
Superior Court of New Jersey

Appellate Division

Docket No. A-000487-22

LIBERTY & PROSPERITY 1776, INC., a non-profit corporation of New Jersey, JAMES MCLEAN, a taxpayer of Atlantic City and Atlantic County, New Jersey and KAREN BOREK and JANIS HETRICK, residents and taxpayers of Atlantic County, New Jersey,	:	CIVIL ACTION
	:	
	:	ON APPEAL FROM A
	:	FINAL JUDGMENT OF
	:	THE SUPERIOR COURT
	:	OF NEW JERSEY,
	:	LAW DIVISION,
	:	ATLANTIC COUNTY
	:	
<i>Plaintiffs-Respondents,</i>	:	DOCKET NO. ATL-01-000170-22
	:	
vs.	:	Sat Below:
	:	
THE STATE OF NEW JERSEY and PHILIP D. MURPHY in his capacity as Governor of the State of New Jersey,	:	HON. MICHAEL J. BLEE, A.J.S.C.
	:	
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	:	
<i>Defendants-Appellants.</i>	:	

BRIEF ON BEHALF OF PLAINTIFFS-RESPONDENTS

On the Brief:

SETH GROSSMAN
Attorney ID# 013331975

SETH GROSSMAN, ESQ.
Attorney for Plaintiffs-Respondents
453 Shore Road
Somers Point, New Jersey 08244
(609) 927-7333
sethgrossman49@gmail.com

Date Submitted: February 28, 2023

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PRELIMINARY STATEMENT

Between 2007 and 2010, the Atlantic City economy sharply declined. It was caused by the world-wide “Subprime Mortgage Crisis” and competition from newly legalized casino gambling in nearby Pennsylvania.

This caused real estate in Atlantic City to lose roughly two thirds of its value. Several casino properties closed.

Atlantic City government failed to voluntarily reduce real estate tax assessments to reflect these lower values. It did not reduce government spending, but instead increased its yearly budget from \$193 million in 2007 to \$216 million in 2010.

In October of 2010, New Jersey State Government assumed “supervision” of Atlantic City government pursuant to NJSA 52:27BB-55(6). In March of 2014, it increased that control.

Atlantic City government still did not voluntarily reduce its real estate tax assessments. Its municipal budget increased from \$216 million in 2010 to \$263 million in 2015.

Between 2008 and 2016, thousands of Atlantic City real estate owners, including all casino property owners, appealed their assessments. As a result, total real estate assessments in Atlantic City fell from \$20,503,172,174 in

2008 to \$6,515,881,304 in 2016. Assessments of casino properties fell from \$13,744,370,400 to \$3,232,262,400.

By 2015, Atlantic City government could not pay its current budgeted expenses. It owed debts and obligations of roughly \$400 million for excess real estate taxes it previously collected and unpaid employee health insurance and pension contributions.

On May 27, 2016, the Legislature and Governor of Defendant State of New Jersey enacted the “Casino Property Tax Stabilization Act” (hereinafter “Original 2016 CPTSA”). It provided that Atlantic City casino properties would pay “P.I.L.O.T.” (“Payments In Lieu Of Taxes”) instead of real estate taxes for ten years starting in 2017.

The P.I.L.O.T. was to be a percentage of the “GGR”, the “Gross Gaming Revenues” received by each Atlantic City casino property.

This was unnecessary. In 2013, the New Jersey Tax Court approved the “income approach” to determine the true value of casino real estate for real estate assessments. Marina Dist. Dev. Co. vs. City of Atlantic City, 27 N.J. Tax 469 (2013), aff’d 28 N.J. Tax 568 (2015).

Plaintiffs-Respondents challenged the constitutionality of the 2015 CPTSA in a previous action entitled *Liberty & Prosperity 1776, et als. vs.*

City of Atlantic City, et als., Docket No. ATL-777-16. However, they dismissed that action in 2018 after observing how it worked.

Between 2016 and 2021, the “GGR” or “Gross Gaming Revenue” of most Atlantic City Casinos greatly increased. This was because the economy had recovered, and Atlantic City casinos began and then expanded newly legalized internet gaming and sports betting.

During December of 2021, the Governor and Legislature amended the Original 2016 CPTSA to exclude most income from internet gaming and sports betting for the years 2022, 2023, 2024, 2025, and 2026.

There is no legal or factual difference between “gross gaming revenue” from gambling activity on the premises of an Atlantic City casino property, and “gross gaming revenue” from internet gaming or sports betting that can only be earned from ownership of an Atlantic City casino property.

By excluding winnings from internet gaming and sports betting from the GGR used to determine casino P.I.L.O.T payments, the State of New Jersey Defendants reduced the P.I.L.O.T. paid by Atlantic City casinos by anywhere from \$20 million to \$40 million for each of those years. It arbitrarily forced other taxpayers to pay those extra amounts or lose government services.

PROCEDURAL HISTORY

On May 27, 2016, the Legislature and Governor of Defendant State of New Jersey enacted the “Casino Property Tax Stabilization Act” (hereinafter “Original 2016 CPTSA”). The Original 2016 CPTSA provided that Atlantic City casino properties would pay “P.I.L.O.T.” (“Payments In Lieu Of Taxes”) instead of real estate taxes based on their fair market values for ten years beginning in 2017. (*N.J.E.R. 202 Judicial Notice*)

Plaintiffs-Respondents previously challenged the constitutionality of the Original 2016 CPTSA in an action entitled *Liberty & Prosperity 1776, Inc., et als. vs. City of Atlantic City, et als.* Docket No. ATL-L-777-16. However, they dismissed that action pursuant to a comprehensive settlement agreement reduced to a consent order on June 18, 2018. **Pa6**

On December 21, 2021, the State of New Jersey enacted the Amended CPTSA of 2021. The Amended CPTSA of 2021 excludes most casino gaming revenue from online gaming and internet betting from the GGR used to determine the P.I.L.O.T. payments for calendar/tax years 2022, 2023, 2024, and 2025. (*N.J.E.R. 202 Judicial Notice*)

On January 24, 2022, Plaintiffs-Respondents filed their Complaint In Lieu of Prerogative Writs and For Declaratory Judgment against Defendants

State of New Jersey and against Philip D. Murphy in his capacity as Governor of the State of New Jersey. *Da1*.

Said Complaint by Plaintiffs-Respondents sought judgment *inter alia* declaring the Amended CPTSA of 2021 to be in violation of the Uniformity Clause of the New Jersey State Constitution. *Da1*

On August 29, 2022, after hearing cross-motions for summary judgment, the Trial Court issued a Final Judgment which *inter alia* held that “The 2021 Amendment to the Casino Property Tax Stabilization Act is hereby DECLARED NULL, VOID, AND OF NO EFFECT”. *Da19-Da20*

On October 13, 2022, Defendants-Appellant filed a Notice of Appeal with the Appellate Division, appealing said decision.

STATEMENT OF FACTS

Beginning in 2008, there was a worldwide economic decline commonly called the “Great Recession of 2008”, the “Subprime Mortgage Crisis” and/or the “Collapse of the Housing Bubble”. (N.J.E.R. Judicial Notice and *Marina District Development Co., LLC vs. City of Atlantic City*, 27 NJ Tax 469 at 475-477 (Tax 2013), *aff’d*, 28 N.J. Tax 568 (App Div. 2015).)

In 2006, casino gambling in the form of slot machines became legal in Philadelphia and other areas of Pennsylvania. Beginning in July of 2010, casino table games also became legal there. This caused a significant decline

in visitors to casino and non-casino businesses in Atlantic City. (*N.J.E.R. Judicial Notice and Marina District Development Co., LLC vs. City of Atlantic City*, 27 NJ Tax 469 at 475-477 (Tax 2013), *aff'd*, 28 N.J. Tax 568 (App Div. 2015).)

In 2006, Atlantic City casinos paid \$417,528,000 to the State of New Jersey as their “8% Gross Revenue Tax”. That number dropped to \$360,250,000 in 2010, \$216,725,000 in 2012, and \$174,670,000 (enhanced by \$22,354,000 in taxes from online gambling) in 2017. (*Pa66*)

In 2006, Atlantic City casinos paid \$37,087,000 to the State of New Jersey as “Parking Fees” collected from customers who used their parking lots and garages. That number dropped to \$34,398,000 in 2008, \$29,816,000 in 2010, \$28,782,000 in 2012, \$19,807,000 in 2017. (*Pa66*)

Although business income for casino and non-casino businesses declined dramatically between 2006 and 2012, the Atlantic City Assessor, even while under State supervision, did not voluntarily reduce assessments of taxable real estate. As a result, the Total Net Assessed Value of Taxable Real Estate in Atlantic City remained relatively unchanged during those years:

A. 2008: \$20,503,172,174 (*Pa50*)

B. 2009: \$20,320,995,673 (*Pa51*)

C. 2010: \$20,480,854,452 (*Pa52*)

D. 2011: \$19,448,465,500 (**Pa53**)

E. 2012: \$18,078,249,000 (**Pa54**)

Between 2008 and 2012, casino properties made up between 59% to 67% of the total assessed taxable value of Atlantic City and paid that percentage of the tax burden: (**Pa70**)

A. 2008: \$13,733,370,400 (67%)

B. 2009: \$13,691,147,093 (68%)

C. 2010: \$12,231,902,203 (60%)

D. 2011: \$11,476,275,280 (59%)

E. 2012: \$10,550,094,000 (59%)

While the incomes of casino and non-casino property owners in Atlantic City declined between 2006 and 2016, the cost of local government increased substantially. The “Total General Appropriations (Item 9, Sheet 29)” of the Atlantic City municipal budget increased as follows:

2007: \$193,157,083 (**Pa40**)

2008: \$199,927,319 (**Pa41**)

2009: \$201,513,319 (**Pa42**)

2010: \$216,298,131 (**Pa43**)

On October 10, 2010, Defendant State of New Jersey assumed supervision of the finances of Atlantic City government pursuant to NJSA

52:27BB-55(6). See “*THOMAS H. NEFF, Director of the Division of Local Government Services, etc. vs. CITY OF ATLANTIC CITY*”, Docket No. L-5928-10. (*N.J.E.R. 202 Judicial Notice*)

In March of 2014, “the scope of supervision” by the State over Atlantic City government “was expanded”. (*Pa75 at Paragraph 6.*)

Between 2010 and 2016, the cost of operating Atlantic City’s municipal government continued to increase while under State supervision. Below are the total appropriations shown in the final approved budgets by Atlantic City government during those years: (*Pa44 to Pa49*)

2011: \$233,696,406 (*Pa44*)

2012: \$234,717,791 (*Pa45*)

2013: \$249,000,000 (*Pa46*)

2015: \$262,943,164 (*Pa48*)

2016: \$242,995,495 (*Pa49*)

Between 2008 and 2016, thousands of owners of real estate in Atlantic City filed tax appeals for thousands of parcels of real estate. The number of appeals filed during each such year were as follows: Da71

2008: 2,445 appeals Da71

2009: 2,603 appeals Da71

2010: 2,939 appeals Da71

2011: 3,951 appeals Da71

2012: 4,467 appeals Da71

2013: 4,319 appeals Da71

2014: 4,571 appeals Da71

2015: 6,355 appeals Da71

On October 18, 2013, the Tax Court of New Jersey ruled that the Borgata Casino in Atlantic City was “entitled to a significant reduction in the assessments” of its property for tax years 2009, 2010 and later years. See *Marina District Development Co., LLC vs. City of Atlantic City*, 27 NJ Tax 469 (Tax 2013), aff’d, 28 N.J. Tax 568 (App Div. 2015).

In making that ruling, the Tax Court ruled that for various reasons:

“the income approach is the most reliable method through which to determine the true market value of the subject property on the relevant valuation dates”. *Marina, supra*, 27 NJ Tax at _____

After the above described tax appeals were decided, the total assessed values of all taxable real estate in Atlantic City fell to the following levels in 2015 and 2016:

A. 2015: \$7,342,866,355 (**Pa57**)

B. 2016: \$6,509,752,640 (**Pa58**)

After the above described tax appeals were decided, casino properties still consisted of 50% to 54% of the taxable value of Atlantic City, and paid that percentage of the tax burden. (*Pa70*).

A. 2015: \$3,913,600,000 (54%)

B. 2016: \$3.232.262,400 (50%)

On or about May 27, 2016, Defendant STATE OF NEW JERSEY adopted NJSA 52:27BBBB-18 known as the “Casino Property Tax Stabilization Act”. (Original 2016 CPTSA). (*N.J.E.R. 202 Judicial Notice*)

Between 2010 and 2016, Atlantic City municipal government, while under State supervision, had incurred debts of roughly \$400 million for its operating expenses. (*Pa95-Pa99*) and (*Pa113-Pa114*)

On May 27, 2016, Defendant State adopted the Municipal Stabilization and Recovery Act (“MSRA), N.J.S.A. 52:27BBBB-1 through 17. This law allowed Atlantic City to substantially reduce municipal spending. It also allowed Investment Alternative Tax (IAT) funds to be diverted away from redevelopment, and used to repay some of the roughly \$400 million of debt incurred to pay for Atlantic City’s operating expenses between 2010 and 2016. (*N.J.E.R. 202 Judicial Notice*)

On that same day, May 27, 2016, Defendant State also adopted the Casino Property Tax Stabilization Act (Original 2016 CPTSA). (*N.J.E.R. 202 Judicial Notice*)

Atlantic City government, the taxpayers of Atlantic City, and the casino industry recovered and thrived during the years 2017, 2018, 2019, 2020, and 2021 when the MSRA and the Original 2016 CPTSA were in effect. (*Da29-Da30*)

On or about December 21, 2021, Defendant State enacted the Amended CPTSA of 2021. (*N.J.E.R. 202 Judicial Notice*)

The Amended CPTSA of 2021 greatly reduces the P.I.L.O.T. paid by Atlantic City casino properties because it excludes sports betting and internet gaming from their “Gross Gaming Revenue” (GGR) and reduces the P.I.L.O.T. paid by Atlantic City casino properties in other ways. (*N.J.E.R. 202 Judicial Notice*)

The New Jersey Office of Legislative Services (OLS) estimated that Atlantic City casinos would pay “\$30 million to \$65 million per year” less during the years 2022 through 2026. (*Da15*)

The Amended 2021 CPTSA Law also provides that casino property payments in lieu of taxes to Atlantic City be adjusted upward by “two percent from the preceding year” in years where there is not an upward or down

adjustment of the base amount. This amount is not nearly sufficient to keep up with current inflation. If allowed to stand, the Amended CPTSA of 2021 would arbitrarily and capriciously shift the tax burden in Atlantic City and Atlantic County from casino property owners to other owners of real estate.

(N.J.E.R. 202 Judicial Notice)

LEGAL ARGUMENT

I. PLAINTIFF-RESPONDENTS AGREE WITH AND REPEAT THESE FINDINGS AND CONCLUSIONS OF THE TRIAL COURT:

- A. The stated purpose of the Original 2016 CPTSA was to devise a ten year program:

“that avoids costly assessment appeals for both the casino operators and Atlantic City, and that provides a certain mandatory minimum property-tax related payment by casino properties that Atlantic City can rely upon each year”. *Da25*

Plaintiff-Respondents agree that the formula of the Original 2016 CPTSA calculated a P.I.L.O.T. that approximated what Atlantic City casinos would have paid had they been assessed according to the “income approach” approved by the Tax Court and this court in Marina Dist. Dev. Co. vs. City of Atlantic City, 27 N.J. Tax 469 (2013), aff’d 28 N.J. Tax 568.

- B. As a direct result of the implementation of the Original 2016 CPTSA, Atlantic City,

“was able to access the municipal bond market three times during 2017 and 2018... In turn, the bond issuances enabled Atlantic City to negotiate, resolve, and fund all outstanding historic property tax appeals filed by casinos and pending prior to the Act’s implementation, and fund repayment of certain pension and health payments the City had deferred during its fiscal crisis. . .” **Da29**

C. Despite losses due to brick-and-mortar closures at the early stages of the COVID-19 pandemic,

“Atlantic City casinos experienced unprecedented growth in internet casino gaming and internet sports wagering in 2020 and 2021. **Da30**

D. Despite casino gross revenue totaling approximately \$4.2 billion in 2021, the Legislature declared in December of that year,

“that there was ‘a compelling public purpose’ to reduce the casinos PILOT obligations for the remaining five years of the program for the purpose of ‘ensuring that Atlantic City continues to receive sufficient PILOT payments and IAT payments to fund its municipal budget’.” **Da31.**

E. Prior to passing the Amended 2021 CPTSA, the Senate Budget and

Appropriations Committee considered the following “Fiscal Impact”

statement from the Office of Legislative Services (“OLS) estimating that the Amended 2021 CPTSA,

“will result in a loss of local payment in-lieu of tax (PILOT) revenues in the calendar years 2022 through 2026 likely falling in a range from \$30 million to \$65 million each year. Removing gross revenues generated by Internet casino gaming and Internet sports wagering will result in lower annual totals of gross gaming revenue (GGR) and reduce the PILOT due (i.e. payable) to the City of Atlantic City, Atlantic County, and the Atlantic County (sic) School District...” **Da33**

F. The Trial Court took judicial notice that published DGE reports showing 2021 year to date gross revenue of Atlantic City casinos were available online and that at the end of November, 2021,

“casino gross gaming revenue was approaching \$3.9 billion (approximately \$2.3 billion in brick-and-mortar gaming revenue, approximately \$1.2 billion in internet casino game revenue, approximately \$16 million in brick-and-mortar sports wagering revenue, and approximately \$264 million in internet sports wagering revenue. . . “
Da35

G. “The existence of a rational basis for legislation may be assailed by proof of facts beyond the sphere of judicial notice” where “(no) state of facts either known or which could reasonably be assumed” could support the Legislature’s judgment”. *Reingold vs. Harper* 6 N.J. 182 (1951) at 196. **Da53**

H. The Trial Court found that the Amended 2021 CPTSA was “arbitrary, capricious and unreasonable” because

(T)here is no basis on the record for the Legislature’s “concerns” of pandemic-related casino losses, nor any evidence that the newly prescribed PILOT formula would preserve payments for the City, County and State. **Da54**

I. The Trial Court instead agreed with other findings of the Legislature declaring that reduction of PILOT payments were needed to “compensate for the impacts that the public health emergency had. . . on

casino gaming properties” and were “in the best interest of the casino gaming industry”. . . . Then found that,

“while many industries suffered incredible pandemic-related revenue losses, those industries were not provided any legislative property tax relief”.

- J.** The Trial Court concluded that *Kimmelman, supra* at 105 NJ 426 held that the Uniformity Clause barred the Legislature from granting real estate tax relief “to aid an ailing industry”.

II. THE UNIFORMITY CLAUSE BARS THE LEGISLATURE FROM GRANTING ANY PREFERENTIAL REAL ESTATE TAX REDUCTIONS “TO AID AN AILING INDUSTRY”.

Article VIII of the New Jersey State Constitution states:

“1(a) Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of the taxing district”.

The unanimous NJ Supreme Court case of *New Jersey State League of Municipalities vs. Kimmelman* 105 NJ 422 (1987) referred to this section of our State Constitution as “the uniformity clause”.

Kimmelman began by observing the predecessor to this uniformity clause was added to our State Constitution in 1875.

“The dominant industry of that time, the railroads, exerted considerable influence over the Legislature’s taxing power and had obtained for itself virtual exemption from taxation. . . . (citation omitted) Growing sentiment mobilized by Governor Parker led to a constitutional convention that produced the first limited restraint against preferential tax treatment for one industry. . . .”

Kimmelman also cited with approval *Roe v. Kervick* 42 NJ 191, 199 A2d 834 (1964). *Roe*, supra recognized at 199 A2d 842 that constitutional prohibitions like the uniformity clause were adopted when “many abuses followed in the wake of” financial aid to encourage the development of a particular industry “to the serious detriment of the taxpayer. . . .” *Roe*, supra at 199 A2d 842

Roe, supra, further repeated the timeless wisdom of an 1870 Michigan Supreme Court case which observed,

“When the State once enters upon the business of subsidies, we shall not fail to discover that the strong and powerful interests are those most likely to control legislation, and that the weaker will be taxed to enhance the profits of the stronger. . . .” *Roe*, supra at 199 A2d 842.

Kimmelman then recited the history of the 1947 New Jersey Constitutional Convention which drafted the uniformity clause in our current state constitution. *Kimmelman* concluded that the uniformity clause specifically denies the State the “right to classify real estate in different categories” for the purpose of taxation.

Finally, *Kimmelman* made it clear that whether a tax break is called an “exemption” or a “classification”, the Legislature cannot grant a tax break to “aid an ailing industry”.

2nd Roc-Jersey Associates vs. Town of Morristown, 158 NJ 581 (1999) clearly does not apply to this case. That dealt with a situation where a Special Improvement District (SID) provided certain services mostly to benefit commercial property owners, and there was a rational basis for not charging residential customers fees for services that offered them little benefit.

Town of Secaucus vs. Hudson County Board of Taxation, 133 NJ 482 (1993) also does not apply to this case. There the New Jersey Supreme Court struck down the disparate tax treatment as unconstitutional special legislation. It did not apply the uniformity clause of Article VIII because it found that the term “taxing district” only applied to municipalities. It observed that the Hudson County Board of Taxation was not a “taxing district” as contemplated by the uniformity clause because it was a county agency, and not a municipality.

Town of Morristown v. Woman’s Club of Morristown, 124 NJ 605 (1991) dealt with real estate that was a recognized historic site. That property clearly fell into the “educational” purposes recognized by Article VIII,

Section 2 of the New Jersey Constitution. That case does not apply to Atlantic City casino properties.

The State argues that the CPTSA articulates many worthy “public purposes”. However, that argument misses the obvious holding of *Kimmelman*. The uniformity clause clearly denies the Legislature the power to create different tax classifications of real estate. That can only be done by an amendment to the State Constitution approved by voters.

The State relies on a certification from Novelette Robinson, the Tax Assessor for Atlantic City to claim that casino properties will pay less if they are taxed at their true assessed values. *Da112-Da113*. That claim is ludicrous. The Assessor in her certification claims that a traditional assessment of casino properties today would start with her last assessed 2016 values based on rock-bottom 2015 casino income, adjusted by yearly increases at the arbitrary rate of 2% per year since then. However, *Marina Dist. Dev. Co. vs. City of Atlantic City* held that the income method is the best way to assess casino properties. As previously stated, Plaintiffs-Respondents are satisfied that when casino properties are valued by their income, including revenue received from internet gaming and sports betting, the real estate taxes they would pay on that value would closely approximate what they would pay as P.I.L.O.T. under the Original 2016 CPTSA.

It is also absurd for the State to argue that Plaintiffs' challenge of the amended CPTSA threatens the stability of the tax base and budget process for Atlantic City, Atlantic County, and the casino industry. Plaintiffs consented to the original ten year CPTSA formula and settlement. It is the casino property owners and the Governor and Legislature of New Jersey who seek to scrap the ten year deal they made after only five years.

The argument that hotels, restaurants, retail stores, and parking areas owned by casino operators serve more of a public purpose than those owned by others is inconsistent with the plain language and intent of the uniformity clause. Moreover, if the argument is made that casinos serve more of a public purpose than any other business, it is difficult to conceive of a single industry which could not make the same argument. That would make a total mockery of the uniformity clause.

Finally, the state seems to make an argument that casino properties may qualify for special tax treatment pursuant to Article VIII, Section 3 of our State Constitution. That section states:

“Article VIII, Section III, Paragraph 1: The clearance, replanning, development, or redevelopment of blighted areas shall be a public purpose and public use for which private property may be taken or acquired. . . (P)ivate corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them,

may be exempted from taxation, in whole or in part, for a limited period of time. . . “

It is hard to image how any licensed casino property in New Jersey can determined to be “blighted” or part of a “blighted” area.

NJSA 5:12-84 adopted in 1977 required and does require each licensed Atlantic City casino property to at all times be “a superior, first-class facility of exceptional quality”.

The New Jersey Legislature on May 27, 2016 did not have any factual basis to declare each licensed casino property in Atlantic City to be a “blighted area” when it enacted the Original 2016 CPTSA.

The Amended CPTSA does not even purport to claim that the casino properties of Atlantic City are blighted areas.

Gallenthin Realty Development Inc. III vs. Borough of Paulsboro, 191 NJ 344 (2007) held that courts, and not the Legislature are to determine whether an area is “blighted” as contemplated by the State Constitution, and that the objective commonly used and understood meaning of the word “blighted” must be used to make that determination.

III: ATLANTIC CITY CASINO PROPERTIES ARE NOT USED FOR RELIGIOUS, EDUCATIONAL, CHARITABLE, OR CEMETERY USES WHICH TRADITIONALLY RECEIVED TAX EXEMPTIONS IN NEW JERSEY.

Kimmelman made it clear that Article 8, Section 2, which gives the legislature the power to grant real estate tax exemptions, only applies to religious, educational, charitable, and cemetery uses which had historically been granted such exemptions.

Exemptions for veterans, farmers, senior citizens, and owners of “blighted areas in need of redevelopment” clearly did not qualify for any legislative exemptions. That is why they required special amendments to the State Constitution approved by voters.

Atlantic City casino properties clearly do not fall within any of those “religious, educational, charitable, or cemetery” exceptions.

IV: IT WOULD BE UNCONSCIONABLE AND ARBITRARY TO SHIFT THE BURDEN OF REPAYING ROUGHLY \$400 MILLION OF MUNICIPAL DEBTS FROM CASINO PROPERTIES TO NON-CASINO PROPERTIES

It appears that much, if not all of the \$400 million in debts incurred by Atlantic City government between 2010 and 2016 were incurred to pay operating expenses. This is because State and/or local officials failed to comply with the Local Budget Act and the Local Bond Act. Plaintiffs-Defendants are not aware of any investigations or discussions by State or

Local officials as to who was responsible for incurring this debt, or whether or not the taxpayers of Atlantic City can or should be legally compelled to pay it.

During that time, Atlantic City casino properties owned between 50% to 67% of the City's taxable value and paid that percentage of the tax burden of that taxing district. It would be unconscionable for the legislature to now arbitrarily decree that casino properties should now repay a much smaller portion of that debt while all other owners or real estate pay more.

V. IT IS IN THE PUBLIC INTEREST FOR ATLANTIC CITY'S LEADING INDUSTRY TO HAVE A FINANCIAL INTEREST IN PROMOTING EFFICIENT LOCAL GOVERNMENT

The Uniformity Clause of our State Constitution also has an important practical and political purpose. The owners, employees, and suppliers of Atlantic City's casinos are by far the biggest, richest, and most influential interest group in Atlantic County. If casino property owners are permitted to pay fixed, payments "in lieu of" their regular property taxes, these power groups have little or no self interest in using their influence to limit local government spending and/or tax increases. That would make it easier for other special interests to seek more spending and higher taxes by local government since opposition to those other interests would be weaker.

This may explain why State government did little or nothing to control out of control local government spending and tax increases for ten years from

2006 and 2016. It appears that the full power of state government was not mobilized to address the problem until the powerful casino industry, including owners, employees, and suppliers felt threatened by unsustainable increases in real estate taxes.

CONCLUSION

The Original 2016 Casino Property Tax Stabilization Act, although unnecessary, was constitutional. That is because the Appellate Division of Superior Court approved the “income approach” of the New Jersey Tax Court for assessing casino properties in 2015. Under Original 2016 CPTSA, the P.I.L.O.T paid by Atlantic City casino properties closely approximated what those properties would have paid had they been so assessed and then taxed at the same rate as other real estate in the taxing district of Atlantic City.

However, the portions of the 2021 Amendments to the CPTSA which exclude most internet gaming and sports betting revenue from “Gross Gaming Revenue” violates the Uniformity Clause of the New Jersey State Constitution.

That is because it arbitrarily reduces the P.I.L.O.T. paid by Atlantic City casino properties. By doing that, it arbitrarily shifts a significant part of the real estate tax burden in Atlantic City and Atlantic County from one set of favored real estate taxpayers to others who are not favored. This does not

serve a public purpose, but instead merely aids one “ailing industry” of favored taxpayers at the expense of those less favored.

Respectfully submitted,

Dated: February 28, 2023

/s/ Seth Grossman
SETH GROSSMAN,
453 Shore Road
Somers Point, NJ 08244
(609) 927-7333
Attorney for Plaintiff