issued under this act”.

Defendant Governor and members of his majority party in the Legislature have decided that state government must borrow \$9.9 billion and pay that money back with interest for the next 35 years to meet what they call an “emergency” created by the COVID19 pandemic.

However, the framers of New Jersey’s State Constitution in 1844 and again in 1947 decided that only voters can decide at the November 3 general election whether state government debts should be incurred. So far, the State Defendants have offered no evidence of an emergency requiring the borrowing of \$9.9 billion before that election can be held.

III. STATE DEFENDANTS ARE ESTOPPED FROM CLAIMING A NEED TO BORROW \$2.7 BILLION FOR EXTENDED FIFTEEN MONTH EXTENDED BUDGET “YEAR” 2020 ENDING ON SEPTEMBER 30, 2020.

On April 14, 2020, Defendant STATE adopted the “COVID-19 Fiscal Mitigation Act” (P.L. 2020, c.19). That act extended the end of the 2020 State Fiscal Year from June 30, 2020 to September 30, 2020, and created a shortened nine month 2021 Fiscal Year running from October 1, 2020 to June 30, 2021. It also ordered the State Treasurer to “prepare a report on the financial condition of the State Budget” for both altered fiscal years by May 22, 2020.

On May 22, 2020, the State Treasurer issued her report. On June 30, 2020, Defendant State adopted “An Act to Amend and Supplement” the 2020 State Budget adopted the previous year. That Act is hereinafter referred to as “JULY, AUGUST, SEPTEMBER, 2020 SUPPLEMENTAL BUDGET. This new budget appropriated funds through September 30, 2020.

On June 30, 2020, the Governor and State Treasurer certified that said supplemental budget was balanced and in compliance with the New Jersey State Constitution which requires a balanced budget.

On June 30, 2020, the Governor and State Treasurer certified that they anticipated receipt of sufficient revenue to fund all appropriations made in the supplemental budget through September 30, 2020.

On June 17, 2020, Amicus Curiae LIBERTY and MICHAEL E. SMITH brought a previous action against the State of New Jersey, Governor Murphy and State Treasurer Muoio in the Superior Court of Mercer County. That case was assigned Docket No. MER-L-001089-20. A copy of Plaintiffs' complaint in that matter is attached as Attachment B.

LIBERTY and MICHAEL E. SMITH alleged in the Second Count of that Complaint that the State had made commitments not reflected in the supplemental budget to spend more money during July, August, and September, 2020 than it expected to receive. LIBERTY and SMITH alleged that the State intended to create debts" and "liabilities" during that three month extended budget period without voter approval, in violation of the New Jersey Constitution.

Plaintiffs based their allegations on public statements made by Governor Murphy. They also relied on statements in May 22, 2020 Financial Report of the State Treasurer that the payment of certain mandatory and necessary expenses to be incurred in July, August, and September of 2020, would be deferred to the next altered fiscal year.

On July 7, 2020, Plaintiffs propounded eight interrogatory questions upon the State of New Jersey and its Governor and State Treasurer. Those questions sought the production of basic documents showing projected and actual revenue received by Defendant State, moneys borrowed by the State on its line of credit, and expenses incurred by the State from July 1, 2020 to the present. A copy of those interrogatory questions is attached as Attachment C.

On June 23, 2020, the State moved to dismiss that Second Count of Plaintiff's complaint on the ground that LIBERTY and SMITH had failed "to allege facts sufficient to sustain their claim".

Judge Mary C. Jacobson of the Law Division of Superior Court in Mercer County heard oral argument on that motion on July 16, 2020. During that oral argument, the STATE OF NEW JERSEY represented to the court that the appropriate STATE officials had certified that they reasonably expected the STATE to receive "more than sufficient" funds to pay for the appropriations made in the supplemental budget through September 30, 2020. Based on those representations, Judge Jacobson dismissed the Second Count of Plaintiff's previous complaint "without prejudice" pursuant to Rule 4:6-2.

For those reasons, Defendant MURPHY and the State of New Jersey are estopped from claiming in legislation adopted that very same day, July 16, 2020, that the STATE OF NEW JERSEY needed \$2.7 billion of borrowed funds through September 30, 2020 to meet an emergency.

According to Wood vs. Borough of Wildwood Crest, 319 NJ Su 650 (App Div 1999):

"Equitable estoppel is rarely invoked against a governmental entity," County of Morris v. Fauver, 153 N.J. 80, 104 (1998) (quoting O'Malley v. Department of Energy, 109 N.J. 309, 316 (1987)), particularly when it would "prejudice essential governmental functions." Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954). Nevertheless, equitable considerations are relevant in assessing governmental conduct, Skulski v. Nolan, 68 N.J. 179, 198 (1975), and the doctrine may be invoked against a municipality "where the interests of justice, morality and common fairness clearly dictate that course." Gruber v. Mayor and Tp. Comm., 39 N.J. 1, 13 (1962).

IV. THERE IS NO OBJECTIVE EVIDENCE THAT STATE DEFENDANTS MUST SPEND \$9.9 BILLION “TO MEET AN EMERGENCY” PRIOR TO THE GENERAL ELECTION OF NOVEMBER 3, 2020.

Merriam Webster’s Collegiate Dictionary (Tenth Edition) 1994 defines “emergency” as:

“An unforeseen combination of circumstances or the resulting state that calls for immediate action. 2. An urgent need for assistance or relief”.

Black’s Law Dictionary Revised Fourth Edition (1968) defines “emergency” as;

“A sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity.”

Black’s Law Dictionary cited the Washington State case of State v. Hinkle 161 Wash 652, 297 P. 1071, 1072 (1931) for the proposition that

“Emergency in sense of constitutional provision respecting referendum does not mean expediency, convenience, or best interest”.

State v. Hinkle, supra, dealt with a peculiar Washington State constitutional provision that allowed citizens to force referendums on statutes assessing taxes to fund the day to day operations of the government, as opposed to merely limiting the state government’s ability to borrow.

Black’s Law Dictionary also gives a secondary definition:

“A relatively permanent condition of insufficiency of service or of facilities resulting in social disturbance or distress”.

However, the authority of that secondary definition is questionable. None of the three cases cited in Black’s Law Dictionary supported the second definition. Those cases were Kardasinski vs. Koford, 88 N.H. 444 (1937) Contract Cartage Co. v. Morris, D.C.Ill, 59 F.2d 437,446 (1932) and Los Angeles Dredging Co. v. City of Long Beach 210 Cal. 348 (1930).

At this point, there is no suggestion, let alone evidence, of an “emergency” need to borrow \$9.9 billion before November 3, 2020 other than the title of the Act!

While the so-called “New Jersey COVID-19 Emergency Bond Act” recited several “emergency” declarations of the Governor to limit the spread of the disease, the Act does not recite any facts pointing to an “emergency” need to borrow money before the General Election of November 3, 2020 when voters can grant or withhold their consent to borrowing the money.

Even if the Legislature did declare such an emergency, such declaration is not binding on this Court if not supported by facts.

In Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 NJ 344 (2007), this Court held that a local legislative body could not use eminent domain to take any private property simply by declaring it to be “blighted” or “in need of redevelopment”. Gallenthin, supra, held that the legislative declaration must be supported by facts.

V. THE “NO LAYOFF” MEMORANDUM OF AGREEMENT MADE BETWEEN THE STATE AND THE COMMUNICATIONS WORKERS OF AMERICA (CWA) IS NOT ENFORCEABLE IF THE STATE HAS NOT APPROPRIATED SUFFICIENT FUNDS TO PAY THE SALARIES AND OTHER BENEFITS TO STATE EMPLOYEES COVERED BY IT.

On June 23, 2020 the State of New Jersey and the CWA entered into a comprehensive “no layoff” Memorandum of Agreement (hereinafter referred to as MOA), subject to ratification by a majority of CWA members voting. A majority of CWA members later ratified that MOA.

The MOA provided *inter alia* that the State would not lay off any of the roughly 40,000 state employees represented by the CWA prior to

December 31, 2021 if a sufficient number of those employees took unpaid furlough days during the month of July, 2020.

The Third Count of the complaint filed by LIBERTY and MICHAEL E. SMITH in the Law Division in Mercer County demands judgment:

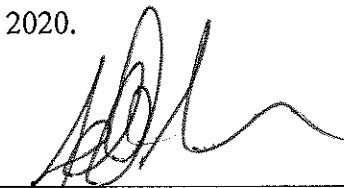
“Declaring that the MOA or Memorandum of Agreement made by and between Defendant STATE OF NEW JERSEY and Defendant COMMUNICATIONS WORKERS OF AMERICA on or about June 23, 2020 is NOT an enforceable contract or legally enforceable agreement unless Defendants (State of New Jersey, Governor Murphy, and State Treasurer Elizabeth Muiio) have sufficient revenue to meet its obligations without borrowing”.

Burgos vs. State, 222 NJ 175 (2015) at 222 held that a state statute purporting to compel the state to fund future pension obligations for state and local employees was not enforceable because

“the Debt Limitation Clause prohibited the Legislature and Governor from binding the state to an enforceable contract of this nature. . . “

Because the “No Layoff” MOA is not enforceable, a desire to fund its obligations cannot be an “emergency” justifying the borrowing of funds and/or the creation of “debts” or “obligations” with voter approval in the next General Election on November 3, 2020.

Dated: July 24, 2020



SETH GROSSMAN, Attorney for
AMICUS CURIAE
LIBERTY AND PROSPERITY 1776, INC.
AND MICHAEL E. SMITH

LIST OF ATTACHMENTS

ATTACHMENT "A": Complaint filed by Amicus Curiae on July 21, 2020 in Superior Court of NJ, Law Division, Mercer County. Caption is <u>Liberty and Prosperity 1776, Inc., et als. vs. State of New Jersey, et als.</u> Docket No. MER-L-001284-20.....	A-1 through A-11
ATTACHMENT "B": Complaint filed by Amicus Curiae on June 17, 2020 in Superior Court of NJ, Law Division, Mercer County. Caption is <u>Liberty and Prosperity 1776, Inc., et als. vs. State of New Jersey, et als.</u> Docket No. MER-L-001089-20.....	B-1 through B-8
ATTACHMENT "C": Eight interrogatory questions propounded by Amicus Curiae upon State of New Jersey in previous action filed on June 17, 2020.....	C-1 through C-4

ATTACHMENT
A

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

LIBERTY AND PROSPERITY 1776, INC.
a Non-Profit Corporation of New Jersey
and MICHAEL E. SMITH, a
citizen and taxpayer of New Jersey

MERCER COUNTY

Docket No. MER-L- 00/284-20

Plaintiff

COMPLAINT FOR DECLARATORY
JUDGMENT AND IN LIEU OF
PREROGATIVE WRIT

vs.

STATE OF NEW JERSEY, and
PHILIP D. MURPHY, in his official
Capacity as Governor of State of
New Jersey,
ELIZABETH MAHER MUOIO, in
her official capacity as Treasurer of
STATE OF NEW JERSEY, and
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, a non-profit
labor organization

Defendant(s)

LIBERTY AND PROSPERITY 1776 INC., a Non-Profit Corporation of New Jersey with principal offices located at 453 Shore Road, in Somers Point, New Jersey 08244, and MICHAEL E. SMITH, a resident and taxpayer of New Jersey, residing at 2006 Sycamore Lane, in Mays Landing, New Jersey, all in Atlantic County, by way of complaint in lieu of prerogative writ and for declaratory judgment, say:

FIRST COUNT

1. Plaintiff LIBERTY AND PROSPERITY 1776 INC. (hereinafter referred to as

"LIBERTY" is a Non-Profit Corporation of STATE OF NEW JERSEY

(hereinafter referred to as NEW JERSEY).

2. PHILIP D. MURPHY (hereinafter referred to as "GOVERNOR") is the Governor of NEW JERSEY.
3. ELIZABETH MAHER MUOIO (hereinafter referred to as "STATE TREASURER") is Treasurer of NEW JERSEY
4. NEW JERSEY (hereinafter referred to as "STATE") is a government established by a written constitution which defines and limits its powers.
5. COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (hereinafter referred to as "CWA") is a labor organization doing business in New Jersey.
6. On or about, July 16, 2020, Defendant STATE purported to adopt a Law entitled the "New Jersey COVID-19 Emergency Bond Act". Said Law is also known as P.L. 2020, c. 60. Prior to adoption, said Law was known as Assembly Bill 4175 and Senate Bill 2697. Said Law is also known as "An Act authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the aggregate principal amount of up to \$9,900,000,000 for the purpose of responding to the fiscal exigencies caused by the COVID-19 Pandemic, authorizing the Governor to apply for and receive federal stimulus loans for the benefit of the State; authorizing the issuance of refunding bonds; and providing the ways and means to pay and discharge the principal of and interest on the bonds".

Said Law is hereinafter referred to as the "\$9.9 BILLION BORROWING LAW".

7. The \$9.9 BILLION BORROWING LAW purports to authorize and direct the Defendant STATE to issue bonds

"either to the federal government pursuant to any stimulus law. . . or at a public or private sale. . . in the aggregate principal amount of up to \$2,700,000,000 billion for the period that began July 1, 2019 and ends September 30, 2020, and in the aggregate principal amount of up to \$7,200,000,000 billion for the period that begins October 1, 2020 and ends

June 30, 2021, for a total combined aggregate principal amount of up to \$9,900,000,000.

8. The \$9.9 BILLION BORROWING LAW states that this borrowing is authorized "to address the State's financial problems that have arisen as a consequence of the COVID-19 Pandemic".
9. The \$9.9 BILLION BORROWING LAW provides that said bonds shall mature not later than the 35th year from the date of their issue.
10. The \$9.9 BILLION BORROWING LAW provides that
"If at any time, funds necessary to meet the interest, redemption premium, if any, and any principal payments on outstanding bonds are insufficient or not available, there shall be assessed, levied, and collected annually in each of the municipalities of the counties of this State, a tax on the real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to meet the interest on all outstanding bonds issued hereunder and on the bonds proposed to be issued under this act".
11. The \$9.9 BILLION BORROWING LAW purports to take effect immediately, and does not provide for submission to the people for approval, pursuant to Article VIII, Section II of the New Jersey State Constitution.
12. Article VIII, Section II, Paragraph 3 (hereinafter referred to as the "Debt Limitation Provision) of the New Jersey State Constitution states:
"The Legislature shall not, in any manner, create in any fiscal year. . . debts. . . or liabilities of the State. . . unless. . . authorized by a law. . . Except as hereinafter provided, no such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. . . This paragraph shall not. . . apply to the creation of any debts or liabilities. . . to meet an emergency caused by disaster or act of God."
13. Defendants will not and do not intend to use or apply the debts and liabilities sought to be created by the \$9.9 BILLION BORROWING LAW to "meet an emergency caused by disaster or act of God".

14. Defendants at all time had, and continue to have many options to raise revenues and/or reduce expenditures reasonably and sufficiently to meet the needs of the government and people without borrowing all or part of the above described \$9.9 Billion prior to the next General Election on November 3, 2020 when the people of New Jersey can give or withhold their consent as is their right under the New Jersey State Constitution.

WHEREFORE, Plaintiffs demand judgment:

A. Declaring that the \$9.9 BILLION BORROWING LAW be and is null and void in whole or in part until such time as it is submitted to and approved by the people at a general election pursuant to Article VIII, Section II of the New Jersey Constitution, and approved by a majority of the legally qualified voters of the State voting thereon.

B. For such other and further relief as the court finds just and appropriate.

C. For costs.

SECOND COUNT

1. All allegations contained in the First Count are repeated and deemed incorporated herein in lieu of repetition.
2. Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution states in part:

"All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. . . No 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, as certified by the Governor."

3. On or about June 30, 2019, NEW JERSEY adopted a yearly budget appropriating \$38.7 billion to be spent during the Fiscal Year ending June 30, 2020, and anticipating the receipt of tax and other revenues in an equal amount.
4. Defendants knew or should have known between March 16, 2020 and March 25, 2020, that the GOVERNOR'S executive orders shutting down every "non-essential" business in New Jersey was certain to cause "precipitous declines" in revenues in Fiscal Year 2020 and Fiscal Year 2021.
5. The GOVERNOR and the Legislature have ample time and means to reduce spending to match the above described reductions in state revenues or raise taxes so that state government operates with a balanced budget until the General Election on November 3, 2020.
6. On or about April 30, 2020, the GOVERNOR publicly stated that NEW JERSEY needed \$20 billion to \$30 billion in assistance from the Federal government to "keep firefighters, teachers, police, EMS, on the payroll serving the communities in their hour of need".
7. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that NEW JERSEY expected \$2.7 billion in revenue losses for the 2020 Fiscal Year over what was projected in late February of 2020. However, this was only \$1.8 billion less than the amount projected in the 2020 Fiscal Year budget adopted on June 30, 2019.
8. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that they had not yet begun the process of making any

reductions in the number of state government employees on payroll or in their salaries or benefits.

9. It appears from said public statements that both the GOVERNOR and the STATE TREASURER have failed to cut state government spending to match their own estimates of the decline NEW JERSEY'S anticipated tax revenues. As a result, it appears that Defendants are knowingly spending money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period" in violation of Article VIII Section II of the New Jersey State Constitution.
10. If Defendants knowingly spent money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period", said Defendants are creating in July, August, and September of extended Fiscal Year 2020 "a debt, debts, liability or liabilities of the State, which together with any previous debts or liabilities" exceeds one percent of the \$38.7 billion appropriated in the budget appropriation law for this fiscal year. This would be a clear and direct violation of Article VIII Section II of the New Jersey State Constitution.
11. On April 13, 2020, Defendant STATE enacted P.L. 2020, c.19 entitled "The COVID-19 Fiscal Mitigation Act", hereinafter referred to as "2020 BUDGET EXTENSION ACT".
12. The 2020 BUDGET EXTENSION ACT added three months to the 2020 Budget Year, and eliminated those three months from the 2021 State Budget Year that would normally run from July 1, 2020 to June 30, 2021.

13. Section 3a of the 2020 BUDGET EXTENSION ACT extended the 2020 Budget Year by delaying the end of that "Year" from June 30, 2020 to September 30, 2020.
14. Section 3a of the 2020 BUDGET EXTENSION ACT created a new, shortened 2021 Budget "Year" that is to run nine months from October 1, 2020 to June 30, 2021.
15. Section 3b of the 2020 BUDGET EXTENSION ACT provided that "any additional spending required to support the operations of the State from July 1, 2020 through September 30, 2020, shall be made through the enactment of a general law that amends or provides for a supplemental appropriation to P.L. 2019 c150. (that is the original 12 month 2020 Budget)"
16. On June 30, 2020, Defendant STATE enacted P.L. 2020, c43 a general law that amended the 12 month 2020 Budget by authorizing additional spending required to support the operations of the State for July, August, and September, 2020. That general law is entitled "An Act to Amend and Supplement 'An Act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 2020 and regulating the disbursement thereof'. It is hereinafter referred to as THE "JULY, AUGUST & SEPTEMBER, 2020 BUDGET ACT".
17. Defendants STATE, STATE TREASURER, and GOVERNOR certified and represented that the JULY, AUGUST & SEPTEMBER 2020 BUDGET ACT was a balanced budget, that complied with the New Jersey State Constitution, and did not create any debts or liabilities beyond the extended 2020 Budget Year ending September 30, 2020.

18. On July 16, 2020, Defendants represented to the Presiding Judge of the Superior Court, Law Division in Mercer County at a hearing in a previous action entitled Liberty and Prosperity 1776, Inc. et als. vs. State of New Jersey, et als. Docket No. MER-L-1089-20 that the JULY AUGUST & SEPTEMBER 2020 BUDGET ACT was a balanced budget that did not create debts or liabilities beyond September 30, 2020.

WHEREFORE Plaintiffs demand judgment

A. Enjoining and restraining Defendants from spending any moneys in either Fiscal Year 2020 or Fiscal Year 2021 which exceed the amount reasonably expected to be received by the State during those years, as certified by an appropriate official of New Jersey.

B. For such other and further relief the court finds just and appropriate under the circumstances.

C. For costs.

THIRD COUNT

1. CWA is a national labor union that represents 700,000 workers in the United States, Canada, and Puerto Rico. This includes 300,000 telephone and cable TV services workers, 140,000 public, health care, and education workers, 50,000 flight attendants, 45,000 manufacturing and industrial workers, and "over 34,000 media workers at wire services, newspapers, magazines, labor information services, broadcast news, public service, and dot com companies.

2. CWA at all times relevant to this complaint is and was the "majority representative" and "exclusive representative" of roughly 40,000 employees of defendant STATE pursuant to N.J.S.A. 34:13A-5.3, et. seq.
3. On or about June 2, 2020, Defendant CWA and STATE engaged in negotiations "to reduce STATE's salary costs during this economic crisis".
4. On or about June 23, 2020, Defendant STATE reached an agreement with Defendant CWA to modify terms of the 2019-2023 collective bargaining agreement made by said parties. The terms of that agreement were reduced to a written eight page Memorandum of Agreement (hereinafter referred to as "MOA") and made subject to ratification by the members of CWA.
5. Shortly after June 23, 2020, the MOA was ratified by sufficient members of the CWA.
6. The MOA includes the following terms:
 - a. The 2% across-the-board increase to annual base salaries scheduled to begin on July 1, 2020 will be deferred and paid the first full pay period after December 1, 2021.
 - b. The 2% across-the-board increase to annual base salaries scheduled to begin after April 1, 2022 and June 1, 2022 is deferred to July 1, 2022.
 - c. Approximately 25,000 employees will take ten unpaid furlough days between June 29, 2020 and July 31, 2020 for a total of 250,000 unpaid furlough days.
 - d. The State would pay all pension and retirement pension benefits for unpaid furlough days.
 - e. "In consideration for the substantial personnel savings achieved through the raise deferral ad furlough programs. . . the State agrees that there shall be no layoffs of bargaining unit employees through December 31, 2021."

7. On June 25, 2020, CWA posted on its official website and E-newsletter that this "No Layoff Agreement" is the "best in the country" and allows workers to collect "enhanced unemployment benefits under the CARES Act" during their furloughs.
8. Defendants GOVERNOR, STATE TREASURER, and/or STATE knew or should have known at the time they agreed to the terms of the MOA that the STATE would not receive sufficient revenue from taxes and other sources to meet the STATE's obligations to fully employ all employees covered or protected by the MOA until December 31, 2021.
9. Defendants GOVERNOR, STATE TREASURER, and/or STATE knew or should have known at the time they agreed to the terms of the MOA that the STATE could not and would not meet its obligations to pay the salaries and benefits of all state employees and/or CWA members covered and protected by said MOA without layoffs until December 31, 2021 unless it borrowed some or all of the funds to be borrowed pursuant to the \$9.9 BILLION BORROWING LAW.
10. The MOA is NOT enforceable if the STATE does not have sufficient revenue to pay the salaries and benefits of the State Employees and/or CWA Members described in the MOA.
11. If Defendant STATE is unable to meet its obligations to its employees covered and protected by the MOA without money borrowed through the \$9.9 BILLION BORROWING LAW, then said MOA creates "debts" and "liabilities" of Defendant STATE in a future budget year.
12. The MOA was not submitted to the people for approval pursuant to Article VIII, Section II of the New Jersey State Constitution.

13. The MOA is not enforceable unless or until it is submitted to the people for approval at a general election, and approved by a majority of the legally qualified voters of the State voting thereon.

14. Neither the CWA nor any of its members or employees of Defendant STATE have any legally enforceable right to compel Defendant State to raise taxes, borrow or appropriate funds to comply with the terms of the MOA.

15. Borrowing funds, or creating debts or liabilities to meet the STATE's obligations under the MOA does NOT constitute "an emergency caused by disaster or act of God".

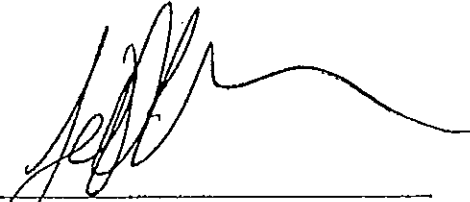
WHEREFORE Plaintiffs Demand Judgment:

A. Declaring that the MOA or Memorandum of Agreement made by and between Defendant STATE OF NEW JERSEY and Defendant COMMUNICATIONS WORKERS OF AMERICA on or about June 23, 2020 is NOT an enforceable contract or legally enforceable agreement unless Defendants have sufficient revenue to meet its obligations without borrowing.

B. For such other and further relief as the court may find just and appropriate under the circumstances.

C. For costs.

Dated: July 11, 2020



SETH GROSSMAN,
Attorney for Plaintiffs

pre-complaint-prerogwrit-liberty-bond-cwa-2020-0720

ATTACHMENT
B

SETH GROSSMAN
Attorney ID#: 013331975
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453 Shore Road
Somers Point, NJ 08244
Tel. 609-927-7333
Attorney for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

LIBERTY AND PROSPERITY 1776, INC.
a Non-Profit Corporation of New Jersey
and MICHAEL E. SMITH, a
citizen and taxpayer of New Jersey

MERCER COUNTY

Docket No.

Plaintiff

COMPLAINT FOR DECLARATORY
JUDGMENT AND IN LIEU OF
PREROGATIVE WRIT

vs.

STATE OF NEW JERSEY, and
PHILIP D. MURPHY, in his official
Capacity as Governor of State of
New Jersey, and
ELIZABETH MAHER MUOIO, in
her official capacity as Treasurer of
STATE OF NEW JERSEY

Defendant(s)

LIBERTY AND PROSPERITY 1776 INC., a Non-Profit Corporation of New Jersey with principal offices located at 453 Shore Road, in Somers Point, New Jersey 08244, and MICHAEL E. SMITH, a resident and taxpayer of New Jersey, residing at 2006 Sycamore Lane, in Mays Landing, New Jersey, all in Atlantic County, by way of complaint in lieu of prerogative writ and for declaratory judgment, say:

FIRST COUNT

1. Plaintiff LIBERTY AND PROSPERITY 1776 INC. (hereinafter referred to as "LIBERTY" is a Non-Profit Corporation of STATE OF NEW JERSEY (hereinafter referred to as NEW JERSEY).

2. PHILIP D. MURPHY (hereinafter referred to as "THE GOVERNOR) is the Governor of NEW JERSEY.
3. ELIZABETH MAHER MUOIO (hereinafter referred to as "STATE TREASURER" is Treasurer of NEW JERSEY
4. NEW JERSEY is a government established by a written constitution which defines and limits its powers.
5. On June 4, 2020, 52 of the 80 members of the General Assembly of NEW JERSEY voted to approve "Assembly Bill No. 4175", also known as the "New Jersey COVID-19 Emergency Bond Act" hereinafter referred to as the "BOND BILL".
6. On June 4, 2020, the BOND BILL was received in the Senate of NEW JERSEY, and referred to its Budget and Appropriations Committee.
7. At various and diverse occasions, THE GOVERNOR publicly voiced his support for the BOND BILL, and indicated he would sign it if approved by the STATE SENATE.
8. The General Assembly, in approving the BOND BILL found and declared the following facts effective as of May 28, 2020, the date said bill was introduced and referred to the Assembly Budget Committee.
 - a. On March 16, 2020, the GOVERNOR issued Executive Order 104 which *inter alia* ordered that all K-12 schools be closed (with limited exceptions), that all universities and colleges in the State cease in-person instruction, that all casinos, racetracks, in-person sports wagering, gyms and fitness centers and entertainment centers be closed, and that all non-

essential businesses cease operations from 8pm to 5am, and when open adhere to limited occupancy restrictions, and that all restaurants and bars close except for delivery and take-out services.

- b. On March 19, the GOVERNOR issued Executive Order No. 106 which among other things ordered that no lessee, tenant, homeowner or other person be removed from a residential property by foreclosure or eviction, and that enforcement of all judgments for possession, warrants for removal, and writs of possession be stayed while said order remained in effect, unless the court hearing the matter determines that enforcement was necessary "in the interests of justice".
- c. On March 21, 2020, the GOVERNOR issued Executive Order No. 108, which superseded Executive Order 104, and ordered for the most part that all New Jersey residents remain home or at their place of residence except for certain very limited exceptions, and that all non-essential retail businesses be closed to the public.
- d. On March 23, 2020, the GOVERNOR issued Executive Order No. 109 suspending all elective surgeries as of March 27, 2020.
- e. On March 25, 2020, the GOVERNOR issued Executive Order No. 110 which ordered all child care centers to close, except those certified to care for the children of "essential persons".
- f. NEW JERSEY since May 28, 2020 expected precipitous declines in revenues in Fiscal Year 2020 and Fiscal Year 2021, which include significant reductions in gross income tax revenues, corporation business

tax revenues, and sales and use tax revenues to the required business shutdowns; motor fuels taxes due to mandated "stay-at-home orders; casino-related taxes due to casino closures; and lottery sales which have already started to decline."

g. NEW JERSEY since May 28, 2020 expected that it will need to significantly revise the estimated revenues and projected appropriations for Fiscal Years 2020 and 21 contained in the GOVERNOR's Budget Message for Fiscal Year 2021 on February 25, 2020.

9. The Legislature did NOT find or declare any facts indicating that the GOVERNOR had taken any measures to reduce spending in response to said estimated precipitous declines in revenue.

10. After finding and declaring said facts, the BOND BILL authorized and directed that the following action by NEW JERSEY:

- (a) Bonds of NEW JERSEY are authorized in the aggregate principal amount of \$5 billion.
- (b) In addition to said bonds, the GOVERNOR or STATE TREASURER with the consent of the GOVERNOR is authorized to borrow from the federal government for the benefit of NEW JERSEY "in such amounts and on such terms as the federal government sets forth in or pursuant to any federal stimulus law".

i.

- (c) In addition to said bonds, the GOVERNOR or STATE TREASURER with the consent of the GOVERNOR is authorized to borrow from the federal government for the benefit of NEW JERSEY "in such amounts and on such terms as the federal government sets forth in or pursuant to any federal stimulus law" for the purpose of "providing financial assistance to local government units. . . "
- (d) Bonds issued in accordance with the provisions of this act shall be the direct obligation of NEW JERSEY, and the faith and credit of NEW JERSEY are pledged for the payment of the interest and redemption

premium, if any, thereon when due, and for the payment of the principal thereof at maturity.

- (e) Bonds . . . shall mature. . . not later than the 35th year from the date of issue.
- (f) Should the State Treasurer, by December 31 of any year, deem it necessary because of the insufficiency of funds collected from the sources of revenues as provided in this act, to meet the interest and principal payment for the year after the ensuing year, then the STATE TREASURER shall certify to the Director of the Division of Budget and Accounting in the Department of the Treasury the amount necessary to be raised by taxation for those purposes. The Director shall, on or before March 1 following calculate the amount in dollars to be assessed, levied, and collected in each county as set forth. . . The director shall certify the amount to the county board of taxation and treasurer of each county. The county board of taxation shall include the proper amount in the current tax levy of the several taxing districts of the county in proportion to the ratables as ascertained for the current year.
- (g) The last paragraph of the BOND BILL states that said bill shall take effect immediately upon passage. It does NOT provide for submission to the people at a general election as required by Article VIII, Section II of the New Jersey State Constitution.

11. The BOND BILL does not recite any facts showing that said sum of \$5

billion together with any unspecified funds to be borrowed from the federal government "pursuant to any stimulus law" would "meet an emergency caused by disaster or act of God".

WHEREFORE, Plaintiffs demand judgment declaring that the BOND BILL is null and void on its face, for failing to provide for submission to the people at a general election, and failing to state that said law shall not take effect until it is approved by a majority of the legally qualified voters of NEW JERSEY voting thereon.

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SECOND COUNT

1. All allegations contained in the First Count are repeated and deemed incorporated herein in lieu of repetition.
2. Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution states in part:


“All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. . . No 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, as certified by the Governor.”
3. On or about June 30, 2019, NEW JERSEY adopted a yearly budget appropriating \$38.7 billion to be spent during the Fiscal Year ending June 30, 2020, and anticipating the receipt of tax and other revenues in an equal amount.
4. Defendants knew or should have known between March 16, 2020 and March 25, 2020, that the GOVERNOR’S executive orders shutting down every “non-essential” business in New Jersey was certain to cause “precipitous declines” in revenues in Fiscal Year 2020 and Fiscal Year 2021.
5. The GOVERNOR and the Legislature have ample time and means to reduce spending to match the above described reductions in state revenues.
6. On or about April 30, 2020, the GOVERNOR publicly stated that NEW JERSEY needed \$20 billion to \$30 billion in assistance from the Federal government to “keep firefighters, teachers, police, EMS, on the payroll serving the communities in their hour of need”.

7. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that NEW JERSEY expected \$2.7 billion in revenue losses for the 2020 Fiscal Year over what was projected in late February of 2020. However, this was only \$1.8 billion less than the amount projected in the 2020 Fiscal Year budget adopted on June 30, 2019.
8. On or about May 22, 2020, the GOVERNOR and STATE TREASURER publicly stated that they had not yet begun the process of making any reductions in the number of state government employees on payroll or in their salaries or benefits.
9. It appears from said public statements that both the GOVERNOR and the STATE TREASURER have failed to cut state government spending to match their own estimates of the decline NEW JERSEY'S anticipated tax revenues. As a result, it appears that Defendants are knowingly spending money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period" in violation of Article VIII Section II of the New Jersey State Constitution.
10. By knowingly spending money in excess of "the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period", Defendants are creating in Fiscal Year 2020 "a debt, debts, liability or liabilities of the State, which together with any previous debts or liabilities" exceeds one percent of the \$38.7 billion appropriated in the budget appropriation law for this fiscal year. This is in

clear and direct violation of Article VIII Section II of the New Jersey State Constitution.

WHEREFORE Plaintiffs demand judgment enjoining and restraining Defendants from spending any moneys in either Fiscal Year 2020 or Fiscal Year 2021 which exceed the amount reasonably expected to be received by the State during those years, as certified by an appropriate official of New Jersey.

Dated: June 16, 2020



SETH GROSSMAN,
Attorney for Plaintiffs

Complaint-prerogwrit-liberty-smith-2020-0615

B

ATTACHMENT

C

SETH GROSSMAN
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453 Shore Road
Somers Point, NJ 08244
Tel. 609-927-7333
Attorney for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

LIBERTY AND PROSPERITY 1776, INC.

Plaintiffs

DOCKET NO: MER-L-001089-20

vs.

STATE OF NEW JERSEY, et als.

INITIAL INTERROGATORIES

Defendant

TO: Defendants STATE OF NEW JERSEY,
PHILIP D. MURPHY, Governor, and
ELIZABETH MAHER MUOIO,
Treasurer of New Jersey
c/o their attorney
Jean P. Reilly, Assistant Attorney General
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 106
Trenton, NJ 08625

PLEASE TAKE NOTICE that Plaintiffs hereby demand(s) that you cause complete and proper answers, under oath or certification, to be made to the following Interrogatories within the time provided by the Rules of Court, or as set forth in any Case Management Order to be entered in this matter, and in the manner prescribed by the New Jersey Rules of Civil Practice and Procedure. If you do not have exact information, give approximate information and state that same is approximate.

TAKE FURTHER NOTICE that these are continuing interrogatories so as to require immediate Supplemental Answers if you or your attorneys or other representatives obtain further information between the time you certify and serve your answers hereto, and the time of trial.

Interrogatory questions #1 through # 8 are attached hereto.

Dated: July 7, 2020


SETH GROSSMAN
ATTORNEYS FOR PLAINTIFFS

2020-0705-LP-NJ-interrogs

C-1

1. Did Defendant State of New Jersey or any of its officers and/or employees create or cause to be created any summary of all revenues collected by the State of New Jersey on a monthly or quarterly basis for any month or quarter for the time frame beginning July 1, 2018 and continuing to the present?

YES _____ NO _____

2. If you answered "yes" to the previous question, please attach to these interrogatories (or supply in a separate paper or pdf or Xcel or csv electronic document) a true copy of each said document showing the total revenues received during each month and quarter, broken down into the following categories for each month and budget quarter from July 1, 2018, through June 30, 2020, for the following breakdown of revenues received:

a. Major Revenues

- i. Gross Income Tax
- ii. Sales Tax Dedication to Property Tax Relief Fund
- iii. Sales Tax
- iv. Sales Tax Dedication-General Fund
- v. Corporation Business Revenues
- vi. Motor Fuels Revenues
- vii. Motor Vehicle Fees
- viii. Transfer Inheritance Revenues
- ix. Casino Revenue Fund Revenues
- x. Insurance Premium Revenues
- xi. Cigarette Revenues
- xii. Petroleum Products Gross Receipts Revenues
- xiii. Petroleum Products Gross Receipts-Capital Reserves Revenues
- xiv. Corporation Banks and Financial Institutions Revenues
- xv. Alcoholic Beverage Excise Tax
- xvi. Realty Transfer Revenue
- xvii. Tobacco Products Wholesale Sales Revenue
- xviii. Public Utility Excise (Reform) Revenue
- xix. Marijuana Tax

TOTAL MAJOR REVENUES:

b. Miscellaneous Taxes, Fees, Revenues, and Transfers:

- i. Unclaimed State Lottery Prizes
- ii. State Owned Real Property Trust Fund
- iii. Other Energy Taxes
- iv. Assessment on Real Property Greater Than \$1 Million
- v. Medicaid Uncompensated Care
- vi. "Good Driver" Driver License Surcharges
- vii. Hotel/Motel Occupancy Tax
- viii. Fringe Benefit Recoveries
- ix. Interfund Transfers
- x. Casino Control Revenue
- xi. Gubernatorial Elections Funds
- xii. Other Miscellaneous Revenues:

TOTAL MISCELLANEOUS TAXES, FEES, REVENUES,
TRANSFERSTOTAL STATE REVENUES:

3. Did Defendant State of New Jersey or any of its officers, agents, or employees prepare any worksheets showing which of any of the above described categories of revenues were expected to decline between March 1, 2020 and June 30, 2021, how much revenues in each category were expected to decline, and a description of each factor relied upon by said officers, agents and/or employees of the State of New Jersey in estimating the amount of such decline, before Defendant State Treasurer Elizabeth Maher-Muolo prepared and submitted her "Report On The Financial Condition of the State Budget For Fiscal Years 2020 and 2021" dated May 22, 2020?

YES _____ NO _____

4. If you answered "Yes" to preceding question, please attach to these interrogatories (or supply in a separate paper or pdf or Xcel or csv electronic document) a true copy of each said document showing the total revenues estimated to be received during each period, broken down into the following categories for each month and budget quarter from March 1, 2020 through June 30, 2021, for the above described breakdown of revenues.

5. Did Defendant State of New Jersey maintain any short term loan account, make use of short term loans, or maintain or make use of a line of credit, or rolling line of credit to pay expenses between July 1, 2018 and the present?

YES _____ NO _____

6. If you answered "yes" to the previous question, please attach to these interrogatories (or supply in a separate paper or pdf or Xcel or csv electronic document) a true copy of each of the following documents:

- a. Each document establishing and/or setting forth the terms of or governing each such short term loan, line of credit, or rolling line of credit account.
- b. Each document setting forth the dates and amounts of (i) any and all funds drawn or borrowed against each such account, (ii) interest charged and paid, (iii) principal repaid, and the outstanding loan balance of each such account at the end of every month, quarter, and/or year or other regular accounting period from the period ending June 30, 2018 to the present.

7. Did the defendant State of New Jersey, or any of its officers, agents, or employees between April 1, 2020 and the present prepare any reports, summaries, or worksheets setting forth the actual and/or projected/estimated employer costs of salaries, wages, benefits, payroll taxes and expenses, and/or pension costs paid or to be paid by the State of New Jersey for those state employees represented by Defendant Communications Workers of America (CWA) as their bargaining agent or representative for any week, month, quarter, year, or other period between July 1, 2020 and December 31, 2021?

Yes___ No___

8. If you answered "yes" to the previous question, please attach to these interrogatories (or supply in a separate paper or pdf or Xcel or csv electronic document) a true copy of each of the following documents:
- a. All such reports, summaries, or worksheets prepared showing actual and/or projected salaries without any agreement between the Defendant State of New Jersey and Defendant Communication Workers of America (CWA).
 - b. All such reports, summaries, or worksheets prepared showing actual and/or projected salaries with certain workers taking furlough days during the month of July, 2020, pursuant to the June, 2020 Memorandum of Agreement between the Defendant State of New Jersey and Defendant Communication Workers of America (CWA).
 - c. All such reports, summaries, or worksheets prepared showing actual and/or projected salaries with 2% raises being deferred pursuant to the June, 2020 Memorandum of Agreement between the Defendant State of New Jersey and Defendant Communication Workers of America (CWA).
 - d. Reports estimating or projecting any reductions of employer costs between June 1, 2020 and December 31, 2021 caused or to be caused by natural attrition and/or retirements of employees during that time frame.