
NEW JERSEY CITIZEN ACTION;	:	SUPERIOR COURT OF NEW JERSEY
MAURA COLLINSGRU, in her	:	APPELLATE DIVISION
capacity as Healthcare Program	:	
Director; AMERICAN FEDERATION	:	A-000783-22
OF TEACHERS, NEW JERSEY;	:	
DONNA CHIERA, in her capacity as	:	On Appeal from Final Judgment
President of AFTNJ; and	:	Dismissing the Complaint
MARK and KATHERINE SMITH,	:	
	:	Docket No. Below: MER-L-001968-21
Plaintiffs-Appellants,	:	
	:	
v.	:	Sat Below:
	:	Hon. Mala Sundar, P.J.T.C.
PHILIP D. MURPHY, in his	:	
official capacity as Governor	:	
of New Jersey; and the STATE	:	
OF NEW JERSEY,	:	
	:	
Defendants-Respondents.	:	

PLAINTIFFS' BRIEF AND APPENDIX IN SUPPORT OF APPEAL

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PRELIMINARY STATEMENT

In 2021, after several years of lobbying by the N.J. Hospital Association, other large nonprofit organizations and the League of Municipalities, the Legislature eliminated third-party property tax challenges and appeals from Chapter 54 (Taxation), after such procedure had existed via N.J.S.A. 54:3-21 for well over 100 years. The text of the amendment, the legislative statements accompanying P.L. 2021, 17, ¶6, media accounts and published statements of interested law firms and non-profit organizations, all demonstrate that the Legislature intended to eliminate third-party tax challenges by individual taxpayers. Plaintiffs New Jersey Citizen Action (“NJCA”), American Federation of Teachers, New Jersey (“AFTNJ”), and two individual property owners, Mark and Katherine Smith, brought this action, on behalf of their members and all individual property owners, for declaratory and, if appropriate, injunctive relief that the right of individual property owners to challenge the assessment or tax exemption of another property owner was not eliminated, as the Legislature intended, but rather, that such right remained --- now, in the form of a challenge submitted directly in the Superior Court, pursuant to N.J. Const. (1947), Art. VI, sec. 5, ¶4 (Prerogative Writ Clause).

The State sought to dismiss Plaintiffs’ Complaint for failure to state a claim, asserting that the amendment did not eliminate a taxpayer’s right of action in lieu of prerogative writ under Art. VI, sec. 5, ¶4, to challenge the tax assessment or

exemption status of another property owner, but only sought to eliminate the administrative remedy in N.J.S.A. 54:3-21. In the alternative, the State took the position that even if the Legislature intended to eliminate such rights, the court was required, as a constitutional matter, to interpret the amendment as preserving a taxpayer's right to appeal a tax official's determination to the Superior Court per N.J. Const. (1947), Art. VI, sec. 5, ¶4.

On either theory, the State sought dismissal for failure to state a claim.

Plaintiffs cross-moved for summary judgment since there were no factual issues in dispute, *i.e.*, that the question was one of law, either: 1) the statute eliminated such rights illegally or 2) they still continued via N.J. Const. (1947), Art. VI, sec. 5, ¶4. Accordingly, Plaintiffs asserted that the amendment to N.J.S.A. 54:3-21 must be declared unconstitutional or, in the alternative, be interpreted by the court to permit such tax appeals to proceed directly in court pursuant to Art. VI, sec. 5, ¶4. Accordingly, both parties, disagreeing about legislative intent, took the position that the Court had an obligation to interpret the statute as constitutional, if it were able to do so.

This agreement does *not* give rise to mootness. Equitable relief still has a practical effect on the controversy. The State's concession that even if the Legislature intended to eliminate third-party appeals, it could not do so, puts this matter in the realm of the "voluntary cessation" doctrine, not mootness. That is, this

situation is similar to that where a party commits wrongdoing, is confronted by litigation, and only then admits it was not permitted to do what it wanted to do, so it will no longer do it. As in all such cases, Plaintiffs are entitled to a decision on the merits that bars the State from changing its interpretation of the amendment to N.J.S.A. 54:3-21 and provides notice to the public that the amendment does not eliminate third-party tax appeals, as it purported to do.

Even if this court were to agree that the case is technically moot, it is one of public importance that is likely to recur. The trial court's contrary conclusion is belied by the participation of *Amici*, the amount of press on issue at the time of the amendment, the comments of the interested law firms and the fact that issues of tax equity are of extreme importance to property owners throughout the State.

Accordingly, this Court, reviewing the matter *de novo*, should declare N.J.S.A. 54:3-21, as amended, as constitutional or not. And if the former, it must specify that the right to file a third-party tax appeal remains, enjoin the State from changing its current position and direct it to issue notice or guidance setting forth such interpretation. The Court's decision on the merits of this matter is neither speculative or advisory. It will provide equitable relief to Plaintiffs and all property owners, who desire to challenge the tax assessment or tax exemption of another, and binds the State to a legal interpretation that it cannot change going forward.

STATEMENT OF FACTS

On December 17, 2020, the New Jersey General Assembly passed Assembly Bill No. 1135 (“A.1135”) (Pa24) and the Senate passed S.357/624 (collectively the “Bill”). (Pa24-5) Once passed by both chambers, Governor Murphy signed the Bill into law on February 22, 2021, as Public Law 2021, Chapter 17. (Pa25) The Bill broadly modified the nonprofit hospital property tax exemption (permitting the exemption even when for-profit providers operate on the hospital premises), and, in section 6, amended N.J.S.A. 54:3-21 to eliminate the right of taxpayers to challenge the local property tax assessment or exemption of other property owners. It is this latter part of the amendment that is the subject of this litigation.

As indicated by the Senate Budget and Appropriations Committee Statement to A.1135, dated December 15, 2020, the Legislature removed from Title 54 a taxpayer’s right of review or remedy with respect to the assessed valuation or exempt status of the property of other taxpayers, including that of nonprofit charitable organizations such as colleges, educational facilities or hospitals, *i.e.*, third-party tax appeals. The Statement reads in part:

The bill also **prohibits** property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill would **eliminate this option**, but not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county. (Pa112)(emphasis added)

This portion of the Bill had been introduced in a previous legislative session as an independent bill (S.2212/A.3888), which was reintroduced in the 2020-2021 session as S.1767/A.2796. The Legislative Statement to that earlier version also made it clear that the intent was to eliminate third-party tax challenges. *See* Sen. Community and Urban Affairs Comm. Statement to S.1767 (July 16, 2020) (“This bill would prohibit property taxpayers from filing property tax appeals with respect to the property of others.”) (Pa166). *See also* N.J. Center for Non-Profit Corporations, Legislation to Protect NonProfits from Arbitrary Tax Challenges By Third Parties Signed As Part of Broader Bill, Sept. 8, 2021 (“Clarifying that third parties **do not have standing to challenge the property tax exemption of non-profits**, while preserving the authority of local governments, would provide needed assurance and protection for thousands of non-profit property owners.”) (Pa179).

In 2017, an even earlier bill generated numerous articles in several newspapers and from business groups and law firms throughout the state. *E.g.*, NJ Business & Industry Assoc. (Pa171)(“urge Senate to vote to prevent property taxpayers from challenging the property assessments of nonprofit organizations in their county”); Insider N.J. (Pa169)(“NJBIA Urges Senate to Pass Ban on Third-Party Appeals”); Bloomberg BNA (Pa177)(“New Jersey Bill Would Kill Third-Party Property Tax Appeals”); McCarter & English LLP (Pa172) (“New Jersey Would Kill Third-Party Tax Appeals”); and Scarinci & Hollenbeck (Pa173)(“Proposed NJ Bill Bans Third

Party Appeals”) All of these publications represented that the proposed legislation was a complete ban on third-party local property tax appeals, with New Jersey posed to join a majority of the states that do not allow such challenges. This position was also the theme of a 9/19/16 memorandum that was distributed by the New Jersey Hospital Association, *amici* below, to state legislators. (Pa176)(“The legislation would protect taxpayers and municipalities by prohibiting a third party from filing a tax appeal with respect to the property of others.”). As such, the legislative intent and the understanding of the interested legal and business community was that the amendment to N.J.S.A. 54:3-21 eliminated the right of third-party tax assessment or exemption challenges, giving rise to this action for declaratory and injunctive relief.

PROCEDURAL HISTORY

On September 28, 2021, Plaintiffs filed a Verified Complaint against Defendants, the Governor, in his official capacity, and the State, stating four counts. Counts I-III were directed to the part of the bill allowing tax exempt status as to for-profit hospital operations. Count IV challenged the elimination of third-party tax challenges. (Pa17-42)

On October 5, 2021, the Complaint was transferred to the Tax Court. (Pa45) Because Plaintiffs were permitted to argue Counts I-III as *amici* in Colacitti, et al v. Murphy, et al, Docket No. MER-L-000738-21, plaintiffs agreed to withdraw Counts I-III from this present action upon resolution of the Colacitti action. A request to

withdraw those counts was made on May 17, 2022 (Pa1126) and dismissal was ordered on May 23, 2022. (Pa127)

On January 10, 2022, the State moved to dismiss the remaining Count IV concerning the elimination of third-party tax challenges for failure to state a claim, the matter currently in litigation through this appeal. (Pa46)

On February 2, 2022, the Independent Colleges and Universities of New Jersey (“ICUNJ”), and the N.J. Center for Non-Profit Corporations, Inc. (the “Center”), moved to participate as *amici curiae* pursuant to R. 1:13-9. (Pa48) Plaintiffs consented, and the Court granted that motion on February 7, 2022. (Pa61) On February 19, 2022, the New Jersey Hospital Association (“NJHA”) also moved to participate in this matter as *amici curiae*. (Pa63) Again, Plaintiffs consented to NJHA’s participation and the Court granted that motion on February 24, 2022. (Pa69) *Amici* ICUNJ and the Center filed their brief on February 22, 2022, and *Amici* NJHA filed its brief on February 28, 2022.

On March 19, 2022, Plaintiffs made a Cross-Motion for Summary Judgment with respect to Count IV and to Amend their Complaint to clarify that Count IV was brought under the New Jersey Civil Rights Act (“CRA”) in addition to the N.J. Constitution. (Pa71-73) Plaintiffs filed a brief in support of their cross motion and in opposition to State’s Motion to Dismiss. On April 26, 2022, Plaintiffs filed a brief in response to that of *Amici*, followed by the State’s filing of its opposition to

Plaintiffs' Cross-Motion on May 25, 2022. *Amici* were permitted to file reply briefs, which they did on May 31, 2022, and Plaintiffs' submitted their Reply Brief to the Motion to Amend on June 24, 2022.

Following oral argument, an Order and Decision was issued on September 28, 2022 dismissing the Complaint for reasons of mootness and non-justiciability. (Pa2-16) Plaintiffs filed the Notice of Appeal and Case Information Statement (CIS) on November 10, 2022 (Pa142-152), and the State filed its CIS on November 23, 2022. (Pa153) The NJHA, ICUNJ and the Center *Amici* have not submitted a CIS or entered their appearance.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

This matter involves the statutory scheme set forth in Title 54 regarding taxation, and in particular, the administrative appeal procedure set forth in N.J.S.A. 54:3-21; as well as the constitutional requirements barring the Legislature from eliminating a taxpayer's right to appeal the decisions of local tax assessors via N.J. Const. (1947), Art. VI, sec 5, ¶4. (preserving actions in lieu of prerogative writ).

N.J. Const. (1947), Art. VIII, Sec. 1, ¶1 (Uniformity)

For almost a century and one-half, New Jersey's tax statutes have implemented the constitutional requirement of uniformity in local property tax and fairness in the distribution of the tax burden and avoidance of discrimination. This is a constitutional requirement, not one created by statute. The Constitution of 1844,

as amended in 1875, provided that "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." N.J. Const. (1875), Art. IV, Sec. VII, ¶12. This constitutional provision was changed in 1947 (*i.e.*, deleting the "true value" requirement), although the gist of the uniformity clause that exists today remains the same. Article VIII, Sec. I, ¶1 states:

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; 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 such taxing district.

The dominant principle of the 1947 constitutional mandate is equality of treatment and tax burden, which "was the essence and spirit of the old Constitution as well." Baldwin Constr. Co. v. Essex County Bd. of Tax, 16 N.J. 329, 338-340 (1954). Ultimately, it is a fundamental principle that an aggrieved taxpayers' right to relief from discrimination in assessments is a constitutional right that cannot be eliminated by statute, as Judge Pressler observed in Atrium Dev. Corp. v. Continental Plaza Corp., 214 N.J. Super. 639, 642 (App. Div. 1987), app. dis. 108 N.J. 590 (1987).¹

¹ The State argued below that the right to challenge the assessment of another taxpayer was not constitutionally protected. (Pa162)

N.J. Const. (1947), Art. VI, Sec. 5, ¶4 (Prerogative Writs)

Under the 1947 Constitution the remedy of challenging governmental acts by means of the great common law writs is fully protected and preserved as a matter of constitutional right as to all governmental actions. No exception appears in the Constitution as to property tax matters. Article VI, Sec. 5, ¶4, of the New Jersey Constitution reads as follows:

Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, **as of right**, except in criminal causes where such review shall be discretionary. (emphasis added)

Thus, the 1947 Constitution preserves as a matter “of right” a citizen’s power and ability to challenge governmental actions under the traditional common law writs of *mandamus*, *certiorari*, *prohibition* and *quo warranto*. These writs constituted a series of remedies “by which officials and bodies in the executive branch of government at local and higher levels were kept within their respective spheres and were held to methods prescribed by law.” Ward v. Keenan, 3 N.J. 298, 302 (1949). The 1947 Constitution preserves such actions as an absolute matter of constitutional right by converting them into a single form of “action in lieu of prerogative writ” and this form of action applies with equal force to assessment

decisions as to any other governmental decision-making.²

New Jersey courts have taken special care to preserve and foster the use of the prerogative writ to challenge governmental acts, taking “in almost every respect a more liberal view of the province of the writ [of certiorari] than the courts of other commonwealths.” *Id.* at 305-306 (citation omitted). Our courts have given special significance to the broad scope of such writs in protecting an aggrieved citizen from almost every form of improper official action. *Id.* at 306. In view of the strong executive branch model of New Jersey’s government, the power to bring such actions (based on the great common law writs) is an essential check on the power of government.

As early as 1856, the variety of uses to which the writ of *certiorari* was put in civil matters was summarized by Chief Justice Green in Treasurer of Camden v.

² Prerogative writs have never been eliminated in New Jersey. Instead, this remedy was preserved in the 1947 Constitution via the action “in lieu of prerogative writ” in which “the review, hearing and relief” associated with such writs “shall be afforded in the Superior Court,” but “on terms and in the manner provided by rules of the Supreme Court, as of right.” Ward v. Keenan, *supra*, 3 N.J. at 302. (emphasis added). As caselaw makes clear, this change was made because of “widespread dissatisfaction” with certain aspects of the implementation of the writs, namely the risk that a litigant would accidentally choose the wrong writ and have to start all over again. *Id.* at 303-308. As the Supreme Court has said in Ward, “all difficulties with respect to a choice of the proper prerogative writ have been resolved by providing for a single proceeding in lieu of all prerogative writs.” *Id.* at 305. Ward makes clear that the Constitutional goal was to continue to safeguard individual rights against public officials and governing bodies via the right of action under the writs, while avoiding such procedural defects.

Mulford, 26 N.J.L. 49, 54 (Sup. Ct. 1856):

. . . in this state the remedy of [certiorari] has been extended to wrongs inflicted upon individuals, whether by judicial decision, by corporate acts, or by the acts of special jurisdictions created by statute. Thus, it is habitually used as a remedy against unlawful taxation, either for state, county, township, or city purposes; and while the remedy has been denied in other states, as dangerous or prejudicial to the public welfare, no such evil has been experienced from the use of the remedy, while it has been found eminently salutary and efficacious as a protection to private rights against oppressive and illegal taxation.

Ward v. Keenan, *supra*, 3 N.J. at 306 (quoting Treasurer of Camden v. Mulford). *See also Switz v. Middletown*, 23 N.J. 580, 587-590 (1957)(concerning a challenge to the municipal assessment decisions and holding that the right to be heard to challenge government action is constitutionally assured by Art. VI, Sec. 5, ¶4).

Today, R. 4:69 governs the procedure for implementing “Actions In Lieu of Prerogative Writs” and, consistent with the common law, R. 4:69-5 requires:

Except where it is manifest that the interest of justice requires otherwise, actions under R. 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted.

In addition, R. 4:69-6(a), provides that “No action in lieu of prerogative writs shall be commenced later than 45 days after the accrual of the right to the review, hearing or relief claimed, except as provided by paragraph (b) of this rule.”

Accordingly, R. 4:69 (i) implements the constitutionally protected right of access to the Superior Court to challenge all government action and secure declaratory and injunctive relief, (ii) places jurisdictional time limitations on that

right, and (iii) conditions it on the exhaustion of administrative remedies (where appropriate). This preserved right to challenge official government action via judicial action in the Superior Court is substantive in nature; and, read together with the Uniformity Clause, effectively establishes a private right of action for all New Jersey taxpayers to hold local and state officials accountable for unfair treatment or discrimination in property tax assessments or exemptions in the Superior Court --- a right of any taxpayer to appeal any assessment or tax exemption is thus a constitutionally protected civil right.

Taxpayers' Statutory Process of Administrative Appeal

Since 1906 when N.J.S.A. 54:3-21 and its predecessors were first enacted, the constitutional right as to tax assessment or exemption challenges has been channeled into a particular administrative framework, *i.e.*, the appeal process to the County Board or the Tax Court. *See* P.L. 1906, c. 120, §3. Prior to the enactment of the law in 1906, such actions were brought by citizens as prerogative writ actions. Thus, the statutory procedure in N.J.S.A. 54:3-21 is merely a formalistic means of channeling administratively what has always been a remedy available through the prerogative writ format.³

³ Although the statute did not explicitly authorize a taxpayer or taxing district to appeal the “exempt” status of any property, the authority to file a third-party appeal of another’s exempt status has long been recognized as a feature of New Jersey taxation law. (Pa6).

N.J.S.A. 54:3-21(a), as amended by P.L. 2021, c. 17, deleted language that allowed an appeal through the administrative process by third parties. The statute, as amended, reads in relevant part as follows:

a. (1) Except as provided in subsection b. of this section a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property [or feeling discriminated against by the assessed valuation of other property in the county] or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.

P.L. 2021, c. 17., ¶6. [underlined language was added and bracketed language was deleted].

Prior to this amendment, there is little doubt that taxpayers have always had the ability to appeal a local determination of tax-exempt status or assessed valuation of any property to either (i) an administrative body tasked with hearing appeals per the relevant statute or (ii) a court via the common law writ of *certiorari*, if the nature of the challenge and the interests of justice weighed in favor of direct judicial review. Prior to the 2021 amendment, the 1906 language, which explicitly authorized third-party appeals, remained virtually unchanged in all amendments and supplements to

the statute.⁴ *See also* (Pa6)

The “either/or” assertion stated above, however, does not mean that a taxpayer, in the ordinary course, has had a choice between the two procedures: file an appeal with the county board of taxation or submit a complaint in lieu of prerogative writ with the Superior Court. As a practical matter, the courts generally recognize the need to first exhaust an administrative remedy as provided in N.J.S.A. 54:3-21, but also allow a direct right of action “lieu of” a prerogative writ “if that course be in the interest of essential justice.” Baldwin Constr. Co. v. Essex County Bd. of Taxation, 16 N.J. 329, 342 (1954).⁵ *See also* Murnick v. Asbury Park, 95 N.J. 452, 455 (1984) (where court concluded that although the statute ordinarily requires administrative exhaustion, “[i]n egregious cases of discrimination, a taxpayer retains a constitutional right to relief.”). In the usual case, so long as the administrative process in N.J.S.A. 54:3-21 was available, a taxpayer aggrieving an

⁴ *See* P.L.1945, c. 125; P.L.1978, c. 102; P.L.1979, c.113 (Adding ability to file appeal directly with the Tax Court if satisfy \$750,000 minimum); P.L.1981, c.568; P.L.1983, c. 36; P.L. 1987, c. 185;P.L.1991, c. 75 (changing August 15 deadline to file petition to April 1, and introducing concept that taxpayer has 45 days to file an appeal upon issuance of notification of change or assessment); P.L. 1999, c.208 (permits filing within 45 days from bulk mailing of tax assessments); P.L.2003, c.125; P.L.2007, c. 256; P.L 2009 c.252; P.L 2013 c.15; P.L.2017 c. 306; and P.L. 2018, c. 94.

⁵ *See* Atrium Dev. Corp. v. Continental Plaza Corp. *supra*, 214 N.J. Super. at 641 for a discussion of Royal Mfg. Co. v. Bd. of Equal Taxes, 76 N.J.L. 402 (Sup. Ct. 1908), *aff’d* 78 N.J.L. 337 (E & A 1908) and the New Jersey Supreme Court cases rejecting that court’s holding that the statutory appeal process is the exclusive method by which a taxpayer claiming discrimination in his assessment could seek redress.”

assessment or exemption, whether their own or that of another, was required to first comply with the administrative remedy prior to seeking judicial review. *See McCleod v. City of Hoboken*, 330 N.J. Super. 502, 505-508 (App. Div. 2000)(subject matter jurisdiction of “spot” assessment claim also required exhaustion of administrative remedies; failure to do so constitutes “total jurisdictional defect”).

Following the amendment in P.L. 2021, c. 17, ¶6 taxpayers no longer have the administrative route under N.J.S.A. 54:3-21 to exhaust as to third-party claims; their remedy now adverts to the prerogative writ process preserved in Art. VI, Sec. 5, ¶4 of the Constitution per R. 4:69-5. However, the availability of the action in lieu format following the 2021 Amendment is not apparent on the current face of N.J.S.A. 54:3-21;⁶ which now appears to eliminate all such rights in accordance with the legislative statements accompanying A.1135 that was adopted in December 2020, and one of its predecessors, S.1767. *See* (Pa112)(“This bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others.”); and (Pa166)(same).

⁶ The trial court disagreed. In what must be considered *dicta*, Judge Sundar stated that “the Legislature did not foreclose the application of R. 4:69 for third-party LPT appeals in the Superior Court. On its face, then, N.J.S.A. 54:3-21(a) does not eliminate the rights afforded by the In-Lieu Clause.” (Pa11)

As such, Plaintiffs are entitled to declaratory relief: 1) as to the statute's constitutionality, because on face of the statute it now appears to eliminate the right of third-party tax appeals or 2) that such right of third-party tax appeal continues via the constitutionally-protected "action in lieu" framework.

Either way, the trial court's dismissal was legal error.

LEGAL ARGUMENT

I. THE COURT'S DETERMINATION THAT PLAINTIFFS' CHALLENGE BECAME NON-JUSTICIABLE AFTER THE FILING OF THE COMPLAINT IS SUBJECT TO *DE NOVO* REVIEW. (Pa2-Pa16)

Judge Sundar granted the State's motion to dismiss and denied Plaintiffs' Cross-Motions for Summary Judgment and to Amend their Complaint. The trial judge's reason for taking such action was "lack of a justiciable controversy," a legal determination. Accordingly, each element of her order is subject to *de novo* review. Castello v. Wohler, 446 N.J. Super. 1, 13–14 (App. Div. 2016). Similarly, this court must review *de novo* the trial court's denial of Plaintiffs' cross-motion for summary judgment under the same standard as the trial court. Templo Fuente De Vida Corp. v. National Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189 (2016). That standard mandates that summary judgment be granted "if . . . there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). When no issue of fact exists, and only a question of law remains, as is the case herein, the Court affords no special deference

to the legal determinations of the trial court. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). And, although the appellate court typically reviews a trial court's decision to amend the complaint for abuse of discretion, Grillo v. State, 469 N.J. Super. 267, 275 (App. Div. 2021); in this case, the denial of such motion was based on a legal determination of mootness thus requiring this court to subject it to *de novo* review as well.⁷

II. THIS MATTER IS NOT MOOT SINCE EFFECTIVE RELIEF CAN BE GRANTED THE PLAINTIFFS IN A MATTER OF PUBLIC IMPORTANCE THAT IS LIKELY TO RECUR. (Pa2-Pa16)

In her decision, the Court noted that at the time of filing of the Complaint Count IV did present a justiciable question as to the constitutionality of the amendment to N.J.S.A. 54:3-21:

At the time the complaint was filed, which then triggered the State's motion under R. 4:6-2(e), Count IV amply demonstrated the cause of action: facial unconstitutionality of Section 6 under the Petition clauses and the In-Lieu Clause. The relief sought was also evident - striking and enjoining the enforcement of Section 6. Thus, a dismissal of Count IV under R. 4:6-2(e) was unwarranted at that time. (Pa15)

⁷ To the extent that Judge Sundar engaged in statutory interpretation as to the meaning of N.J.S.A. 54:3-21, an appellate court's reviews *de novo* all such rulings, *i.e.*, as to the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules. Grillo v. State, *supra*, 469 N.J. Super. at 274. *See, e.g.*, In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute); State v. G.E.P., 243 N.J. 362, 382 (2020) (retroactivity of statute); State v. Hemenway, 239 N.J. 111, 125 (2019) (constitutionality of a statute); Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019) (statutory interpretation); Green v. Monmouth Univ., 237 N.J. 516, 529 (2019) (applicability of charitable immunity) and State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation).

However, the Court then found that by the time Plaintiffs filed their cross-motion for summary judgment, “events” had changed rendering this matter moot, *i.e.*, the State had since conceded that the Legislature could not, as a constitutional matter, eliminate third-party tax appeals. Faced with this concession, the Court found the controversy to be moot, with no issue of public importance remaining, holding:

The need to educate the public on the availability of R. 4:69, is not of such public importance that the court should ignore the absence of controversy, *i.e.*, the mootness of Count IV, and issue a declaratory judgment. (Pa12)

This decision is error. Throughout this matter, the parties remained adverse to one another, asserted different interpretations of N.J.S.A. 54:3-21 and relief would have had a practical effect on their dispute. The State claimed that the Legislature in enacting P.L. 2021, c. 17, ¶6 had no intent to negate the prerogative action under the 1947 Constitution for third-party tax appeals, whereas Plaintiffs argued that the very language of the bill (and the legislative statements) suggested that such rights were meant to be cancelled outright by the Legislature. The parties thus came to this controversy with contrary views of the operation and intent of P.L. 2021, c. 17, ¶6 thus demonstrating “*tangible* adversity” that remained throughout the litigation.

Advance Elec. Co. v. Montgomery Twp. Bd. of Educ., 351 N.J. Super. 160, 166 (App. Div. 2002) (emphasis added).⁸

In addition, the State had a confused and fluctuating position below, asserting in its reply brief that the amended N.J.S.A. 54:3-21 was the exclusive means by which any property tax finding may be challenged; therefore, directly implying that the third-party right of challenge *was* in fact eliminated. As the Attorney General stated:

The law is unequivocal: challenges to local property tax assessments, whatever their nature, must follow the statutory appeal procedure as set forth in N.J.S.A. 54:3-21 and the statutory omitted property appeal procedures set forth in N.J.S.A. 54:4-63.13. (footnote omitted) . . .

(Pa164)(emphasis added). If, as the State argued in the trial court, N.J.S.A 54:3-21 is the exclusive means of making any “challenge to local property tax assessments *whatever their nature*” and since P.L. 2021, c. 17, ¶6 eliminated third-party tax appeals, the State’s interpretation must mean that the right is extinguished. At minimum, the very nature of the State’s sweeping statement, *id.*, gives rise to uncertainty as to the right of property owners to make third-party tax challenges going forward.

⁸ It should be noted that the courts’ discussion of whether her decision would be advisory were not directed at Plaintiffs’ request for relief; rather, they were in response to arguments raised by *Amici* as to whether R. 4:69 was a more burdensome or efficient remedy than the pre-existing administrative route. (Pa12)

In such circumstances, a declaratory judgment regarding legislative intent, and whether the amendment is constitutional or not, or whether the right of third-party tax challenge still persists as a direct right of action “in lieu of prerogative writ” goes to the heart of this litigation and would have a significant impact on the parties’ dispute. *Cf. Betancourt v. Trinitas Hosp.*, 415 N.J. Super. 301, 311-15 (App. Div. 2010)(appeal of hospital moot when the decision could have no practical effect on parties’ “prior” dispute over DNR order once plaintiff died). Indeed, it is the court’s statutory interpretation rendered *in dicta* in its unpublished decision that leaves Plaintiffs without effective relief. The cases cited by the Court to support its finding of non-controversy can thus be distinguished.⁹

Even if this Court were to agree with Judge Sundar that the case became technically moot once the State conceded the Legislature’s lack of authority to eliminate third-party tax challenges, this is still a case of first impression that involves a matter of public importance requiring the Court to decide on the merits whether third-party tax appeals are barred by P.L. 2021, c. 17, ¶6 or preserved under the prerogative writ clause in N.J. Const. (1947), Art. VI, sec. 5, ¶4. *See e.g., State*

⁹ *State v. Davila*, 443 N.J. Super. 577, 584 (App. Div. 2016)(defendants’ appeal of a pre-trial motion related only to a dismissed count of the indictment, and moot since decision would have no practical effect on the existing controversy); *City of Camden v. Whitman*, 325 N.J. Super 236, 243 (App. Div. 1999)(where legislature enacted a new law that “supplants the proscription against special legislation” that was basis of City’s constitutional challenge no effective relief available to address prior dispute).

v. Gathers, 234 N.J. 208, 217 (2018)(even where moot, court should “resolve [the] important constitutional question” of probable cause in seeking buccal swab from suspect); Joye et al, v. Hunterdon Cen. Regional High School Bd. of Educ., 176 N.J. 568 (2003)(case of first impression and of significant public interest; random drug searches). Despite findings of mootness, New Jersey courts routinely decide matters of public importance in order to eliminate any doubt about the meaning of a statute and to provide guidance thereon. Board of Educ. of City of Sea Isle City v. Kennedy, 196 N.J. 1, 18 (2007)(technically moot since person’s term of office is long over, court accepted appeal because “[p]resent controversy provides a vehicle through which guidance may be provided to school boards, their members, and the Commissioner regarding conflicts of interest.”). In addition, mootness should not be found where the legal issue initially put in dispute by the Plaintiff is likely to recur and will evade review. *See, e.g.*, State v. Gartland, 149 N.J. 456, 466 (1997)(issues of significant importance regarding right to die persist and are likely to recur, justifying further consideration); Zirger v. Gen. Accident In. Co. 144 N.J. 327, 330 (1995)(enforceability of standard arbitration clause evading review because of “possible reluctance” of industry or litigants “to press to resolution the issue.”).¹⁰

¹⁰ *See also* In re Protest of Contract Award for Project A1150-08, N.J. Executive State House Comprehensive Renovation and Restoration, 466 N.J. Super. 244, 260 (App. Div. 2021) (public bidding is one of importance, recurring and evading review so overcome mootness); Matter of Commitment of C.M., 458 N.J. Super. 563, 568

For all these reasons, this Court should decide Plaintiffs' claims under the Prerogative Writ Clause (and the N.J. Civil Rights Act as will be discussed *infra*). This is a case of public importance that is likely to recur; and its importance is underscored by the participation of *Amici* below; the amount of press on the issue; the radical change effected by the amendment of a longer than 100-year old entrenched administrative practice as to property tax challenges; and the fact that the right of appeal implicates significant issues of tax equity that are of extreme importance to property owners throughout the State.

III. THE STATE'S CONCESSION, MADE AFTER THE FILING OF THE LAWSUIT, THAT N.J.S.A. 54:3-21 MUST BE INTERPRETED TO MAINTAIN A THIRD-PARTY TAXPAYER'S CONSTITUTIONAL RIGHT TO APPEAL AN ASSESSMENT OR EXEMPTION TO THE SUPERIOR COURT, BRINGS THIS MATTER WITHIN THE "VOLUNTARY CESSATION" DOCTRINE AND MILITATES AGAINST A MOOTNESS CONCLUSION. (Pa2-Pa16)

Another way of approaching the issue of mootness, as presented by the facts of this case, is through the lens of the "voluntary cessation" doctrine. Under this

(App. Div. 2019)(reversing trial court's decision on mootness finding error when it refused to vacate civil commitment orders solely because plaintiff had already been released); Finkel v. Tp. Comm. of Tp. of Hopewell, 431 N.J. Super. 303, 318 (App. Div. 2013) (ambiguous interrelationship of several referendum provisions requiring clarity requires declaratory judgment despite fact that election occurred and body has already acted on policy question); and Advance Elec. Co., Inc. v. Montgomery Tp. Bd. of Educ., 351 N.J. Super. 160, 167 (App. Div. 2002)(though moot because work built under contract assumed complete, the appeal squarely implicates the public building bidding process, which is a matter of great public interest).

doctrine that first emerged in the federal courts, when a defendant changes its interpretation of a statute, the court will retain jurisdiction unless the defendant can prove that there is no reasonable expectation that the challenged practice will not be repeated – a very high burden, and one that cannot be met here. *See U.S. v. W.T. Grant Co.*, 345 US 629, 632-3 (1953)(voluntary cessation of prior interpretation of agency’s jurisdiction does not deprive court of power to hear and determine the case). In *City of Mesquite v. Aladdin's Castle, Inc.* 455 U.S. 283, (1982), the City revised an ordinance that became effective while the appeal was pending. The Supreme Court held that a “defendant’s voluntary cessation of a challenged practice does not deprive a court of power to determine the legality of the practice.” *Id* at 289. That is, a matter is not moot if the State is free to simply return to a prior interpretation or application of the statute or law. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___, 141 S. Ct. 63 (2020)(injunctive relief still called for since applicants’ remain under constant threat that the Governor can simply reclassify at will the area in question as red or orange thereby reinstating the COVID ban on religious services).¹¹

¹¹ Other federal courts within the Thirds Circuit that have come to the same conclusion are: *Lansing v. SEPTA*, 176 F.R.D. 132, 142 (3d Cir. 1997)(court can still determine legality of a practice unless interim relief or events have completely and irrevocably eradicated the effects of the alleged violation); *Hansen Foundation, Inc. v. City of Atlantic City*, 504 F. Supp. 3d 327, 336 (D.N.J. 2020)(courts are reluctant to declare a case moot when defendant argues mootness because of some

New Jersey courts have taken a similar position. *See e.g., Delanoy v. Tp. of Ocean*, 245 N.J. 384, 403, n.5 (2021)(where new maternity and light duty standards were adopted after plaintiff commenced litigation, such adoption did not render current challenge moot); *NJ Assoc. for Retarded Citizens, Inc. v. Dep’t of Human Services*, 89 N.J. 234, 240-1(1984)(where changing factual situation presented court with a moving record it will issue declaratory relief where there is a still a dispute between the parties as to meaning of the applicable statutory provisions); and *Galloway Tp. Bd. of Educ. v. Galloway Tp. Educ. Assoc.*, 78 N.J. 25, 40-45 (1978)(although offending conduct had stopped, court reversed appellate decision of mootness, finding that PERC had authority to adjudicate and require future compliance with its order as to an unfair labor practice).

In the present matter, despite the State’s concession that the Legislature did not have the authority to eliminate the right of third party appeal even if it had intended to do so when it adopted P.L. 2021, c. 17, ¶6, Judge Sundar should have retained jurisdiction and issued declaratory and injunctive relief with respect to: 1) whether the Legislature in amending N.J.S.A. 54:3-21 intend to eliminate the right of third-party property tax appeals; and if so, 2) whether, despite that intent, the right to make such challenges continues in force via the constitutionally protected action

action it took unilaterally after the litigation began); *Sourovelis v. City of Phila.*, 103 F. Supp. 3d 694 , 701(E.D. Pa 2015)(post-litigation “maneuvers” that are designed to insulate a practice from judicial review as to legality must be viewed critically).

in lieu format. In this case, the State did not repeal the amended version of N.J.S.A. 54:3-21, did not further amend it to clarify that that the right to appeal directly to court still existed, and did not issue any guidance or regulations as to its interpretation of the statute to advise the public that, going forward, it could still make such challenges via the “action in lieu” format. At this time, Plaintiffs’ have only the word of several DAGs --- nothing more nor less.

In fact, the State’s position on this issue in this very litigation has been fluid and changeable. As noted earlier, in its response brief below, the State declared that the amended version of N.J.S.A. 54:3-21 was the only means of making a tax challenge, giving rise to the inference that following the amendment in P.L. 2021, c. 17, ¶6 third parties no longer had any right of challenge to an assessment or exemption. The State made this position quite clear when it stated: “The law is unequivocal: challenges to local property tax assessments, whatever their nature, must follow the statutory appeal procedure as set forth in N.J.S.A. 54:3-21. ” (Pa 164).

Thus, the State has staked out contrary positions. On the one hand, it says that it now agrees that the Legislature could not eliminate third-party property tax appeals, and that such right continues via the action in lieu of prerogative writ under Art. VI, sec. 5, ¶4 of the 1947 Constitution. Conversely, it also states that the only route for any local property tax challenge is via the very statute that has been

amended to eliminate such appeals. (Pa164). By such contradictory arguments, the State not only confuses the public, but reinforces Plaintiffs' fear that it will change its position in the future. After all, if one "must follow", *ibid.*, the amended statute that eliminated third-party tax appeals, the State's argument logically suggests that property owners will be barred in the future from doing so. Under these circumstances, there is no evidence that the State will not change its mind and interpret N.J.S.A. 54:3-21 as eliminating third-party tax appeals entirely.

Of equal importance, the ambiguity latent in this situation will effectively preclude property owners (and their lawyers) from making third-party challenges to assessments or charitable exemptions, even though they have the absolute right to do so under the 1947 Constitution; yet another reason why Plaintiffs are entitled to a decision on the merits. *Cf. Zirger v. Gen. Accident In. Co.*, *supra*, 144 N.J. at 330 (1995) enforceability of arbitration clause evading review because of "possible reluctance" of industry or litigants "to press to resolution the issue.") If the entire New Jersey legal and business community, including the Office of Legal Services, thought that this amendment effectively banned and "killed off" third-party property tax appeals brought by individual property owners, there is no reason to believe that ordinary taxpayers will know otherwise in order to exercise their constitutional right of review.

IV. GIVEN THE 100 YEAR HISTORY OF TAX APPEALS IN THE STATE, THE EXPLICIT LEGISLATIVE INTENT TO

ELIMINATE THIRD-PARTY TAX APPEALS, AND THE UNDERSTANDING OF THE AMENDMENT’S IMPORT WITHIN THE BUSINESS AND LEGAL COMMUNITY, PLAINTIFFS’ COMPLAINT SEEKING TO RESOLVE THE CONSTITUTIONALITY OF N.J.S.A. 54:3-21, AS AMENDED, IN A DECLARATORY ACTION IS APPROPRIATE. (Pa2-Pa16)

Under the Uniform Declaratory Judgment Act, a party affected by a statute may have the constitutionality of the statute resolved in a declaratory action. *See N.J.S.A. 2A:16-50 to -62*. As the Appellate Court so carefully laid out in Finkel v. Tp. Comm. of Tp. of Hopewell, *supra*, 431 N.J. Super. at 318:

The remedial purpose of the Declaratory Judgment Act is "to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." N.J.S.A. 2A:16-51. "The Act merely broadens the rationale of remedies long cognizable in equity, such as those 'to settle doubts about the construction of a will . . . ; or . . . to quiet title, or a bill of peace.'" New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 239-40(1949) (quoting In re Van Syckle, 118 N.J.L. 578, 580 (E. & A.1937)). To serve these ends, the Act provides that "[a]ll courts of record in this [S]tate shall . . . have power to declare rights, status and other legal relations," N.J.S.A. 2A:16-52, and particularly to determine "any question of construction or validity arising under . . . [a] statute," N.J.S.A. 2A:16-53.

Plaintiffs were thus justified in initiating this action to “seek relief from uncertainty and insecurity with respect to [their] right” to file a third-party tax appeal, which had previously been set forth in statute for well over 100 years, but was specifically eliminated by P.L.2021, c.17, ¶6. As Judge Sundar herself agreed, at the outset of the litigation there *was* a dispute as to the “facial unconstitutionality” of the amendment, (Pa15), namely whether amended N.J.S.A. 54:3-21 eliminated

the right of third-party tax appeals. The Court was then obligated to interpret the amendment in order to determine and effectuate the Legislature's intent," Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553 (2009); and to make a decision on the merits as to the constitutionality of the statute, as amended; which the Court assiduously avoided doing by dismissing the case as moot. In fact, the only reason it became "moot" is that the State conceded that Plaintiffs were correct in asserting that the Legislature could not, as a constitutional matter, eliminate the right of third-party property tax appeals. A concession by Defendant of the very point Plaintiffs brought to the court renders the matter fit for judgment in *Plaintiffs' favor*, not dismissal.

The central question faced by this Court is whether the Legislature intended to eliminate entirely the ability of taxpayers to appeal the assessment or exemption of another property owner or to eliminate only such taxpayers' administrative remedy, leaving intact the constitutional remedy of action in lieu of prerogative writ. Throughout the litigation, the parties differed on this question, with the State insisting that the Legislature intended only to eliminate a taxpayer's administrative appeal, with Plaintiffs insisting that the Legislature's language and its legislative statements demonstrated its intent to prohibit the right of appeal completely. As noted above, the State confused and contradicted its own position, declaring in its reply brief that the amended statute is the only means of making such challenges.

The Court's ultimate "task in statutory interpretation is to determine and effectuate the Legislature's intent." Grillo v. State, 469 N.J. Super 267, 274 (App. Div. 2021 (quoting Bosland v. Warnock Dodge, Inc., *supra*, 97 N.J. at 553)). *See also* Roberts v. State, Div. of State Police, 191 N.J. 516 , 521 (2007) (construing meaning of police disciplinary statute through use of extrinsic aids); Bunk v. Port Auth. of NY. N.J., 144 N.J. 176 , 194 (1996) (construing intent of Legislature's amendment to Workers' Compensation Act). Courts "look first to the plain language of the statute, seeking further guidance only to the extent that the Legislature's intent cannot be derived from the words that it has chosen." McGovern v. Rutgers, 211 N.J. 94, 108, (2012). Thus, any analysis to determine legislative intent begins with the statute's plain language. However, the Court's review "is not limited to the words in a challenged provision." State v. Twiggs, 233 N.J. 513, 532 (2018). *See also* Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251 (2008). In the event that the language is not clear and unambiguous on its face, New Jersey courts look to other interpretive aids to assist in their understanding of the Legislature's will. *See, e.g., Roberts, supra*, 191 N.J. at 521 (reviewing extrinsic aids including Governor's conditional veto message and sponsors' statements); Panzino v. Cont'l Can Co., 71 N.J. 298 301-03 (1976) (relying on sponsor's statement for guidance).

A. Based On The Language Of The Amendment To N.J.S.A. 54:3-21 And The Legislative Statements, P.L. 2021, c. 17, ¶6 Is Unconstitutional As It Eliminates On Its Face The Right To Make Third-Party Property Tax Appeals.

In this case, the Legislature eliminated any reference to third-party tax appeals under the statute, declared in the legislative statements that such appeals brought by individual property owners were now prohibited and said nothing about any right of taxpayers to proceed directly in the Superior Court under the prerogative writ “in lieu” format. It is Plaintiffs’ position that had the Legislature intended to eliminate only a third-party taxpayer’s *administrative* remedy, it would have spelled out the alternative appeal process still available to those taxpayers and other relevant information, such as setting forth the date from which the appeal accrued and the forum in which the challenge was to be lodged. It did not do so, since it appears from the legislative statements and the numerous articles written about the bill, *supra*, Statement of Facts, that the Legislature thought that the right of appeal was simply a statutory cause of action that could be eliminated completely. It, and others, seemed totally unaware that the New Jersey Constitution’s Prerogative Writ Clause allows such actions to be filed directly to the Law Division **as a matter of right**.

As shown by the two Legislative Statements accompanying the bill (and an earlier version thereof), the Legislature was quite clear as to the import of its actions when it adopted the 2021 Amendment to N.J.S.A. 54:3-21, *i.e.*, it was seeking to eliminate all challenges brought by third-party taxpayers:

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of

their own property as well as that of any other property in their county. The bill would eliminate this option, but not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

Assembly Appropriations Comm. Statement, A.1135 (September 17, 2020) (emphasis added) (Pa121). The inclusion within the Statement that “OLS estimates that any reduction in the number of property tax appeals filed would lower local government operating expenditures,” *ibid*, further attests to the Legislature’s intent to eliminate third-party tax appeals entirely. Permitting taxpayers to continue to file third-party appeals against local tax assessor’s directly in court would not result in a reduction of property tax appeals filed nor lower costs. Pointedly, the Legislative Statement contains no recognition that such rights continued to be preserved via the 1947 Constitution’s “action in lieu of prerogative writs” provision; such an observation would be expected if the Legislature did not intend to eliminate such appeals entirely.

In light of the Legislature’s apparent intent to eliminate all third-party property tax appeals, N.J.S.A. 54:3-21, as amended, must be found to be unconstitutional since N.J. Const. (1947), Art. VI, sec. 5, ¶4 does not allow the Legislature to remove the right of a taxpayer to seek review of a tax assessor’s decision via the action in lieu of prerogative writ, preserved in the 1947 Constitution.

**B. In The Alternative, Declaratory Relief Should Issue That
The Right To Bring Third-Party Challenges Continues
Via The Action In Lieu Of Prerogative Writ.**

Traditionally, prerogative-writ actions had been used by citizens to challenge government decisions or actions at all levels of government. As carefully described in the Constitutional and Statutory Framework of this Brief, *supra*, 8-17, New Jersey courts have taken a very liberal view of the scope of the writ of certiorari in particular and have used it routinely as a remedy to safeguard individual rights against public officials and governing bodies. See Treasurer of Camden v. Mulford, *supra*, 26 N.J.L. at 54 (“while the remedy has been denied in other states, as dangerous or prejudicial to the public welfare, no such evil has been experienced [in New Jersey].”) Indeed, already in 1856, the Court in Treasurer of Camden v. Mulford noted that the writ of *certiorari* “is habitually used as a remedy against unlawful taxation, either for state, county, township or city purposes.” *Ibid*.

Broad use of the writ of *certiorari* still prevails today, although the formality of seeking a “prerogative writ” (or any of the other three common law writs) was superseded in the 1947 Constitution by a simplified and modernized procedure consisting of a direct action in the Law Division through a complaint “in lieu” of first securing a court writ. By means of Art. VI, Sec. 5, ¶4, the framers of the 1947 Constitution worked to “streamline and strengthen the traditional prerogative writs” by consolidating the four writs of *certiorari*, *quo warranto*, *prohibition*, and *mandamus* into one single form of action “as of right.” In re LiVolsi, 85 N.J. 576, 593-594 (1981). Today, to bring an action in lieu of prerogative writs, a plaintiff

need only show that the appeal could have been brought under one of the common-law prerogative writs, *id.* at 594, something any third party taxpayer seeking to challenge an tax assessor's determination of another's exemption status is able to do. Indeed, the right to bring the action in lieu of prerogative writ is so well accepted that such formal demonstration is almost never required.

Where a statute is amended to remove the right of administrative remedy, the claim simply adverts to the former prerogative writ action now cognizable as a direct complaint in the Superior Court. This very point was made by the New Jersey Supreme Court in a matter concerning a challenge to a municipal utility's rates that the court had found was not within the jurisdiction of the BPU. The Supreme Court in In re Glen Rock, 25 N.J. 241 (1957), rejected the claim that a consumer could bring administrative remedies in the BPU against the municipal utility, but expressly held that the consumer did not lose their right to bring such claims in the Superior Court under the prerogative writ rule:

At any rate, individual consumers can call upon the courts to review allegedly arbitrary rates by bringing an action in lieu of the former prerogative writ of *certiorari*. *P.J. Ritter Co. v. Bridgeton*, 135 N.J.L. 22 (*Sup. Ct.* 1946), affirmed *o.b.* 137 N.J.L. 279 (*E. & A.* 1948). This is now available as of right in the Superior Court. 1947 *Constitution*, Art. VI, Sec. V, *par.* 4.

In re Glen Rock, *supra*, 25 N.J. at 251.

Similarly, in Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011), the Appellate Division held that any action that could have been brought as a prerogative

writ action prior to the 1947 Constitution can still be brought in the Law Division as long as it is “not an appeal of a state administrative agency decision *or under the jurisdiction of the Tax Court.*” *Id.* at 521 (emphasis added). Following the amendment to N.J.S.A. 54:3-21 that removed third-party claims from the tax appeal procedure, a claim by a third-party challenger is no longer “under the jurisdiction of the Tax Court,” and, it follows under the reasoning of the Appellate Division in Vas v. Roberts that a plaintiff may now bring action in the Superior Court under the constitutionally protected prerogative writ rule.

It follows that even if the Legislature did not intend to interfere with the constitutional remedy in Art. VI, Sec. 5, ¶4 of the 1947 Constitution, its apparent intent to eliminate third-party tax appeals entirely, based on the language of the amendment and the legislative statements, will cause taxpayers (and the legal community) to doubt and question if the right continues to exist; as such, the property owners (and their lawyers) will be chilled and discouraged in their right of access to the courts to make third-party tax challenges (if they are even cognizant of such constitutional right). Such ambiguity requires, at minimum, declaratory relief that the constitutional right of action remains unimpaired following the amendment.

Consistent with these arguments, this Court may decide to apply the doctrine of constitutional avoidance, rather than declare the statute unconstitutional; in this way, the Court can “save” the statute by interpreting it as leaving intact the pre-

existing right of action by a taxpayer using the prerogative writ process set out in Art. VI, Sec. 5, ¶4 of the 1947 Constitution. *See State v. Pomiankek*, 221 N.J. 66, 91 (2015) (the doctrine of constitutional avoidance “comes into play when a statute is susceptible to two reasonable interpretations, one constitutional and one not.”). In adopting this route, the Court does not dismiss but issues judgment on the merits, and must grant Plaintiffs the alternative relief they sought in their Amended Complaint.

To eliminate doubt as to the import of the 2021 Amendment and to resolve all issue with respect to the right of third-parties to challenge the assessment or exemption of another taxpayer, this Court should, at minimum, issue declaratory relief limiting the 2021 Amendment to the elimination of an *administrative* right of appeal only, not the “action in lieu” challenge that can be brought directly in the Superior Court, as preserved in the 1947 Constitution. In addition, it follows that the State should be prohibited from enforcing the 2021 Amendment in any manner that deprives taxpayers of their guaranteed right to seek judicial review pursuant to R. 4:69-5, and should be compelled to issue guidance or regulations that set forth the right of third-party tax appeals to proceed in the Superior Court and to be filed within 45-days of a date certain, *i.e.*, the annual issuance of tax assessments by the municipality or some other marker.

V. PLAINTIFFS WERE ENTITLED TO AMEND THEIR COMPLAINT TO ASSERT A CLAIM UNDER THE NEW JERSEY CIVIL RIGHTS ACT. (Pa2-Pa16)

In response to Defendant's Motion to Dismiss, Plaintiffs made a routine motion to amend Count IV of the Complaint to include an alternate right to declaratory and injunctive relief under the New Jersey Civil Rights Act ("CRA"), N.J.S.A., 10:6-2(a). The proposed addition asserted that N.J.S.A., 54:3-21(a), as amended, eliminates third-party rights to challenge tax exemptions, giving rise to a "deprivation of Plaintiffs' constitutional rights of redress and review" under the Prerogative Writs Clause, which thus gives rise to a cause of action under the CRA.

This is a proper assertion of an alternate remedy via the CRA as to deprivation of a protected State constitutional right, and Plaintiffs' motion should have been granted. See Empower Our Neighborhoods v. Guadagno, 453 N.J. Super. 565 (App. Div. 2018)(upholding violation of Civil Rights Act based on unconstitutional nature of state statute and noting that its attorneys fee provision was necessary to secure meaningful access to the courts).

A. The Court Abused its Discretion When Denying the Plaintiffs the Right to File an Amended Complaint When the State Had Not Filed an Answer and the Matter Was Still Justiciable.

First and foremost, Plaintiffs were entitled to amend by right since no "responsive" pleading had been filed under R. 4:6-2. As the court rules provide, "[a] party may amend any pleading as a matter of course *at any time before a responsive*

pleading is served...” R. 4:9-1 (emphasis added). A motion to dismiss for failure to state a claim, as the State moved herein, was not a “responsive pleading” as defined in R. 4:6-2. *See e.g. Bank Leumi USA v. Kloss*, 243 N.J. 218 (2020)(noting that “Rule 4:6-2 [] plainly treats motions to dismiss as distinct from responsive pleadings...”) Since Defendants’ motion to dismiss was not a “responsive pleading, Plaintiffs were entitled to amend by right and their motion to amend should have be granted on that ground alone.

In any event, if a motion to amend was required given the posture of the litigation, such motions are to be granted with liberality and “without consideration of the ultimate merits of the amendment”. *Interchange State Bank v. Rinaldi*, 303 N.J. Super. 239, 256 (App. Div. 2007). Such liberality is especially necessary in cases concerning matters of public interest. *Springfield Tp. v. Board of Educ.*, 217 N.J. Super. 570 (App. Div. 1987). Since the present matter *is* one of public importance and all such motions are to be granted liberally, the proposed amendment to Count IV to include relief via the CRA should have been granted as a matter of course.

Finally, Plaintiffs’ CRA claim was not futile nor unnecessary. An amendment to a complaint is “futile” “when the newly asserted claim is not sustainable as a matter of law.” *Notte v. Merchs. Mut. Ins. Co.*, 185 N.J. 490, 502 (2006). It is well within the scope of the CRA for Plaintiffs to seek declaratory and injunctive relief

that P.L. 2021, c.17, ¶6 illegally purports to remove a protected constitutional right to challenge third-party tax exemptions via the action in lieu of prerogative writ. In that the CRA allows claims that a statute violates a protected constitutional right, it cannot be said that the proposed claim under the CRA was “not sustainable as a matter of law.” Notte, *supra*, 185 N.J. at 502.

The court below did not deny that a violation of the Prerogative Writ Clause would arise if the amendment to N.J.S.A. 54:3-21(a) was construed to bar all third-party tax exemption challenges. Instead, Judge Sundar accepted that there was no “uncertainty,” “confusion,” or difference of opinion so as to require declaratory relief since she believed that all parties agreed that the right of third-party challenge had to continue via the 1947 Constitution’s Prerogative Writ Clause, **if the statute were found to be constitutional**. This shared position, as shown earlier, *supra* Points II and III, does not constitute mootness, and instead went to the “ultimate merits” of whether Plaintiffs would prevail under the CRA, an analysis that the Court was not permitted to make on a motion to amend. Interchange State Bank, *supra*, 303 N.J. Super. at 256. Moreover, it is not true that all parties agreed on the interpretation of the amended statute; as shown above, the State’s position was changeable and gave rise to conflicting positions. In such circumstances, declaratory relief was proper and necessary.

B. Plaintiffs Would be Entitled to Legal Fees if The Court Were to Decide On the Merits that They Are the Prevailing Party.

N. J.S.A 10:6-2(c) provides:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. (emphasis added)

In interpreting a statute, one looks to the “ordinary and well understood meaning” of the words therein. Tarr v. Bob Ciasulli’s Mack Auto Mall, Inc., 181 N.J. 70, 82 (2004). Also, words are construed in a series consistent with the words surrounding them. Gilhooley v. County of Union, 164 N.J. 533 (2000). Accordingly, New Jersey courts have found, based on the plain language of the statute, that a person may bring a civil action under the CRA in two circumstances: (1) when she is deprived of a substantive right, or (2) when her substantive rights are interfered with by threats, intimidation, coercion or force. Felicioni v. Administrative Office of the Courts, 404 N.J. Super. 382, 400 (App. Div. 2008) *quoted in* Hurdleston v. New Century Financial Services, 629 F. Supp. 2d 434 (D.N.J. 2009). “Substantive rights . . . [may be] secured by the Constitution or laws of this State,” Felicioni v. Administrative Office of the Courts, 404 N.J. Super. at 401; and, whatever procedural requirements previously applied to statutory and constitutional claims applies to the vindication of such claims through the CRA. Owens v. Feigen, 194

N.J. 607, 612 (2008); *see also* Office of the Governor, Press Release, dated September 10, 2004 (“Press Release”) (stating that the CRA “does not create any new substantive rights, override existing statute of limitations, waivers, immunities, or alter jurisdictional or procedural requirements . . . that are otherwise applicable to the assertion of constitutional or statutory rights.”).

It is clear from a review of the legislative history that the Legislature enacted the CRA to create a state law claim analogous to 42 U.S.C. § 1983. Governor McGreevey signed the CRA into law on September 10, 2004. See Press Release. A review of the respective Assembly and Senate Judiciary Committee Statements to Assembly No. 2073 indicate the Legislature’s intent to create a state law analogue to 42 U.S.C. §1983. Furthermore, like the federal civil rights statute, CRA gives a private cause of action to persons against actors, who “under the color of law” deprive them of their substantive rights under the U.S. Constitution and federal law, and extends that cause of action to reach rights arising under either the New Jersey Constitution or state law. N.J.S.A. 10:6-2(c). *See also* Owens v. Feigen, 194 N.J. Super. at 166 (stating that the Legislature passed the NJCRA to create a state law claim analogous to 42 U.S.C. § 1983).

In this matter, it is certain that the amendment to N.J.S.A. 54:3-21 has either deprived them of their constitutional right of third-party challenge to tax assessment or exemption or, at minimum, has created uncertainty as to whether such right

continues to exist following the amendment. As set forth at length in this brief, *supra*, Plaintiffs' assertion that the Legislature intended to eliminate third-party property tax appeals gives rise to the need for declaratory and injunctive relief to clarify that the statute is unconstitutional or that such "right of action" still exists; in either case, such declaratory relief gives rise to a colorable claim under the CRA that the State must be enjoined from enforcing the 2021 Amendment to deprive taxpayers of such substantive right.

In addition to securing injunctive or other equitable relief, plaintiffs who prevail in a civil rights claim are able to receive counsel fees. N.J.S.A.10:6-2(f) provides:

In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

See also Statement to Assembly No. 2073 with Senate Floor Amendments, adopted June 10, 2004 (noting that "[t]hese floor amendments would also amend subsection f of the bill to clarify that when a person brings an action, under this provision of the bill, the court may award the prevailing party reasonable attorney's fees and costs.").

As N.J.S.A. 10:6-2(c) was rooted in the federal civil rights statute, the fee-shifting provision of N.J.S.A. 10:6-2(f) was also based on 42 U.S.C. § 1988, which provides for an award of counsel fees to the prevailing party in a suit brought under § 1983:

In any action or proceeding to enforce a provision of section[] . . . 1983. . . of this title . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs.

42 U.S.C. § 1988. In fact, at the time of Senator Gill's floor amendments, Assemblyman Neil Cohen noted to the press that the Act now "mirrored the language of the fee-shifting provision applicable to the federal Civil Rights Act," 30 Seton Hall Leg. J. 163, 175, n.81 (2005), thus again implying the relevance of case law developed under that statute.

It is well established that litigants who prevail within meaning of §1988 are entitled to receive fees "as a matter of course in the absence of special circumstances." Dunn v. N.J. Department of Human Services, 312 N.J. Super. 321, 333 (App. Div. 1998). The discretionary authority to deny fees outright is extremely limited and should be sparingly exercised. Gregg v. Hazlet Township Comm., 232 N.J. Super. 34, 37-38 (App. Div. 1989); The African Council v. Hadge, 255 N.J. Super. 4, 12 (App. Div. 1992) (reiterating that "counsel fees should be liberally granted").

An overly vigorous or unconstrained use of the power to deny fees would frustrate and potentially defeat the legislative purpose underlying § 1988 and the CRA, which exists to promote the vindication of constitutional values by creating a financial incentive for competent counsel to undertake civil rights cases. Student PIRG v. AT&T Bell Labs, 842 F.2d 1436 (3d Cir. 1988); New Jerseyans for Death

Penalty Moratorium v. New Jersey Dept. of Corr., 185 N.J. 137, 153 (2005) (absent fee shifting to vindicate public rights, “the ordinary citizen would be waging a quixotic battle against a public entity vested with almost inexhaustible resources”). In other words, in the absence of the CRA, taxpayers will be discouraged from seeking to remedy violations of the Constitution or of civil rights and liberties, leaving such potential wrongs unabated. Viewed in this way, the CRA represent an essential component of public policy.

Accordingly, if Plaintiffs prevail in this litigation and secure the declaratory and/or injunctive relief they are seeking, this Court should permit counsel to apply for legal fees prior to entering final judgment in this matter. See Jones v. Hayman, 418 N.J. Super. 291, 305 (App. Div. 2011) (citing Mason v. City of Hoboken, 196 N.J. 51, 76 (2008)(one “unequivocal way” in which a litigant is deemed prevailing is to obtain a judgment on the merits); Inst. Juveniles v. Secy. Of Public Welfare, 758 F.2d 897, 911 (3d Cir. 1985); P.G. v. Brick Twp. Bd. of Ed, 124 F. Supp. 2d 251, 259 (D.N.J. 2000); Singer v. State, 95 N.J. 487, 495 (1984) (requiring a “factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”). *See also* D. Russo, Inc. v. Township of Union, 417 N.J. Super. 384, 386 (App. Div. 2010)(“We include that a party who brings an action that is shown to **have been a catalyst for the cessation of conduct alleged to violate the CRA may qualify** as a prevailing party entitled to an award of attorneys’ fees.”)(emphasis added).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that Judge Sundar's determination that this matter "lacks a justiciable controversy" be reversed, and the matter be remanded for a decision on the merits or, in the alternative, that this Court enter such declaratory and injunctive relief itself, including Plaintiffs' entitlement to legal fees.

Respectfully submitted,

/s/Renée Steinhagen
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Dated: February 22, 2023

PLAINTIFFS' APPENDIX

BY THE COURT

	:	SUPERIOR COURT OF NEW JERSEY
New Jersey Citizen Action, <u>et al.</u>	:	MERCER COUNTY
	:	LAW DIVISION
Plaintiffs,	:	DOCKET NO. 001968-2021
	:	
vs.	:	
	:	FINAL ORDER AND JUDGMENT
State of New Jersey et al.	:	
	:	
Defendants.	:	
	:	

THE ABOVE MATTER having been opened to the court by motion of defendants, by and through their counsel, the Attorney General of New Jersey (Abiola G. Miles; Michelline Capistrano Foster; James Robinson, Deputy Attorneys General appearing), for an Order to dismiss the above-captioned complaint, and thereafter, the complaint left open only a portion of Count IV;

AND Amici, the Independent Universities and Colleges of New Jersey and Center for Non-Profit Corporations, Inc., by and through their counsel, Gibbons P.C. (Lawrence S. Lustberg, Esq. appearing), and amicus New Jersey Hospital Association, by and through their counsel, O'Toole Scrivo, LLC (James DiGiulio, Esq. and Nicole M. DeMuro, Esq. appearing), having appeared in support of defendants' motions;

AND plaintiffs, by and through their counsel, New Jersey Appleseed Public Interest Law Center, Inc. (Renee Steinhagen, Esq. appearing), and the Law Offices of Bruce Afran (Bruce Afran, Esq. appearing), having abandoned one portion of their claim in Count IV and cross-moved for summary judgment on the other portion pertaining to Article VI, § 5, ¶ 4 of the New Jersey Constitution ("In-Lieu Clause"); and having responded to amici's briefs, and further having sought to amend Count IV of the complaint;

AND the court having considered all the papers submitted, and oral arguments presented, and for the reasons stated in the accompanying written letter opinion of the same date, and for good cause shown;

IT IS on this 28th day of September 2022, ORDERED as follows:

- (1) Defendants' motion to dismiss, with prejudice, the remaining portion of Count IV of the complaint with respect to the In-Lieu Clause, be and is hereby GRANTED, due to lack of a justiciable controversy.
- (2) Plaintiffs' cross-motion for summary judgment, be and is hereby DENIED due to lack of a justiciable controversy.
- (3) Plaintiffs' proposed amendment to include a claim under the New Jersey Civil Rights Act to the remaining portion of Count IV of the complaint with respect to the In-Lieu Clause, be and is hereby DENIED as futile due to lack of a justiciable controversy.

/s/ Mala Sundar
Hon. Mala Sundar, P.J.T.C.
t/a Superior Court, Law Division

SUPERIOR COURT OF NEW JERSEY

MERCER VICINAGE

HON. MALA SUNDAR P.J.T.C.
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Re: New Jersey Citizen Action, et al. v. State of New Jersey et al.
Docket No. MER-L-001968-2021

Dear Counsel:

This opinion decides defendants' motion to dismiss the only remaining portion of Count IV of the above referenced complaint for failure to state a cause of action for which relief can be granted under R. 4:6-2(e). That portion alleges Section 6 of L. 2021, c. 17 barring third-party appeals in the Tax Court, as being an unconstitutional prevention of access to the courts under the Prerogative Writs clause of the New Jersey Constitution (Art. VI, § 5, ¶ 4) (hereinafter In-Lieu Clause).¹ The defendants (collectively the "State") and amici argued that Section 6 does not bar the filing of in-lieu prerogative writs in the New Jersey Superior Court, thus, does not violate the In-Lieu Clause. Plaintiffs then asked this court to

¹ A third-party appeal is where a property owner or taxpayer challenges the local property tax (LPT) assessment or exempt status of another taxpayer's or owner's property on grounds it results in discrimination of the challenger's property's LPT assessment.



issue a declaratory judgment to clarify and make it known to taxpayers that third-party appeals can be filed in the New Jersey Superior Court as actions in lieu of prerogative writs under R. 4:69.

The parties and amici agree that Section 6 eliminated the Tax Court and the county boards of taxation as a venue for filing and adjudicating third-party LPT appeals. They also agree that Section 6 does not bar litigants' access to the courts under R. 4:69. Whether access to the courts under R. 4:69 as a means of instituting third-party appeals of LPT assessments/exemptions is the most efficient manner of redress is not an issue in the case where the only challenge raised is the facial constitutionality of Section 6. Since there is no justiciable controversy on the only remaining portion of Count IV of the complaint, the court grants the State's motion to dismiss the same with prejudice, and denies plaintiffs' cross-motion for summary judgment. For the same reason, the court also denies plaintiffs' proposed amendment to Count IV to include a claim for damages and attorney fees under the New Jersey Civil Rights Act as futile.

BACKGROUND

Prior to its amendment by L. 2021, c. 17 (hereinafter Chapter 17),² the statute governing third-party appeals before the Tax Court and county boards of taxation read as follows:

[A] taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property, or feeling discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may . . . appeal . . . to the county board of taxation . . . provided, however, that any such taxpayer or taxing district may . . . file a complaint directly with the Tax Court, if the assessed valuation of the property . . . exceeds \$1,000,000.

[N.J.S.A. 54:3-21(a) (emphasis added).]

² Chapter 17 was enacted as a legislative response to the trial court's decision in AHS Hosp. Corp. v. Town of Morristown, 28 N.J. Tax 456 (Tax 2015).



The above statute codified a taxpayer's right to challenge another property's LPT assessment as early as 1906. See L. 1906, c. 120, § 3; Twp. of Ewing v. Mercer Paper Tube Corp., 8 N.J. Tax 84, 90-91 (Tax 1985) ("it has been and still is the Legislature's purpose to afford the right to appeal essentially to any person whose tax payments are adversely affected by an improper assessment"); Atrium Dev. Corp. v. Cont'l Plaza Corp., 214 N.J. Super. 639, 641 (App. Div. 1987) (N.J.S.A. 54:3-21(a) by "its plain language . . . accord[s] standing to a taxpayer to challenge, on discrimination grounds, the alleged underassessment of the property of others in the district").

Courts have extended the reach of N.J.S.A. 54:3-21(a) to permit third-party challenges to the grant of LPT exemptions. See City of Hackensack v. Hackensack Med. Ctr., 228 N.J. Super. 310, 313 (App. Div. 1988) (that "someone else may have received improper tax treatment does not entitle the taxpayer to an exemption Rather, it may give rise to ground for any taxpayer in the taxing district to challenge such exemption") (citing among others, Post v. Warren Point Vol. Firemen's Assoc., 19 N.J. Misc. 367, 368 (Bd. of Tax Appeals 1941) which rejected an argument that a third-party appeal in N.J.S.A. 54:3-21 is limited to "the amount of an assessed valuation" and "does not authorize" a challenge to an "exemption." The Board ruled that an assessed valuation includes "the entirety of the entry on the tax lists, including the notation of exemption" and a third-party is "certainly . . . discriminated against as a taxpayer, if an improper exemption has been" granted to property "owned by others").

Section 6 of Chapter 17 deleted the statutory provision permitting third-party LPT appeals in the Tax Court and county boards of taxation. Thus, post-Chapter 17, the statute reads as follows (amendments indicated by italics and strikeout):

[A] taxpayer feeling aggrieved by the assessed valuation *or exempt status* of the taxpayer's property, ~~or feeling discriminated against by the assessed valuation of other property in the county,~~ or a taxing district which may feel discriminated by the assessed valuation *or exempt status* of property in the taxing district, or by the assessed valuation *or exempt status* of property in another taxing district in the

county, may ... appeal ... to the county board of taxation ... provided, however, that any such taxpayer or taxing district may ... file a complaint directly with the Tax Court, if the assessed valuation of the property ... exceeds \$1,000,000.

[N.J.S.A. 54:3-21(a).]

The legislative history relative to the above amendments note that the proposed Section 6 of Chapter 17 “prohibits property taxpayers from filing property tax appeals with respect to the property of others.” Sponsor’s Statement to A. 1135 12. “Eliminating this option would reduce property tax appeals, which are costly and create uncertainty in local government finances.” Ibid. The proposed amendment to N.J.S.A. 54:3-21(a) “would not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.” Ibid. See also Assembly Approp. Comm. Statement to A. 1135 2 (Sep. 17, 2020) (proposed law “would eliminate” the “option” of third-party LPT appeals for a taxpayer).

PROCEDURAL HISTORY

On September 28, 2021, plaintiffs filed a verified complaint for declaratory and injunctive relief against the State from “enacting, enforcing and/or otherwise acting upon” Chapter 17. The complaint alleged four counts. Counts I-III were later dismissed as withdrawn and an Order in this regard was entered on May 23, 2022.³

Count IV alleged that Section 6 violated the New Jersey Constitution’s “right to redress” clause (Article I, ¶ 18) and the First Amendment of the federal Constitution (hereinafter “Petition clauses”), and “preservation of the” In-Lieu Clause. Plaintiffs sought to have Section 6 declared null and void by a declaratory judgment and a permanent injunction “against further infringement of Plaintiffs right of redress and review of government action in the Superior Court” or other equitable relief.

³ Counts I-III alleged that Chapter 17 was unconstitutional (1) as violating the Uniformity and Exemption clauses of the New Jersey Constitution, (2) being special legislation; and (3) as violating the Due Process and Equal Protection clauses. Identical allegations were made in another litigation, Colacetti v. Murphy et al., Docket No. MER-L-000738-21, in which plaintiffs participated and argued these claims as amici.



On January 10, 2022, the State moved to dismiss the complaint for failure to state a cause of action for which relief can be granted under R. 4:6-2(e).⁴ In subheading C of its brief relative to Count IV of the complaint, the State argued that Section 6 did not violate the Petition clauses because a third-party LPT appeal was a statutory, not constitutional right, therefore can be altered or removed by the Legislature. The State also maintained that Section 6 did not address, thus, did not eliminate the rights afforded under the In-Lieu Clause, therefore, a third-party LPT appeal could be filed under R. 4:69. Amici supported the State's contentions.⁵

In response, plaintiffs filed a cross-motion for summary judgment, and separate briefs to address amici's contentions. Since the State and amici agreed that third-party LPT appeals could be filed under R. 4:69, plaintiffs chose not to pursue their claim that Section 6 violated the Petition clauses. Rather, they asked this court to issue a declaratory judgment that a third-party LPT appeal can be filed in the Superior Court via R. 4:69. They also sought to amend Count IV in this regard (plaintiffs seek "a Declaratory Judgment that . . . ¶ 6 must be construed to permit such third-party taxpayers to file their complaints seeking review of the decisions made by local tax authorities directly in the Superior Court pursuant to R. 4:69 (Actions in Lieu of Prerogative Writs)").

Plaintiffs' proposed amendment also sought to include a claim for violation of the New Jersey Civil Rights Act (NJ-CRA) against "any deprivation" of "constitutional" rights, and for attorney fees/damages in this regard. They argued that since Chapter 17 "has created uncertainty as to whether the Legislature has deprived Plaintiffs and all the taxpayers they represent of their constitutionally protected right to challenge the tax assessment or exemption of other taxpayers," which was a

⁴ Since Counts I-III of the complaint were still viable at this time, the State moved to dismiss all four counts.

⁵ Amici curiae are the Independent Colleges and Universities of New Jersey and the Center for Non-Profit Corporations, Inc. (both represented by Gibbons, P.C.) and the New Jersey Hospital Association (represented by O'Toole Scrivo, LLC). Their participation as amici was with consent of the parties.



“substantive right,” and one included in the “deprivation of access to courts,” declaratory relief is needed to ensure that “such ‘right of action’ still exists.”

Plaintiffs’ brief also challenged the third-party LPT appeal deletion as violating the Equal Protection clause. This cause of action was not alleged in the original complaint, thus, was not addressed in the State’s initial dismissal motion. Nor was it included as a proposed amendment to the complaint.

The State opposed plaintiffs’ Equal Protection argument on procedural and substantive grounds. It disputed the proposed amendment to include a claim under the NJ-CRA on grounds it would be futile since the parties and amici agreed that Section 6’s repeal of third-party LPT appeals did not eliminate the constitutional remedy under the In-Lieu Clause.

ANALYSIS

The only portion of Count IV presently before the court is plaintiffs’ (1) request for a declaratory judgment that a third-party LPT appeal can be filed before the Superior Court under R. 4:69; and (2) proposed amendment to Count IV to include a cause of action under the NJ-CRA.

A court can and should dismiss a complaint if the relief sought therein has become moot or is unfit for declaratory judgment. An issue is moot if there is no bona fide justiciable controversy. Here there is no bona fide disagreement. The only issue is whether there is a means for redress, i.e., access to the courts, for purposes of determining whether Section 6 is facially constitutional. Parties and amici agree that notwithstanding the prohibition in Section 6, a third-party LPT appeal can be instituted under R. 4:69. Therefore, there is nothing left to adjudicate in connection with Count IV presently before this court. See City of Camden v. Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999) (“It is ingrained in our case law that courts of this state will not determine constitutional questions unless absolutely imperative to resolve issues in litigation. . . . That imperative level is never reached when the issues presented are non-justiciable”).

Plaintiffs posit that regardless, this court should issue a declaratory judgment that a third-party LPT appeal can be filed under R. 4:69. As a matter of “statutory interpretation,” plaintiffs argue, the court should find that the intent of Section 6 is ambiguous: did it eliminate third-party LPT appeals in toto, or did it not? The legislative history, they say, points to the former. See Sponsor’s Statement to A. 1135 (proposed Section 6 would “prohibit[] property taxpayers from filing property tax appeals with respect to the property of others”). A declaratory judgment, plaintiffs argue, would “eliminate doubt as to the right of any taxpayer to challenge the assessment or tax-exemption of another taxpayer” under R. 4:69-5.

The State and amici contend that no such ambiguity exists because Section 6 simply eliminated a venue for filing third-party LPT appeals, i.e., in the Tax Court and county boards of taxation. See id. (“Eliminating this option [of third-party appeals] would reduce property tax appeals, which are costly and create uncertainty in local government finances”). Filing actions in lieu of prerogative writs always was, and remains, the State and amici contend, an available recourse for challenging third-party LPT appeals. Thus, the State maintains, “N.J.S.A. 54:3-21 was simply a formal statutory procedure for actions in lieu of prerogative writ against an assessor” (citing Macleod v. City of Hoboken, 330 N.J. Super. 502 (App. Div. 2000); Borough of Bradley Beach v. State Bd. of Tax Appeals, 124 N.J.L. 36 (E & A 1940)).⁶

⁶ The State notes that apart from R. 4:69, taxpayers have a variety of remedies to correct discriminatory LPT assessments such as obtaining orders for revaluations and applying the Chapter 123 ratio (N.J.S.A. 54:1-35a; 1-35b; 54:51A-6) to a property’s true value. However, revaluations are not third-party LPT appeals under N.J.S.A. 54:3-21(a). Further, Chapter 123 is implicated only after a value determination has been made by the court or a county board of taxation. See Passaic Street Realty Assoc., Inc. v. City of Garfield, 13 N.J. Tax 482, 484 (Tax 1993) (the court must “first . . . find the fair market value of the property” and then determine “the proper tax assessment of the property . . . after the application of” the Chapter 123 ratio). Chapter 123 is not implicated if the only issue is the entitlement of a property to a LPT exemption. Thus, the availability of these statutory remedies does not obviate the relief sought in Count IV of plaintiffs’ complaint.

The plain language of N.J.S.A. 54:3-21(a), after its amendment by Section 6, is that a taxpayer cannot file a third-party LPT appeal either at a county board of taxation or the Tax Court. Because the repeal is clear and unambiguous, delving into the legislative history is unnecessary. DiProspero v. Penn, 183 N.J. 477, 492 (2005) (“the best indicator” of legislative intent “is the statutory language”).

That Section 6 of N.J.S.A. 54:3-21(a) does not specify an alternate route to our courts, i.e., an alternative venue, available to litigants, does not render either of them ambiguous for purposes of deciding their facial constitutionality. What is clear is that Section 6 does not bar litigants’ access to all the courts in our State. It is also clear that the Legislature did not foreclose the application of R. 4:69 for third-party LPT appeals in the Superior Court.⁷ On its face, then, N.J.S.A. 54:3-21(a) does not eliminate the rights afforded by the In-Lieu Clause.

Whether the Legislature may have understood that the venue for most third-party LPT appeals is generally a county board of taxation or the Tax Court, or whether it should have added language that Section 6 was not intended to foreclose access to the courts under R. 4:69 for third-party LPT appeals, is irrelevant. What is of concern is the language of the enactment, here, the repeal of a taxpayer’s ability to file a third-party LPT appeal under N.J.S.A. 54:3-21(a), which the court finds unambiguous. Cf. Johnson & Johnson v. Dir., Div. of Taxation, 461 N.J. Super. 148, 162-64 (App. Div. 2019) (plain language of a statutory amendment controls, thus, speculating why the Legislature omitted certain language is “effectively rewriting” the statute, a reversible error), aff’d, 244 N.J. 413, 414 (2020) (while the Legislature can “amend the [challenged] statute if it chooses to do so,” the courts cannot).

It follows that plaintiffs’ request for declaratory judgment relief in this regard is also moot. See e.g. Registrar & Transfer Co. v. Dir., Div. of Taxation, 157 N.J. Super. 532, 538 (Ch. Div. 1978) (“A

⁷ For instance, R. 4:69-1 which permits “[r]eview, hearing and relief heretofore available by prerogative writs and not available under R. 2:2-3 or R. 8:2” in the Law Division of the Superior Court, was not amended to delete reference to R. 8:2. Rule 8:2 sets forth the Tax Court’s jurisdiction for, among others, LPT appeals.



primary procedural requirement for a declaratory judgment action is that there exists a real controversy between the parties”), rev’d on other grounds, 166 N.J. Super. 75 (App. Div. 1979); New Jersey Ass’n for Retarded Citizens, Inc. v. Dep’t of Human Servs., 89 N.J. 234, 241 (1982) (a court can “render declaratory relief when there is an actual dispute between parties who have a sufficient stake in the outcome”). Contrary to plaintiffs’ argument, the need to educate the public on the availability of R. 4:69, is not of such public importance that the court should ignore the absence of controversy, i.e., the mootness of Count IV, and issue a declaratory judgment.

A lack of a controversy also bars the grant of injunctive relief, an equitable remedy. See Crowe v. DeGioia, 90 N.J. 126, 132-34 (1983) (injunctive relief requires a showing of (1) irreparable harm; (2) settled legal right to an asserted claim; (3) a reasonable probability that plaintiff will succeed on the merits of its claim; and (4) more hardship to plaintiff than to defendant without an injunction). Cf. GMC v. City of Linden, 143 N.J. 336, 346-47 (1996) (if there is an adequate remedy to challenge a state tax assessment, which means that the “a state remedy need only satisfy minimal procedural criteria” then granting an injunctive or declaratory relief is improper) (citations and internal quotation marks omitted).

Whether filing a third-party LPT appeal under R. 4:69 is more burdensome or more efficient need not be decided here where the complaint only addressed the facial constitutionality of Section 6. See e.g. Donadio v. Cunningham, 58 N.J. 309, 325 (1971) (declaratory judgment relief should not be granted if “the request is in effect an attempt to have the court adjudicate in advance the validity of a possible defense in some expected future law suit”); New Jersey Tpk. Auth. v. Parsons, 3 N.J. 235, 240 (1949) (“the understandable policy of the courts [is] to refrain from rendering advisory opinions, from deciding moot cases, or generally from functioning in the abstract, and to decide only concrete contested issues conclusively affecting adversary parties in interest”) (citation and internal quotation marks omitted). Speculating here, on the pros and cons of how a third-party LPT appeal will fare on its merits when filed under R. 4:69, would be improperly rendering an advisory opinion. See e.g. G.H. v. Twp. of

Galloway, 199 N.J. 135, 136 (2009) (declining to provide guidance on the limits of Megan’s law or advice in this regard since courts “cannot answer abstract questions or give advisory opinions. . . . The judicial function operates best when a concrete dispute is presented to the courts”); State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016) (“When a party’s rights . . . [lose] concreteness” due to “developments subsequent to the filing of suit, the perceived need to test the validity of the underlying claim of right in anticipation of future situations is, by itself, no reason to continue the process”) (citation omitted).

Equal Protection

Although the court can reject the claim of Equal Protection violation because it was never alleged in Count IV, thus, cannot be raised for the first time in a responsive cross-motion for summary judgment, it will address the same since the issue is purely legal.

Plaintiffs argue that Section 6 violates the Equal Protection clause because a taxing district can challenge any LPT assessment or exempt status in the Tax Court or a county board of taxation, but a third-party taxpayer cannot. The court is unpersuaded. Tax statutes survive an attack of equal protection violation if the alleged statutory classification has a rational, i.e., any conceivable, basis. Armour v. Indianapolis City, 566 U.S. 673, 680-82 (2012) (“Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes,” and a “tax classification [is] constitutionally valid if there is a plausible policy reason for the classification . . . and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational”); Ramos v. Passaic City, 19 N.J. Tax 97, 103 (Tax 2000) (“a legislative classification will be presumed valid, even if it has the effect of treating some differently from others, so long as it bears some rational relationship to a permissible state interest”); Garma v. Twp. of Lakewood, 14 N.J. Tax 1, 15 (Tax 1994) (“the Equal Protection Clause does not require that all persons be treated alike. Rather, it requires that similar persons be treated similarly, and that people of different circumstances be treated differently”).

Here (presuming plaintiffs are contending that a taxing district is similar to a third-party taxpayer in that both seek to challenge the LPT assessment or exemption of some other taxpayer's property), Section 6 does not deprive the right of appeal to either a municipality or a third-party taxpayer. All here agree that Section 6 took away the venue, i.e., the Tax Court and county boards of taxation, for a third-party LPT appeal by a taxpayer, but it did not bar access to another venue, the Superior Court via R. 4:69. Thus, there is no disparate treatment. Additionally, as the State reasonably contends, the taxing districts are the most invested in the uniformity of assessments. More specifically, their assessors have a constitutional obligation to ensure the same. Thus, Section 6's goal of reducing duplicate appeals which have the same agenda (increasing a LPT underassessment or removing a LPT exemption) is rational and justified by the legislative endeavor to reduce costs and potential duplication of challenges to a property's assessment/exemption. See Sponsor's Statement to A. 1135 (Section 6 "would reduce property tax appeals, which are costly and create uncertainty in local government finances").

Inclusion of a Claim Under the NJ-CRA

A "person who has been deprived of substantive due process or equal protection rights" or "substantive rights" under the federal or state constitution, can seek damages, injunctive or other relief, and may be awarded attorney fees. N.J.S.A. 10:6-2(c)-(f). Thus, a claim under the NJ-CRA is contingent upon, or presupposes, the finding of a constitutional violation. It follows that if there is no such violation, then there is no independent cause of action under the NJ-CRA.

Here, after the complaint was filed, the State and amici did not dispute that third-party LPT appeals can be filed under R. 4:69, therefore, contended that there was no violation of the In-Lieu Clause. Fully aware of this position, plaintiffs still cross-moved for summary judgment even after abandoning their claims of Section 6's violation of the Petition clauses. Therefore, plaintiffs' attempt to include a claim in Count IV under the NJ-CRA is dubious. In any event, when all agree that Section 6 does not bar the application of R. 4:69 to third-party LPT appeals, there is no violation of the In-Lieu Clause, and

thus, no deprivation of a constitutional right, therefore there is no implication of the NJ-CRA. The State is correct that no purpose would be served in permitting an amendment to Count IV to include a cause of action under the NJ-CRA since the basis for a claim under that statute does not exist.

In sum, the court finds that there is no justiciable controversy as to the remaining portion of Count IV of the complaint. Although plaintiffs argued an Equal Protection clause violation in their brief without ever having alleged such a claim, the court finds no merits to this assertion. The court also finds that in the absence of a justiciable controversy, plaintiffs' proposed amendment to their complaint to include as a cause of action under the NJ-CRA is futile.

CONCLUSION

At the time the complaint was filed, which then triggered the State's motion under R. 4:6-2(e), Count IV amply demonstrated the cause of action: facial unconstitutionality of Section 6 under the Petition clauses and the In-Lieu Clause. The relief sought was also evident - striking and enjoining the enforcement of Section 6. Thus, a dismissal of Count IV under R. 4:6-2(e) was unwarranted at that time. See Mack-Cali Realty Corp. v. State, 250 N.J. 550, 553 (2022) (when deciding a motion to dismiss under R. 4:6-2(e), a court should examine the allegations facially using "a generous and hospitable approach" and grant such motion "only the rarest of instances") (citation and internal quotation marks omitted).

However, as explained above, when plaintiffs cross-moved for summary judgment, there was nothing left for this court to decide, thus rendering the proposed amendment to Count IV to include a cause of action under the NJ-CRA futile. Therefore, and at this time, the State's motion to dismiss under R. 4:6-2(e) is viable for consideration. A declaratory judgment cannot be used as a vehicle to advise the public that the parties agree R. 4:6-9 applies to a taxpayer's third-party LPT appeals, and thus it cannot overcome the lack of a case or controversy in this matter. Therefore, the court (1) grants the State's motion to dismiss the remaining portion of Count IV of the complaint with respect to the In-Lieu Clause with prejudice; (2) denies plaintiffs' cross-motion for summary judgment; and (3) denies plaintiffs'

proposed amendment to include a claim under the NJ-CRA to the remaining portion of Count IV of the complaint with respect to the In-Lieu Clause. A judgment reflecting the same will be separately entered.

/s/ Mala Sundar
Hon. Mala Sundar, P.J.T.C.
t/a Superior Court, Law Division



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	X	
	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	:	LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	:	DOCKET NO. MER-L-000 -21
capacity as Healthcare Program	:	
Director, AMERICAN FEDERATION	:	
OF TEACHERS, NEW JERSEY, DONNA	:	Civil Action
CHIERA, in her capacity as	:	
President of AFTNJ, and.	:	
Corporation, and LIVINGSTON.	:	
MARK and KATHERINE SMITH,	:	VERIFIED COMPLAINT IN
	:	SUPPORT OF DECLARATORY AND
Plaintiffs,	:	INJUNCTIVE RELIEF
	:	
-vs.-	:	
	:	
PHILLIP D. MURPHY, in his	:	
official capacity as Governor	:	
of New Jersey, and the STATE	:	
OF NEW JERSEY,	:	
	:	
Defendants.	:	
	X	

Plaintiffs, NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU,
 AMERICAN FEDERATION OF TEACHERS, NEW JERSEY, DONNA CHIERA and MARK
 SMITH and KATHERINE SMITH, by way of Verified Complaint against

PHILIP D. MURPHY, in his official capacity as Governor of New Jersey, and the STATE OF NEW JERSEY, hereby state:

NATURE OF ACTION

1. This action brought by Plaintiffs seeks declaratory and injunctive relief against Defendants in the form of restraining Defendants from enacting, enforcing and/or otherwise acting upon P.L. 2021 Chapter 17 (the "Statute"), in violation of the United States and New Jersey Constitutions.

THE PARTIES

2. Plaintiff NEW JERSEY CITIZEN ACTION, INC. ("NJCA") is a New Jersey non-profit corporation, registered under Section 501(c)(4) of the Internal Revenue Code with business addresses in the City of Newark, Essex County; Highland Park, Middlesex County; and Cherry Hill, Camden County. NJCA has 15,000 individual members, as well as 100 affiliated partner groups with vast networks of members across New Jersey.

3. For nearly 40 years, NJCA and its members have engaged in issue advocacy, education and outreach, as well as electoral campaigns. In addition, we have provided assistance to tens of thousands of New Jersey residents through our empowerment programs that offer financial coaching, housing counseling and discrimination monitoring, health care enrollment, and free tax preparation through their 501(c)(3) sister organization NJCAEF. Collectively, the work of NJCA and NJCAEF serves to improve the lives of low-

and moderate- income individuals and taxpayers and advance social, racial and economic justice for all New Jerseyans.

4. NJCA has championed and advocated for earned sick days, paid family leave, raising the minimum wage, tax fairness (equity), housing protections, consumer financial protections and health care issues. Of particular relevance to this case, NJCA has had an active role in expanding access to quality, affordable health care and reining in health care costs by holding providers and other health care entities accountable.

5. NJCA's membership of 15,000 individuals, many of whom own property in counties in which nonprofit hospitals are located, would be harmed by the exemptions given to these institutions that are at issue in this complaint. By allowing for-profit hospitals to shelter for profit partners tax free on their campuses, property tax payers in the surrounding communities of NJ hospitals are disadvantaged. They are in effect subsidizing these for-profit health care entities through higher property taxes.

6. In addition, permitting property tax deduction on properties used by for-profit health providers renders the nonprofit hospital a mere forum for for-profit activities and violates the hospital's obligation to bring value to the community in exchange for tax-exemption. It constitutes an abuse of their nonprofit status and contract with the community to provide affordable care on a nonprofit basis and other community benefits.

7. Pursuant to this legislation, for-profit health care providers are given an unfair advantage, which only contributes to the increasing profitization of healthcare and provides an incentive for nonprofit hospitals to contract out entire departments to for-profit physicians and hire temporary nursing staff -- trends that NJCA has long opposed due to their negative impact on consumers in terms of access, affordability and quality of care. NJCA has generally and specifically opposed the conversion of health care from non-profit to for-profit entities through campaigns it has waged including opposing the takeover of NJ hospitals by Carepoint, Prime, and Meritt, and the restructuring of Horizon Blue Cross Blue Shield as a mutual holding company.

8. NJCA also took an active role in opposing earlier versions of this bill introduced and passed by the Legislature prior to the pandemic.

9. Plaintiff MAURA COLLINSGRU is a taxpayer and owner of property in Palmyra, Burlington County, the county in which Virtual Health System is located. She is also the Health Care Program Director of NJCA, with a business address at 75 Raritan Avenue, Suite 200, Highland Park, Middlesex County. She is the principal coordinator of the New Jersey for Health Care Coalition consisting of numerous consumer groups, civil rights and immigration advocates and social service providers. Its mission is to improve access, affordability

and quality of health services in NJ, which includes a focus on holding nonprofit hospitals accountable.

10. Plaintiff AMERICAN FEDERATION OF TEACHERS NEW JERSEY ("AFTNJ") is a New Jersey non-profit membership corporation, with its official business address at 720 King George Road, Suite 300, Fords, NJ 08863, in Middlesex County. It represents over 30,000 PreK through grade 12 and higher education workers who live and work throughout New Jersey.

11. AFTNJ workers knows firsthand the importance of large profitable institutions, including hospitals, paying their fair share in property taxes. As residents, taxpayers, homeowners and public servants, the union fully understands that the quality of education provided to students in New Jersey is directly tied to the ability of local Boards of Education to fund the programs our students and educators need. As many districts throughout the State struggle to cope with outdated facilities, staff shortages, and the inability to offer wrap-around student and family services, it is disheartening to see healthcare facilities skirt their social responsibilities by failing to pay property taxes despite the increasing level of for-profit activity occurring on their campuses. Working New Jerseyans should not be responsible for shouldering the burden of funding public education while large profitable institutions, such as hospitals, use their political power to secure legislation, which sanctions their failure to

contribute their fair share of local taxes. AFTNJ joins this lawsuit to right this wrong and to ensure that hospitals properly contribute to the communities in which they are located and from which they financially benefit.

12. Plaintiff DONNA CHIERA is a taxpayer and owner of property in Perth Amboy, Middlesex County, a municipality in which Hackensack-Meridian Raritan Bay Medical Center is located. She is also the President of AFTNJ, with a business address at 720 King George Road, Suite 300, Fords, NJ 08863, Middlesex County.

13. NJCA's and AFTNJ's individual members are harmed by the existence of tax exemptions, such as the one challenged herein, because they reduce public revenues and in so doing, deplete public funds that could otherwise be put to other public policy objectives, including education expenditures.

14. Plaintiffs MARK and KATHERINE SMITH are taxpayers and owners of real property on which they reside in South Brunswick Township in the County of Middlesex. As residents of a county in which are situated at least two hospitals-- Robert Wood Johnson University Hospital and Penn Medicine Princeton Health -- that are tax exempt, Mark and Katherine Smith's contribution to Middlesex County's tax collection increases in proportion to the exempt status of the hospitals that are freed by the Statute of the burden of contributing to the county tax base. Mark and Katherine Smith followed closely the tax-exempt litigation against Princeton

University (Docket Nos. Tax 7672-2016, among others), and attended multiple court sessions at the Tax Court in Morristown where the Princeton University matter was heard before the Hon. Vito Bianco and have a direct and personal commitment to the challenge of certain tax-exempt entities. They will lose the ability to bring such challenge as to the Middlesex County hospitals' exempt status by operation of the Statute insofar as Defendants intended to bar individual taxpayers, such as themselves, from making such challenges to an entity's tax-exempt status. In addition, the Smiths' property is adjacent to Princeton University's undeveloped site that bears the common name "Princeton Nurseries" and, upon information and belief, has a farmland assessment though farming activity is not observable on this site; Mr. and Mrs. Smith will lose the ability under the challenged law to bring an action challenging an improper farmland assessment on the Princeton University site.

15. Consequently, Plaintiffs NJCA, AFTNJ and their members as well as Mark and Katherine Smith have suffered and will continue to suffer an injury by the challenged statute's prohibition on third party assessment and exemption challenges by citizens seeking to set aside unlawful tax exemption schemes that burden the tax base in their community and prejudice their own share of such tax raising.

16. Defendant, Philip D. Murphy ("Defendant Murphy"), at all

relevant times, was and is the Governor of the State of New Jersey, and is named as a defendant in his official capacity as such.

As Governor of the State of New Jersey, Defendant Murphy is sworn to among other duties, diligently, faithfully and to the best of his ability, uphold the Constitution of the State of New Jersey, as well as maintain and enforce the laws of the State of New Jersey. Defendant's official office address is the State House, 225 W. State Street, City of Trenton, County of Mercer, State of New Jersey 08625.

17. Defendant State of New Jersey ("New Jersey"), at all relevant times, enacted the Statute in dispute in this litigation.

JURISDICTION AND VENUE

18. Venue is appropriate in the Superior Court of Mercer County pursuant to N.J. Court Rule 4:3-2(2), as Defendants' official address is in Mercer County, and Defendant Murphy is an elected New Jersey public official whose actions affect real property in the county.

FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS

19. All facts alleged herein are matters of public record and/or subject to judicial notice pursuant to N.J.R.E. 201.

20. On December 17, 2020, the New Jersey General Assembly passed Assembly Bill 1135.

21. On December 17, 2020, the New Jersey State Senate passed its

version of Assembly Bill 1135, designated S357/624 (collectively with Assembly Bill 1135, the "Bill").

22. Once passed both chambers of the New Jersey Legislature, Defendant Murphy signed the Bill into law on February 22, 2021, as Public Law 2021 Chapter 17 (the "Statute").

23. The Statute exempts allegedly non-profit hospitals from property taxation even if those hospitals and third-party medical providers operate for-profit business entities/subsidiaries and conduct for-profit business on hospital property.

24. The Statute imposes on these types of hospitals a community service contribution under the guise of a payment in lieu of property taxes.

25. The Statute is in response to the decision in AHS Hosp. Corp. v. Town of Morristown, 28 N.J. Tax 456 (2015), which held that certain portions of a "non-profit" hospital's property was subject to property tax because of significant for-profit activities being conducted thereon. The Tax Court found that the hospital exemption provided by N.J.S.A. 54:4-3.6 (prior to amendment by the Bill) did not apply to the hospital's entire property due to the for-profit nature of the business being conducted on the property and other factors.

26. (New) Section 3b of the Bill states, in relevant part:

If any portion of a hospital or a satellite emergency care facility is leased to or otherwise used by a profit-making medical provider for medical purposes related to

the delivery of health care services directly to the hospital, that portion shall be exempt from taxation, provided that the portion of the hospital or satellite emergency care facility is used exclusively for hospital purposes.

27. Article VIII, Section I, paragraph 1 of the Constitution of the State of New Jersey, the "Uniformity Clause" provides that:

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 property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

28. The Uniformity Clause provides that all real property must be assessed according to the same standard of value and must be treated in a manner comparable to other similarly-situated taxpayers.

29. The Statute violates the Uniformity Clause by specifically selecting hospital properties upon which significant for-profit activities are being conducted for favorable tax treatment in the form of exemption while at the same time requiring every other industry and taxpayer, including other charitable nonprofit organizations, engaged in for-profit activity upon their property to pay the full and fair share of property taxes.

30. Article VIII, Section I, paragraph 2 of the Constitution of the State of New Jersey, the "Exemption Clause" provides that

Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

31. The Exemption Clause provides that all exemptions from taxation must be assessed according to the same standards and must be treated in a manner comparable to other similarly situated taxpayers seeking exemptions from taxation.

32. The Statute violates the Exemption Clause by specifically selecting hospital properties for favorable tax treatment in the form of exemption while at the same time requiring that every other industry and taxpayer, including other nonprofit entities, seeking an exemption meet different and more stringent standards and qualifications to qualify for the charitable exemption from property taxes.

33. The Statute further violates the Exemption Clause by granting hospitals engaged in and/or allowing for-profit activities at their properties an exemption from property taxes. This "privilege" is expressly prohibited by the Exemption Clause, which permits an exemption only if the entity is "not operating for profit."

34. "Special legislation" is expressly forbidden by several

provisions of the New Jersey Constitution. Article IV, Section VII, paragraph 9 on the New Jersey Constitution provides in part that "[t]he Legislature shall not pass any private, special, or local laws . . . [r]elating to taxation or exemption therefrom." Article VIII, Section I, paragraph 2 of the New Jersey Constitution provides that exemption from taxation may be granted only by general laws. Article IV, Section VII, paragraph 7 of the New Jersey Constitution provides that no general law shall embrace any provision of a private, special, or local character.

35. The test for determining whether a statute constitutes special legislation is "whether the classification is reasonable, not arbitrary, and can be said to rest upon some rational basis justifying the distinction," and excludes those it should include. Vreeland v. Byrne, 72 N.J. 292, 299 (1977).

36. The Statute also violates the New Jersey Constitution on the additional ground that the singling out of nonprofit hospitals conducting and/or providing for-profit activities on their property for exemption and favorable tax treatment to the exclusion of other taxpayers, including nonprofit charitable organizations, is unreasonable, arbitrary and capricious, and lacks any rational basis.

37. The Bill amended provisions related to appeals by taxpayers and tax districts as follows:

54:3-21. a. (1) Except as provided in subsection b. of this 21 section a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property [, or feeling discriminated against by the assessed valuation of other property in the county,] or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; . . .

38. As indicated by the Senate Budget and Appropriations Committee Statement to A.1135, with Committee amendments, December 15, 2020, the Legislature intended to remove a taxpayer's right of review or remedy with respect to the assessed valuation or exempt status of the property of other taxpayers, including that of nonprofit charitable organizations such as colleges, educational facilities or hospitals. The Statement reads in part:

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill would eliminate this option, but not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

39. Article I, ¶18 of the New Jersey Constitution sets forth a taxpayer's right to petition government for redress or remedy of

wrongs, which is also embodied in the First Amendment of the U.S. Constitution, enforced against the states through the XIV Amendment. This paragraph provides:

The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

40. Article VI, Sec. 5, ¶4 states:

Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

41. The Statute violates the New Jersey Constitution if it is interpreted to eliminate a taxpayer's constitutional right to seek review of the tax assessment and exemption status of another property owner in the Superior Court via a complaint in lieu of prerogative writ, as the Legislature apparently intended to do.

42. For all the above reason, Defendants must be enjoined from enacting, enforcing, or otherwise acting upon the Bill, now enacted in Statute, as doing so would be a violation of the New Jersey Constitution and U.S. Constitution as well as result in a gross distortion of the charitable property tax exemption to the serious detriment of the public.

COUNT ONE
(DECLARATORY AND INJUNCTIVE RELIEF
UNIFORMITY CLAUSE)

43. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth herein.

44. Defendants' enactment of P.L. 2021 Chapter 17 is in direct violation of the Uniformity Clause of the Constitution of the State of New Jersey and the Supreme Court's holding in New Jersey State League of Municipalities v. Kimmelman, 105 N.J. 422 (1987).

45. The provisions of the Statute are and will continue to be in direct violation of the Uniformity Clause of the Constitution of the State of New Jersey.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L. 2021 Chapter 17, violates the Constitution of the State of New Jersey, is invalid, void and of no force and effect, as well as a permanent Injunction against further infringement of Plaintiffs' rights under this clause, as well as any additional relief this Court deems equitable and just.

COUNT TWO
(DECLARATORY AND INJUNCTIVE RELIEF
EXEMPTIONS CLAUSE)

46. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth herein.

47. Defendants' enactment of P.L. 2021 Chapter 17 is in direct violation of the Exemption Clause of the Constitution of the State of New Jersey and the Supreme Court's holding in New

Jersey State League of Municipalities v. Kimmelman, 105 N.J.
422 (1987).

48. The provisions of the Statute are and will continue to be in direct violation of the Exemption Clause of the Constitution of the State of New Jersey.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L.2021 Chapter 17, violates the Constitution of the State of New Jersey, is invalid, void and of no force and effect, as well as a permanent Injunction against further infringement of Plaintiffs' rights under this clause, as well as any additional relief this Court deems equitable and just.

COUNT THREE
(DECLARATORY AND INJUNCTIVE RELIEF
SPECIAL LEGISLATION CLAUSES)

49. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth at herein.

50. Defendants' enactment of P.L. 2021 Ch. 17 constitutes "special legislation" in violation of various provisions of the New Jersey Constitution: Article IV, Section VII, paragraph 9; Article VIII, Section II, paragraph 2; and Article IV, Section VII, paragraph 7.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L.2021 Chapter 17, violates the Constitution of the State of New Jersey, is invalid, void and of no force and effect, as well as a permanent Injunction against further infringement of Plaintiffs'

rights under this clause, as well as any additional relief this Court deems equitable and just.

COUNT FOUR
(DECLARATORY AND INJUNCTIVE RELIEF
RIGHT OF REDRESS CLAUSES AND VIOLATION OF THE PRESERVATION OF
THE ACTION IN LIEU OF PREROGATIVE WRIT AS PRESERVED IN THE NEW
JERSEY CONSTITUTION)

51. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth herein.

52. Defendants' enactment of P.L. 2021 Ch. 17 seeks to eliminate a taxpayer's right to challenge the tax assessment or exemption status of another property owner in violation of the New Jersey Constitution, Article 1, ¶18 and Article 6, Sec. 5, ¶4 and the First Amendment of the U.S. Constitution, as enforced against the State through the Fourteenth Amendment.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L. 2021 Chapter 17, violates the Constitution of the State of New Jersey and the U.S. Constitution, is invalid, void and of no force and effect, as well as a permanent Injunction against further infringement of Plaintiffs' rights of redress and review of government action in the Superior Court, as well as any additional relief this Court deems equitable and just.

Respectfully submitted,
NEW JERSEY APPLESEED PILC

By: /s/ Renée Steinhagen
Renée Steinhagen

Dated: September 28, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is hereby advised that RENEÉ STEINHAGEN, ESQ., and BRUCE AFRAN, ESQ. on behalf of all Plaintiffs have been designated Trial Counsel in the matter.

RULE 1:38-7(b) CERTIFICATION

I certify that Confidential Personal Identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

/s/Renée Steinhagen
Renée Steinhagen

RULE 4:5-1 CERTIFICATION

I certify, in accordance with R. 4:5-1, that three counts of this Complaint are included within the Complaint filed by several municipalities in Docket No. MER-L-000738-21, currently pending before Judge Mala Sundar. This Complaint is not the subject matter

of a pending arbitration proceeding or arbitration proceeding that is contemplated, and there are no other parties who should be joined in this action. On August 9, 2021, Plaintiffs made a motion to intervene in the above action; however, on September 24, 2021, Judge Sundar denied that motion. A copy of her Order is attached hereto.

/s/Renée Steinhagen
Renée Steinhagen

Dated: September 28, 2021

BY THE COURT

Joseph G. Colacitti,	:	SUPERIOR COURT OF NEW JERSEY
City of Elizabeth,	:	LAW DIVISION, MERCER COUNTY
Plainsboro Township,	:	
Peter Cantu,	:	Docket No. MER-L-000738-2021
Neil J. Lewis,	:	
Ed Yates,	:	
Nuran Nabi,	:	
City of Vineland, and	:	
Livingston Township,	:	
	:	ORDER DENYING MOTIONS TO
Plaintiffs,	:	INTERVENE UNDER RULE 4:33-1
v.	:	AND RULE 4:33-2
	:	
Phillip D. Murphy, in his official	:	
capacity as Governor of New Jersey, and	:	
the State Of New Jersey,	:	
	:	
Defendants.	:	

THE ABOVE matter having been opened to the court by applicants New Jersey Citizen Action (NJCA); Maura Collingsgru, as Healthcare Program Director of NJCA; American Federation of Teachers, New Jersey (AFTNJ); Donna Chiera, as President of AFTNJ; Mark and Katherine Smith as individuals; by and through their counsel the New Jersey Appleseed Public Interest Law Center, Inc. (Renee Steinhagen, Esq. appearing) and Bruce Afran, Esq., seeking an Order to permit them to intervene as party plaintiffs as of right under R. 4:33-1 or permissively under R. 4:33-2;

AND plaintiffs, through their respective counsel Kologi Simitz (Michael S. Simitz, Esq. appearing); DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Laum, P.C. (Martin Allen, Esq., appearing); and Pearlman & Miranda, LLC; having represented that they take no position as to the applicants' motions to intervene;

AND defendants through their counsel, the Attorney General of New Jersey (Andrew J.

Bruck, Acting Attorney General), Deputy Attorneys General Abiola G. Miles and James Robinson appearing, also having represented that they take no position as to the applicants' motions to intervene;

AND for the reasons stated in the bench opinion of September 24, 2021, which is summarized in the attached Statement of Reasons, and good cause;

IT IS on this 24th day of September 2021, HEREBY ORDERED that applicants' motions to intervene as party plaintiffs in the above captioned litigation under either R. 4:33-1 or R. 4:33-2, be and are hereby DENIED.

This Order is without any prejudice to the applicants' right to file an application to participate in the above captioned litigation as amicus curiae or as amici curiae.

/s/ Mala Sundar
Hon. Mala Sundar P.J.T.C.
t/a Superior Court, Law Division

The motions were unopposed.

STATEMENT OF REASONS

On April 4, 2021, plaintiffs filed an Order to Show Cause with Temporary Restraints based on facts alleged in a verified complaint, and seeking an Order that L. 2021, c. 17 ("Chapter 17"), should not, among others, be enforced, "until judgment regarding the constitutionality of same has been determined." The verified complaint alleged that Chapter 17 "exempts allegedly non-profit hospitals from property taxation even if those hospitals and third-party medical providers operate for-profit and conduct for-profit business on hospital property" and imposes a community service contribution on such hospitals "under the guise of a payment in lieu of property taxes." The relevant provisions of Chapter 17 in this regard are codified at N.J.S.A. 54:4-3.6j and N.J.S.A. 40:48J-1 to 48J-2.

Defendants duly responded. The matter was scheduled for oral argument October 4, 2021, but subsequently rescheduled to November 19, 2021.

On August 10, 2021, the applicants (identified in the Order) moved to intervene under R. 4:33-1 or R. 4:33-2. They asserted that they share the same concerns as plaintiffs and would assert the same constitutional infirmities as plaintiffs had as to Chapter 17's exemption for non-profit hospitals (violation of the uniformity clause, exemption clause, and both state and federal due process and equal protection principles). However, they emphasized, one interest which was not raised by plaintiffs, thus "unique" to the applicants, was another provision of Chapter 17 which, by amending N.J.S.A. 54:3-21, barred third party appeals (appeals filed by taxpayers challenging the assessed valuation of properties of other taxpayers). This amendment, per applicants, also violated certain constitutional provisions.

The parties to the litigation took no position regarding the motions to intervene. Oral argument was heard September 24, 2021 and the court rendered a bench decision that day denying the motions. The court's reasoning was thus: Initially, it agreed with the applicants that their motions were timely. However, it disagreed with the applicants that they should be permitted to intervene. Plaintiffs' "interest" or "claim" (including the organizational applicants through their individual members), for purposes of the intervention rules, is allegedly that a local property tax (LPT) exemption results in a higher LPT burden to the rest of the individual taxpayers in the community or taxing district, therefore, the LPT exemption to hospitals should not be tolerated. This interest is aligned with plaintiffs' interests, i.e., plaintiffs are seeking to increase tax revenues by having the LPT exemption declared constitutionally invalid, which increase would then, in theory, lower the individual taxpayers' LPT burdens. However, such interest is adequately protected by plaintiffs, who/which are represented by experienced and seasoned LPT practitioners

and who have extensively briefed the alleged constitutional violations. Therefore, applicants do not meet the requirements of R. 4:33-1 which provides that a motion to intervene should be granted:

if (1) the applicant claims an interest relating to the property or transaction which is the subject of the action and (2) is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Additionally, the applicants' interest in having the right to file third party appeals, the real thrust of their motions, is also not the "subject" of the litigation, viz., whether a LPT exemption should be allowed for a non-profit hospital which allows portion(s) of its real property to be leased to or used by for-profit medical providers to provide health care services to the hospital, provided the portion of the hospital so leased or used, is used exclusively for hospital purposes. The portion of Chapter 17 which bars third party appeals is much broader in substance and scope in that it applies to any tax-exempt entity, taxable entity, or an individual, and the challenge can be to either the assessed valuation of a property or its tax-exempt status or both.

Similarly, the court was unpersuaded that the organizational applicants, as an organization, meet the requirements of R. 4:33-1 because as non-profit entities and as advocates for health care reform, affordability, and accountability, they did not share the same the concerns which are subject of the instant litigation.

The court also found that permissive intervention was not appropriate under R. 4:33-2 which permits intervention "if the claim or defense and the main action have a question of law or fact in common." There was no commonality because, as applicants conceded, the primary thrust of their motions was to challenge the constitutionality of the portion of Chapter 17 which barred third party appeals. This their "unique" interest is not the subject of the litigation. Additionally,

allowing this constitutional challenge to be included in this litigation would undoubtedly and “unduly delay or prejudice the adjudication of the rights of the original parties.” Ibid. This is again because the subject of the litigation is narrow. The subject of the applicants’ “unique” interest is not.

Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-001968-21

Case Caption: NEW JERSEY CITIZEN ACTION VS
MURPHY PHILIP

Case Initiation Date: 09/28/2021

Attorney Name: RENEE W STEINHAGEN

Firm Name: NJ APPLESEED PUBLIC INTEREST LAW
CENTER

Address: 23 JAMES STREET
NEWARK NJ 07102

Phone: 9737350523

Name of Party: PLAINTIFF : New Jersey Citizen Action

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: OTHER Declaratory and Injunctive relief

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: YES

If yes, list docket numbers: MER-L-000738-21

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: New Jersey Citizen Action?
NO

Are sexual abuse claims alleged by: Maura Collinsgru? NO

Are sexual abuse claims alleged by: American Federation of Teacher? NO

Are sexual abuse claims alleged by: Donna Chieva? NO

Are sexual abuse claims alleged by: Katherine Smith? NO

Are sexual abuse claims alleged by: Mark Smith? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

The three counts that Plaintiffs share with municipal plaintiffs in the above docket number are set to be heard on a motion for summary judgment on November 19, 2021.

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

09/28/2021
Dated

/s/ RENEE W STEINHAGEN
Signed

Renée Steinhagen, Esq.
 Atty No. 3869189
 NEW JERSEY APPLESEED
 PUBLIC INTEREST LAW CENTER, INC
 23 James Street
 Newark, NJ 07102
 (973) 735-0523
Attorney for Plaintiffs

Bruce Afran, Esq.
 Atty. No. 010751986
 48 Cuyler Road
 Princeton, NJ 08540
 (609)454-7435
Attorney for Plaintiffs

	X
	: SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	: LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	: DOCKET NO. MER-L-0001968-21
capacity as Healthcare Program	:
Director, AMERICAN FEDERATION	: Civil Action
OF TEACHERS, NEW JERSEY, DONNA	:
CHIERA, in her capacity as	:
President of AFTNJ, and.	:
MARK and KATHERINE SMITH,	: PROOF OF SERVICE
	:
Plaintiffs,	:
	:
-vs.-	:
	:
PHILLIP D. MURPHY, in his	:
official capacity as Governor	:
of New Jersey, and the STATE	:
OF NEW JERSEY,	:
	:
Defendants.	:
	X

I, RENÉE STEINHAGEN, hereby certify as follows.

- I am an attorney at law of the State of New Jersey and the Executive Director of New Jersey Appleseed Public Interest Law Center ("New Jersey Appleseed"). On October 6, 2021, I

served a Summons and the Complaint in this matter on Governor Philip Murphy and the State of New Jersey by serving the Office of the Attorney General through its electronic service system: NJAG.ElectonicService.CivilMatters@law.njoag.gov

2. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Renée Steinhagen
Renée Steinhagen, Esq.

Dated: October 6, 2021

SUPREME COURT OF NEW JERSEY

A complaint having been filed in the Superior Court, Law Division, Mercer County in New Jersey Citizen Action v. Murphy, Docket No. MER-L-1968-21, and Assignment Judge Robert D. Lougy and Tax Court Presiding Judge Mala Sundar having determined that this is an action “cognizable in the Superior Court which raise[s] issues as to which expertise in matters involving taxation is desirable” (N.J.S.A. 2B:13-2(b));

IT IS ORDERED, pursuant to Alid, Inc. v. Town of North Bergen, 89 N.J. 388 (1981), that, effective immediately, Tax Court Presiding Judge Mala Sundar, in addition to her regularly assigned duties, is hereby temporarily assigned to the Superior Court, Law Division, Mercer County, for the specific purpose of adjudicating the claims raised in New Jersey Citizen Action v. Murphy, Docket No. MER-L-1968-21.



Chief Justice

Dated: October 5, 2021

Renée W. Steinhagen, Esq.
NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC
23 James Street
Newark, NJ 07102
Counsel for Plaintiffs

Bruce Afran, Esq.
48 Cuyler Road
Princeton, NJ 08540
Counsel for Plaintiffs

PLEASE TAKE NOTICE that on February 18, 2022, or at such subsequent date and time set by the Court, the undersigned attorney for defendants, PHILIP D. MURPHY, in his official capacity as Governor of New Jersey, and the STATE OF NEW JERSEY, will apply to the Superior Court of New Jersey, Law Division, at the Courthouse in Trenton, New Jersey, to dismiss Plaintiffs' verified complaint in this matter. In support of its motion, Defendants will rely upon the within brief. A Certification of Service and proposed form of Order are also filed with this Notice.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

Respectfully submitted,

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Abiola G. Miles
Abiola G. Miles
Deputy Attorney General

DATED: January 10, 2022

Lawrence S. Lustberg, Esq. (No. 023131983)
Andrew J. Marino, Esq. (No. 356082020)

GIBBONS P.C.

One Gateway Center
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Telephone: (973) 596-4500
llustberg@gibbonslaw.com
amarino@gibbonslaw.com

*Attorneys for Proposed Amici Curiae Independent Colleges and
Universities of New Jersey and Center for Non-Profit
Corporations, Inc.*

NEW JERSEY CITIZEN ACTION,
MAURA COLLINSGRU, in her
capacity as Healthcare
Program Director, AMERICAN
FEDERATION OF TEACHERS, NEW
JERSEY, DONNA CHIERA, in her
capacity as President of
AFTNJ, and MARK and KATHERINE
SMITH,

Plaintiffs,

v.

PHILIP D. MURPHY, in his
official capacity as Governor
of New Jersey, and the STATE
OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. MER-L-001968-21

**NOTICE OF MOTION FOR LEAVE TO
PARTICIPATE AS AMICI CURIAE**

TO:

Honorable Mala Sundar, P.J.T.C. (t/a)
Tax Court of New Jersey
RJ Hughes Justice Complex
25 Market Street
7th Floor – P.O. Box 975
Trenton, NJ 08625

Counsel for Plaintiffs
Renée W. Steinhagen, Esq.
NEW JERSEY APPLESEED PUBLIC
INTEREST LAW CENTER, INC
23 James Street
Newark, NJ 07102
Counsel for Plaintiffs

Bruce Afran, Esq.
48 Cuyler Road
Princeton, NJ 08540
Counsel for Plaintiffs

Counsel for Defendants
ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW
JERSEY
R.J. Hughes Justice Complex
25 Market Street PO Box 106
Trenton, NJ 08625-0106

Abiola G. Miles
Deputy Attorney General
Attorney ID# 107352015
Attorney for Defendants
(609) 376-2383

PLEASE TAKE NOTICE that, pursuant to *New Jersey Court Rule* 1:13-9, proposed *amici curiae*, the Independent Colleges and Universities of New Jersey ("ICUNJ") and the Center for Non-Profit Corporations, Inc. ("the Center") hereby move, with the consent of the Plaintiffs (by Bruce Afran, Esq. and Renée W. Steinhagen, Esq.) and the Defendants (by Abiola Miles, Deputy Attorney General), for leave to participate as *amici curiae* in the above-captioned matter by filing a Brief and presenting oral argument to the Court. If this motion is granted, *amici* will, as requested by Plaintiffs, submit their proposed brief three weeks before the due date set by the Court for Plaintiffs to file their response to the State's motion to dismiss , *i.e.*, on or before February 22, 2022.

PLEASE TAKE FURTHER NOTICE that, in support of their Motion, *amici* relies upon the Certification of Lawrence S. Lustberg, Esq., filed herewith.

Respectfully submitted,

By: /s Lawrence S. Lustberg
Lawrence S. Lustberg (023131983)
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4500

Attorney for Proposed Amici Curiae

Dated: February 2, 2022

Lawrence S. Lustberg, Esq. (No. 023131983)
Andrew J. Marino, Esq. (No. 356082020)

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*Attorneys for Proposed Amici Curiae Independent Colleges and
Universities of New Jersey and Center for Non-Profit
Corporations, Inc.*

NEW JERSEY CITIZEN ACTION,
MAURA COLLINSGRU, in her
capacity as Healthcare
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OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. MER-L-001968-21

**CERTIFICATION OF LAWRENCE S.
LUSTBERG, ESQ.**

LAWRENCE S. LUSTBERG, ESQ., of full age, hereby certifies as
follows:

1. I am an attorney-at-law of the States of New Jersey and
New York and a Director at the law firm Gibbons P.C., attorneys
for Proposed *Amici Curiae* Independent Colleges and Universities of

New Jersey ("ICUNJ") and the Center for Non-Profit Corporations, Inc. (the "Center") in the above-captioned matter. I respectfully submit this Certification in support of ICUNJ's and the Center's Motion for Leave to Participate as *amici curiae* in the above-captioned matter.

2. New Jersey Court Rule 1:13-9(a) requires that applicants for leave to appear as *amici curiae* state with specificity "the issue intended to be addressed, the nature of the public interest therein, and the nature of the applicant's special interest, involvement or expertise in respect thereof." R. 1:13-9(a). Rule 1:13-9(a) also provides that a court "shall grant the motion [for leave to appear as *amici curiae*] if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby."

3. In determining whether a matter is one of public importance, courts consider whether the case has "broad implications," *Taxpayers Ass'n of Weymouth Township v. Weymouth Township*, 80 N.J. 6, 17 (1976), or implicates the "general public interest," *Casey v. Male*, 63 N.J. Super. 255, 259 (App. Div. 1960). See, e.g., *State v. Maguire*, 84 N.J. 508 (1980) (granting *amicus curiae* status because of the large number of persons with "a stake in the outcome of" the case and "the public importance of the

issues involved"). *Amici* can also help "assure [the Court] that all recesses of the problem will be earnestly explored." *Whelan v. N.J. Power & Light Co.*, 45 N.J. 237, 244 (1965). Accordingly Rule 1:13-9 provides "a liberal standard for permitting *amicus* appearances." *Pfizer, Inc. v. Dir., Div. of Taxation*, 23 N.J. Tax 421, 424 (2007).

4. Count IV of the Complaint in this matter, which is the only remaining count, challenges Public Law 2021 Chapter 17 (codified at N.J.S.A. 54:4-3.6j and N.J.S.A. 40:48J-1 to 48J-2 and amending N.J.S.A. 54:3-21), a 2021 amendment to New Jersey law that, among other things, prevents third parties from challenging a non-profit entity's property tax exemption. Plaintiffs contend, in part, that this statutory amendment violates their right to petition for the redress of grievances under Article I, paragraph 18 of the New Jersey Constitution and the First Amendment to the United States Constitution (Complaint ¶¶ 39-41), and that it could be interpreted to eliminate their ability to file actions in lieu of prerogative writ under Article VI, section 5, paragraph 4 of the New Jersey Constitution and R. 4:69 (Complaint ¶ 41). The State has moved to dismiss this count, contending, *inter alia*, that such actions in lieu of prerogative writ in fact remain available to Plaintiffs to challenge the tax treatment accorded to other entities, by way of tax assessments or the grant of tax-exempt status. State's Brief at 34-44. ICUNJ and the Center respectfully seek to participate in

this matter as *amici curiae* in order to assist the Court to decide this matter of public importance: the constitutionality of a recently enacted New Jersey law. Specifically, ICUNJ and the Center will support the State's argument that the statutory amendment is constitutional while also making clear both the procedural and substantive requirements that would apply to any challenge by way of an action in lieu of prerogative writ that may remain available. See, e.g., *In re State ex rel. Essex County Prosecutor's Office*, 427 N.J. Super. 1, 5 (Super. 2012) (granting *amicus curiae* status because of the case's "public importance" and "broad implications").

5. ICUNJ is a non-profit organization dedicated to advocating on behalf of students who are served by independent colleges and universities in New Jersey.¹ Its goal is to build support for and awareness of independent higher education in the state. ICUNJ was formed from a merger in 2021 of the Independent College Fund of New Jersey (founded in 1953) and the Association of Independent Colleges and Universities of New Jersey (founded in 1966). See ICUNJ - *About ICUNJ: Mission* (<https://njcolleges.org/mission/>).

6. ICUNJ has a direct interest in this case. Each of its

¹ ICUNJ's members are, in alphabetical order: Bloomfield College, Caldwell University, Centenary University, Drew University, Fairleigh Dickinson University, Felician University, Georgian Court University, Monmouth University, Princeton University, Rider University, Saint Elizabeth University, Saint Peter's University, Seton Hall University, and Stevens Institute of Technology.

members possess tax-exempt status under New Jersey law; collectively, they own property in 25 municipalities in New Jersey. Experience and common sense shows that these colleges and universities would bear a significant burden if subjected to plenary third-party challenges to their tax-exempt status. ICUNJ thus has a significant interest in clarifying the scope of any permissible third-party challenges to an entity's tax assessment or tax-exempt status, and the process pertinent thereto under New Jersey law.

7. There is a significant public interest in the matter as well. Universities are an important part of the culture and economy of New Jersey: nearly 63,500 students are enrolled in ICUNJ's 14 member institutions; those institutions directly employ approximately 20,000 people who bring in over \$1.3 billion in wages every year and indirectly employ an additional 2,000 to 3,000 employees through contracted services; and they make a significant economic impact through research, community development, and degree programs, for example, spending hundreds of millions of dollars per year on construction and renovation. Educationally, New Jersey's independent colleges and universities provide a significant percentage of the state's degrees in science and technology: 37% in math, 39% in engineering, 67% in physical sciences, 43% in chemistry and 41% of all computer science advanced degrees. In addition, these colleges and universities award 30% of

the state's Nursing degrees and 31% of its Education degrees. They have provided over \$1.1 billion annually in institutional grants and tuition. And they enroll 11.5% of the state's Black and Hispanic college students. See *AICUNJ Impact Report* (<https://njcolleges.org/wp-content/uploads/2019/10/AICUNJ-Impact-Report.pdf>).

8. The Center is a 501(c)(3) nonprofit corporation and the only umbrella organization for New Jersey's more than 38,000 501(c)(3) nonprofit entities. Its mission is to strengthen the State's nonprofit community so as to improve the quality of life for the people of New Jersey. The Center pursues its goals through several means, including: (i) public education and research regarding the size, scope, strength, and needs of the nonprofit community; (ii) public policy advocacy to promote sound legislation and regulations that will support nonprofit organizations in their charitable work; and (iii) direct services to 501(c)(3) organizations, such as management and compliance assistance, training, telephone and e-mail helplines, conferences, and discount programs to help members save money. Recently, the Center has worked to assist nonprofits affected by the COVID-19 pandemic, including by providing operational guidance, updates and instructional webinars, tracking the impact of the pandemic on nonprofits' ability to serve communities, and lobbying the State government for nonprofit COVID relief and tax incentives for

charitable contributions.

9. The majority of the State's 501(c)(3) organizations are small, community-based organizations that fulfill a variety of purposes: charitable, benevolent, educational, civic, religious, cultural, and scientific, among others. For example, they support the arts, advocate for the environment, promote social justice, work for affordable housing, mentor youth, or provide services to senior citizens. The importance of nonprofits has become even more apparent during the COVID-19 crisis: they have provided life-saving care, food, comfort, mental health counseling, child care, job training and placement, and a host of other essential functions.

10. This litigation will have a significant impact on the ability of nonprofits assisted by the Center to continue providing their crucial services to the people of New Jersey. The availability and scope of any third-party challenge to a nonprofit's tax exempt status will affect that nonprofit's ability to avoid burdensome and vexatious litigation and will, in turn, impact that organization's budget and drain its already limited resources. Particularly vulnerable will be nonprofit organizations serving unpopular constituencies or controversial causes.

11. Pre-COVID, nonprofits spent more than \$50 billion every year, much of it in New Jersey. They employed 330,000 people – nearly 10% of the State's private sector work force – and over 1.6

million people volunteered at New Jersey nonprofits annually. Because of the pandemic, many of these organizations face underfunding and substantial uncertainty. Demand for nonprofit services significantly outpaced funding increases in 2020, and nonprofit organizations now list financial uncertainty as the top issue impacting their ongoing viability.

12. The significant benefits to the State of New Jersey that flow from the presence of educational institutions and nonprofit organizations in the State mean that the consequences of this litigation are of great importance. *See, e.g., State v. Maguire*, 84 N.J. 508 (1980) (granting *amicus curiae* status because of the large number of persons with "a stake in the outcome of" the case and "the public importance of the issues involved"). Specifically, this case raises the specter of ICUNJ and Center members, all nonprofit institutions, having to expend significant funds that could otherwise be spent furthering their charitable, academic, and educational missions on legal fees defending broad and extremely burdensome third-party challenges to their government-approved tax exempt status, which, even if baseless, pose the terrible risk of losing that status should those challenges somehow succeed. The result would surely be to discourage educational institutions, in particular, from locating in New Jersey, a State that already exports more of its students to other states than any other, and to expose smaller nonprofit organizations to frequent and

potentially bankrupting lawsuits. See New Jersey Business & Industry Association, *NJ Leads US in Exporting College Students*, July 30, 2018 (<https://njbia.org/nj-leads-us-in-exporting-college-students/>); see also New Jersey Business & Industry Association, *Young Adults Continue to Leave New Jersey at an Alarming Rate*, May 7, 2019 (<https://njbia.org/young-adults-continue-to-leave-new-jersey-at-an-alarming-rate/>). The consequences for New Jersey's economy, society, politics and culture would, obviously, be profound.

13. Based upon their interest in this matter, as well as the public interest, ICUNJ and the Center seek to lend their assistance to the Court in deciding the issue before it by filing a brief clarifying the requirements and contours of third-party challenges to tax-exempt status, including by providing the Court with the benefit of their analysis of the procedural requirements and substantive standards that apply to actions in lieu of prerogative writ, which are the traditional means of challenging the actions of municipal agencies.

14. Plaintiffs' response to the State's motion to dismiss is currently due March 15, 2022. As noted above, I have been in communication with Bruce Afran, Esq., on behalf of the Plaintiffs and Abiola G. Miles, Deputy Attorney General, on behalf of the Defendants, and they have consented to the participation of amici in this matter, so long as the briefs were filed in such a manner

as not to delay proceedings, *i.e.*, at least three (3) weeks before Plaintiffs' response to Defendants' motion to dismiss is due, or by February 22, 2022. This will give Plaintiffs the requested time to review and respond to *Amici's* arguments and analysis in a manner that will not delay the proceedings or prejudice any party, within the meaning of R. 1:13-9(a).

15. For the foregoing reasons, ICUNJ and the Center, as well as any other similarly situated non-profit or otherwise interested groups who may wish to sign on the brief to be filed by ICUNJ and the Center, respectfully request that they be permitted to participate as *amici curiae* in this matter by filing a Brief on or before February 22, 2022 and presenting oral argument when this matter is heard by the Court.

Respectfully submitted,
/s/ Lawrence S. Lustberg
Lawrence S. Lustberg, Esq. (023131983)
Gibbons P.C.
One Gateway Center
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Phone: 973-596-4731
Fax: 973-639-6285
llustberg@gibbonslaw.com

Dated: February 2, 2022

BY THE COURT

NEW JERSEY CITIZEN ACTION,	:	SUPERIOR COURT OF NEW JERSEY
MAURA COLLINSGRU, in her capacity	:	LAW DIVISION, MERCER COUNTY
as Healthcare Program Director,	:	
AMERICAN FEDERATION OF	:	DOCKET NO. MER-L-001968-21
TEACHERS, NEW JERSEY,	:	
DONNA CHIERA, in her capacity as	:	Civil Action
President of AFTNJ, and	:	
MARK and KATHERINE SMITH,	:	ORDER GRANTING APPLICATION
	:	FOR LEAVE TO PARTICIPATE
	:	AS AMICI CURIAE
Plaintiffs,	:	
v.	:	
	:	
PHILLIP D. MURPHY, in his	:	
official capacity as Governor of New Jersey,	:	
and the STATE OF NEW JERSEY,	:	
	:	
Defendants.	:	

THE ABOVE MATTER having been opened to the court by motion of the Independent Colleges and Universities of New Jersey and the Center for Non-Profit Corporations, Inc. (“Applicants”) seeking an Order for permission to participate in the above matter as amici curiae, in support of defendants’ position as to Count IV of plaintiffs’ complaint, under R. 1:13-9;

AND plaintiffs, through their counsel the New Jersey Appleseed Public Interest Law Center, Inc. (Renee Steinhagen, Esq. and Bruce Afran, Esq. appearing), having consented to the application;

AND defendants, through their counsel, Andrew J. Bruck, Acting Attorney General of New Jersey (Deputy Attorneys General Abiola G. Miles and James Robinson appearing), also having consented to the application;

AND the court having reviewed the certification in support of Applicants’ motion and finding that Applicants have satisfied the criteria of R. 1:13-9(a) in that the application is timely, there is no prejudice (plaintiffs and defendants having consented to the Applicants’ request), and

the issue of whether L. 2021, c. 17 properly denies a property owner's ability to challenge the local property tax treatment of properties owned by another property owner, is one of public interest and importance, and good cause being shown, therefore;

IT IS ON THIS 7th day of February 2022, **ORDERED** as follows:

- 1) Applicants' motion to participate as amici curiae as to Count IV of the above captioned complaint, and only as relevant to, and in the context of local property tax, be and is hereby, GRANTED.
- 2) Amici Applicants' brief is due no later than **February 22, 2022**.
- 3) Plaintiffs' and defendants' respective response to Amici Applicants' brief are due no later than **April 26, 2022**. (This is also the date for defendants to reply to plaintiffs' response, re: defendants' motion to dismiss Count IV of the complaint. See January 24, 2022, Case Management Order, ¶3).
- 4) Amici Applicants may, if they so choose, reply to plaintiffs' and/or defendants' responses no later than **May 17, 2022**. (This is also the date for plaintiffs' deadline to file a sur-reply brief if permitted by the court, re: defendants' motion to dismiss Count IV of the complaint. See January 24, 2022, Case Management Order, ¶4).
- 5) No further pleadings shall be filed by any party regarding Amici Applicants' brief.
- 6) On the date scheduled for oral argument on Count IV of the Complaint, which is **June 3, 2022**, the court will also hear arguments from Amici Applicants.

/s/ Mala Sundar
Hon. Mala Sundar P.J.T.C.
t/a Superior Court, Law Division

Applications to participate as amici curiae were Unopposed.

O'TOOLE SCRIVO, LLC

James J. DiGiulio (013582006)
Nicole M. DeMuro (041642011)
14 Village Park Road
Cedar Grove, New Jersey 07009
(973) 239-5700
jdiagiulio@oslaw.com

*Attorneys for Proposed Amicus Curiae,
New Jersey Hospital Association*

NEW JERSEY CITIZEN ACTION, MAURA
COLLINSGRU, in her capacity as Healthcare
Program Director, AMERICAN
FEDERATION OF TEACHERS, NEW
JERSEY, DONNA CHIERA, in her capacity
as President of AFTNJ, and MARK and
KATHERINE SMITH,

Plaintiffs,

vs.

PHILIP D. MURPHY, in his official capacity
as Governor of New Jersey, and the STATE
OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO.: MER-L-001968-21

Civil Action

**NOTICE OF MOTION FOR LEAVE TO
PARTICIPATE AS *AMICUS CURIAE***

TO:

Honorable Mala Sundar, P.J.T.C. (t/a)
Tax Court of New Jersey
RJ Hughes Justices Complex
25 Market Street
7th Floor – P.O. Box 975
Trenton, NJ 08625

Counsel for Plaintiffs
THE NEW JERSEY APPLESEED PUBLIC
INTEREST LAW CENTER, INC.
Renée W. Steinhagen, Esq.
23 James Street
Newark, NJ 07102

Counsel for Plaintiffs
Bruce Afran, Esq.
48 Cuyler Road
Princeton, NJ 08540

Counsel for Defendants
MATTHEW J. PLATKIN, ACTING
ATTORNEY GENERAL OF NEW JERSEY
Abiola G. Miles, DAG
R.J. Hughes Justice Complex
25 Market Street, PO Box 106
Trenton, NJ 08625-0106

PLEASE TAKE NOTICE that, pursuant to New Jersey Court Rule 1:13-9, proposed *amicus curiae*, the New Jersey Hospital Association, by and through their counsel, O'Toole Scrivo, LLC, hereby moves, with the consent of the Plaintiffs (by Bruce Afran, Esq. and Renée W. Steinhagen, Esq.) and the Defendants (by Abiola Miles, Deputy Attorney General), for and Order granting leave to participate as *amicus curiae* in the above-captioned matter by filing a Brief and presenting oral argument to the Court.

PLEASE TAKE FURTHER NOTICE that, in support of their Motion, *amicus* relies upon the Certification of James J. DiGiulio, Esq., filed herewith.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted herewith.

O'TOOLE SCRIVO, LLC
Attorneys for Proposed Amicus Curiae,
New Jersey Hospital Association

Dated: February 18, 2022

By: /s/ James J. DiGiulio
James J. DiGiulio

O'TOOLE SCRIVO, LLC

James J. DiGiulio (013582006)
Nicole M. DeMuro (041642011)
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*Attorneys for Proposed Amicus Curiae,
New Jersey Hospital Association*

NEW JERSEY CITIZEN ACTION, MAURA
COLLINSGRU, in her capacity as Healthcare
Program Director, AMERICAN
FEDERATION OF TEACHERS, NEW
JERSEY, DONNA CHIERA, in her capacity
as President of AFTNJ, and MARK and
KATHERINE SMITH,

Plaintiffs,

vs.

PHILIP D. MURPHY, in his official capacity
as Governor of New Jersey, and the STATE
OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO.: MER-L-001968-21

Civil Action

**CERTIFICATION OF
JAMES J. DIGIULIO, ESQ.**

JAMES J. DIGIULIO, ESQ., of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and a Partner at the law firm O'Toole Scrivo, LLC, attorneys for Proposed *Amicus Curiae* New Jersey Hospital Association ("NJHA"). I respectfully submit this Certification in support of NJHA's Motion for Leave to Participate as *amicus curiae* in the above-captioned matter.

2. It is well settled that the Court "shall grant the motion [for leave to appear as *amicus curiae*] if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby." R. 1:13-9(a).

3. Initially, the NJHA's motion is filed within the time limits set forth in Rule 1:13-9(c).

4. Further, the NJHA seek to participate in this matter as *amicus curiae* in an effort to assist the Court in deciding a constitutional issue of unquestionable public importance.

5. The sole issue remaining in this matter involves the constitutionality of Section 6 of Public Law 2021, Chapter 17 (codified at N.J.S.A. 54:4-3.6j and N.J.S.A. 40:48J-1 to 48J-2 and amending N.J.S.A. 54:3-21), which prohibits third-party challenges to non-profit entities' property tax exemptions by way of direct appeal. The State has moved to dismiss Count IV, arguing that the provision is constitutional as that there are still alternative means by which to exercise third-party rights.

6. The NJHA intends to support the State's position regarding the constitutionality of this amendment to the law.

7. The NJHA is a non-profit organization that is dedicated to providing support and services to New Jersey's hospitals, health systems, and other healthcare providers in an effort to ensure the people of New Jersey have access to affordable and quality health care. See NJHA – *About NJHA* (<https://www.njha.com/about-njha/>).

8. NJHA has a direct interest in this case. Its membership includes almost 400 healthcare organizations, including hospitals, health systems, nursing homes, and other not for profit entities. Approximately 85% of the hospitals in New Jersey are not for profit, and the burden and expense of third-party challenges to their tax-exempt statuses would be significant and directly borne by these healthcare organizations that provide crucial services to New Jersey residents during their most trying and vulnerable times.

9. The purpose of this amendment to the law was to provide “hospitals a measure of tax relief to help them to fulfill their nonprofit missions.” Sponsor’s Statement to A. 1135 11 (L. 2021, c. 17). Financial relief for hospitals was the Legislature’s central mission in preparing this piece of legislation. It also sought to address both the “uncertainty” and “cost” associated with property tax appeals by limiting the ability of third-parties to bring them against hospitals and other non-profit entities. See id.

10. The people of New Jersey need to have access to low-cost and effective healthcare services. In 2018, acute care hospitals provided over \$3.2 billion in community benefits, including over \$670,000,000 in charity care, which benefits assisted the most vulnerable populations. At the same time, these hospitals employed over 120,000 full-time employees. As the Legislature’s express intent was to protect the financial interests of non-profit hospitals, and recognizing the significant cost associated with third-party tax appeals, there can be no question that NJHA has a significant and unwavering interest in clarifying and confirming the scope of permissible challenges to their memberships’ tax-exempt statuses.

11. Due to the NJHA’s direct interest in this matter, as well as the public interest, NJHA seeks to assist the Court in deciding the issue before it, namely the limits on third-party challenges to non-profits’ tax exempt statuses.

12. Counsel for Plaintiffs and Defendants have consented to the NJHA’s participation in this matter, and NJHA is requesting until March 1, 2022, to submit its brief in this matter so as to not unduly delay any proceedings or prejudice any party.

13. For the foregoing reasons, NJHA respectfully request that it be permitted to participate as *amicus curiae* in this matter by filing a brief by March 1, 2022, and presenting oral argument when this matter is heard by the court.

Respectfully submitted,

O'TOOLE SCRIVO, LLC

*Attorneys for Proposed Amicus Curiae,
New Jersey Hospital Association*

Dated: February 18, 2022

By: /s/ James J. DiGiulio
James J. DiGiulio

BY THE COURT

NEW JERSEY CITIZEN ACTION,	:	SUPERIOR COURT OF NEW JERSEY
MAURA COLLINSGRU, in her capacity	:	LAW DIVISION, MERCER COUNTY
as Healthcare Program Director,	:	
AMERICAN FEDERATION OF	:	DOCKET NO. MER-L-001968-21
TEACHERS, NEW JERSEY,	:	
DONNA CHIERA, in her capacity as	:	Civil Action
President of AFTNJ, and	:	
MARK and KATHERINE SMITH,	:	ORDER GRANTING APPLICATION
	:	FOR LEAVE TO PARTICIPATE
	:	AS AMICI CURIAE
Plaintiffs,	:	
v.	:	
	:	
PHILLIP D. MURPHY, in his	:	
official capacity as Governor of New Jersey,	:	
and the STATE OF NEW JERSEY,	:	
	:	
Defendants.	:	

THE ABOVE MATTER having been opened to the court by motion of the New Jersey Hospital Association (“NJHA”) seeking an Order for permission to participate in the above matter as amicus curiae, in support of defendants’ position as to Count IV of plaintiffs’ complaint, under R. 1:13-9;

AND plaintiffs, through their counsel the New Jersey Appleseed Public Interest Law Center, Inc. (Renee Steinhagen, Esq. and Bruce Afran, Esq. appearing), having consented to NJHA’s application to participate;

AND defendants, through their counsel, Andrew J. Bruck, Acting Attorney General of New Jersey (Deputy Attorneys General Abiola G. Miles and James Robinson appearing), also having consented to NJHA’s application to participate;

AND the court having reviewed the certification in support of NJHA’s motion and finding that it has satisfied the criteria of R. 1:13-9(a) in that the application is timely, there is no prejudice (plaintiffs and defendants having consented to the Applicants’ request), and the issue of whether

L. 2021, c. 17 properly denies a property owner's ability to challenge the local property tax treatment of properties owned by another property owner, is one of public interest and importance, and good cause being shown, therefore;

IT IS ON THIS 24th day of February 2022, **ORDERED** as follows:

- 1) NJHA's motion to participate as amicus curiae as to Count IV of the above captioned complaint, and only as relevant to, and in the context of local property tax, be and is hereby, GRANTED.
- 2) NJHA's brief is due no later than **March 1, 2022**.
- 3) Plaintiffs' and defendants' respective response to NJHA's brief are due no later than **April 26, 2022**. (This is also the date for defendants to reply to plaintiffs' response, re: defendants' motion to dismiss Count IV of the complaint. See January 24, 2022, Case Management Order, ¶3).
- 4) NJHA may, if it so chooses, reply to plaintiffs' and/or defendants' responses no later than **May 17, 2022**. (This is also the date for plaintiffs' deadline to file a sur-reply brief if permitted by the court, re: defendants' motion to dismiss Count IV of the complaint. See January 24, 2022, Case Management Order, ¶4).
- 5) No further pleadings shall be filed by any party regarding NJHA's brief.
- 6) On the date scheduled for oral argument on Count IV of the Complaint, which is **June 3, 2022**, the court will also hear arguments from NJHA.

/s/ Mala Sundar
Hon. Mala Sundar P.J.T.C.
t/a Superior Court, Law Division

Application to participate as amicus curiae was Unopposed.

Renée Steinhagen, Esq.
Atty No. 038691989
NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.
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(973) 735-0523
Attorney for Plaintiffs

Bruce Afran, Esq.
Atty. No. 010751986
48 Cuyler Road
Princeton, NJ 08540
(609)454-7435
Attorney for Plaintiffs

	X	
	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	:	LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	:	DOCKET NO. MER-L-0001968-21
capacity as Healthcare Program	:	
Director, AMERICAN FEDERATION	:	
OF TEACHERS, NEW JERSEY, DONNA	:	Civil Action
CHIERA, in her capacity as	:	
President of AFTNJ, and	:	NOTICE OF CROSS-MOTION FOR
MARK and KATHERINE SMITH,	:	SUMMARY JUDGMENT AND DENYING
	:	STATE'S MOTION TO DISMISS
	:	
Plaintiffs,	:	NOTICE OF MOTION FOR LEAVE
	:	TO AMEND COMPLAINT TO CLARIFY
	:	DECLARATORY AND INJUNCTIVE
-vs.-	:	RELIEF SOUGHT
	:	
PHILIP D. MURPHY, in his	:	
official capacity as Governor	:	
of New Jersey, and the STATE	:	
OF NEW JERSEY,	:	
	:	
Defendants.	:	

To: Abiola G. Miles
Deputy Attorney General
R.J. Hughes Justice Complex
Trenton, New Jersey 08625-0106
Attorney for Defendants

PLEASE TAKE NOTICE that on June 3, 2022, at 9:00 a.m., or as soon thereafter as counsel may be heard, the undersigned attorneys for Plaintiffs, will move before the Honorable Mala Sundar, J.T.C., at the Mercer County Courthouse, 175 South Broad Street, Trenton, New Jersey, for an Order granting summary judgment declaring P.L. 2021, Chapter 17, ¶6 invalid, or in the alternative, declaring that P.L. 2021, Chapter 17, ¶6 must be interpreted to maintain a New Jersey taxpayer's constitutionally protected right to challenge in the Superior Court a third-person's property tax assessment or tax-exemption via Art. VI, Sec. 5, ¶4 (Complaint in Lieu of Prerogative Writ).

PLEASE TAKE FURTHER NOTICE that Plaintiffs request leave to amend their Verified Complaint, pursuant to R. 4:9-1, to clarify the declaratory and injunctive relief, including counsel fees, Plaintiffs seek under Count IV of their Verified Complaint.

PLEASE TAKE FURTHER NOTICE that Plaintiffs will rely upon the accompanying brief in opposition to the State's Motion to Dismiss and in support of their Cross-Motion for Summary Judgment with respect to their motion to dismiss, as well as the Plaintiffs' Statement of Undisputed Material Facts. Plaintiffs will rely upon the Certification of Counsel, with Amended Complaint, with respect to their Motion to Amend. A proposed form of Order is also enclosed.

Oral argument is requested.

Respectfully submitted,

NEW JERSEY APPLESEED PILC

By: /s/ Renée Steinhagen
Renée Steinhagen

Dated: March 18, 2022

Renée Steinhagen, Esq.
Atty No. 038691989
NEW JERSEY APPLESEED
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Attorney for Plaintiffs

	X
	: SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	: LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	: DOCKET NO. MER-L-0001968-21
capacity as Healthcare Program	:
Director, AMERICAN FEDERATION	:
OF TEACHERS, NEW JERSEY, DONNA	: Civil Action
CHIERA, in her capacity as	:
President of AFTNJ, and	:
MARK and KATHERINE SMITH,	:
	: CERTIFICATION OF
Plaintiffs,	: RENÉE STEINHAGEN IN SUPPORT
	: OF MOTION FOR LEAVE
-vs.-	: TO AMEND COMPLAINT TO CLARIFY
	: DECLARATORY AND INJUNCTIVE
	: RELIEF SOUGHT
	:
PHILIP D. MURPHY, in his	:
official capacity as Governor	:
of New Jersey, and the STATE	:
OF NEW JERSEY,	:
	:
Defendants.	:
	X

I, RENÉE STEINHAGEN, hereby certify as follows:

1. I am an attorney with New Jersey Appleseed Public Interest Law Center, who represents, with co-counsel Bruce Afran, all the plaintiffs in this matter. This action involves the State's

deprivation of taxpayers' right to challenge the property tax assessments and exemptions of other property owners by lodging an appeal in the Superior Court, in violation of the Prerogative Writ Clause in the New Jersey Constitution, and the New Jersey Civil Rights Act. I make this certification in support of Plaintiffs' request for leave to amend their Verified Complaint, pursuant to R. 4:9-1, to clarify the declaratory and injunctive relief, including counsel fees Plaintiffs seek under Count IV of their Verified Complaint.

2. As a preliminary matter, Plaintiffs do not believe that they must seek the permission of the Court to amend this Complaint at this juncture of the litigation. This is the case, because Defendants have yet to file a responsive pleading in this matter. See R. 4:9-1 (permitting a party "to amend any pleading as a matter of course at any time before a responsive pleading is served"). Defendants have only filed a motion to dismiss for failure to state a claim pursuant to R. 4:6-2; and in accordance with R. 4:5-1(a), a motion to dismiss is not considered a pleading.

3. Notwithstanding, the State disagrees with Plaintiffs, and because Plaintiffs do not want to create another legal issue in this matter, we are now making this motion.

4. In their Brief in Support of Their Motion to Dismiss, the State admits that N.J.S.A. 54:3-21, as amended, must be construed to not violate Art. VI, Sec. 5, ¶4 (Complaint in Lieu of

Prerogative Writ). As a result, Plaintiffs would like to conform their request for relief to include such alternative. That is, in addition to requesting an order declaring P.L. 2021, Chapter 17, ¶6 invalid, Plaintiffs seek an order in the alternative, declaring that P.L. 2021, Chapter 17, ¶6 be interpreted to maintain a New Jersey taxpayer's constitutionally protected right to challenge in the Superior Court a third person's property tax assessment or tax exemption via Art. VI, Sec. 5, ¶4 (Complaint in Lieu of Prerogative Writ). A copy of the Amended Complaint is attached hereto as an exhibit.

5. Furthermore, because the Prerogative Writ Clause provides a substantive constitutional right, Plaintiffs also seeks to clarify their request for injunctive relief under the New Jersey Civil Rights Act, including their request for legal fees.

6. Case law is clear that a motion for leave to amend is required by the rule to be liberally granted and without consideration of the ultimate merits of the amendment. See Comment, §2.1 R. 4:9-1 Rules Governing The Courts of the State of New Jersey (2021).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: /s/ Renée Steinhagen
Renée Steinhagen

Dated: March 18, 2022

EXHIBIT

Renée Steinhagen, Esq.
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NEW JERSEY APPLESEED
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Attorney for Plaintiffs

	X
	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION, MERCER COUNTY
	: DOCKET NO. MER-L-0001968-21
NEW JERSEY CITIZEN ACTION,	:
MAURA COLLINSGRU, in her	:
capacity as Healthcare Program	:
Director, AMERICAN FEDERATION	:
OF TEACHERS, NEW JERSEY, DONNA	: Civil Action
CHIERA, in her capacity as	:
President of AFTNJ, and	:
MARK and KATHERINE SMITH,	:
	: AMENDED VERIFIED COMPLAINT IN
	: SUPPORT OF DECLARATORY AND
Plaintiffs,	: INJUNCTIVE RELIEF
	:
-vs.-	:
	:
PHILIP D. MURPHY, in his	:
official capacity as Governor	:
of New Jersey, and the STATE	:
OF NEW JERSEY,	:
	:
Defendants.	:
	X

Plaintiffs, NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU,
AMERICAN FEDERATION OF TEACHERS, NEW JERSEY, DONNA CHIERA and MARK
SMITH and KATHERINE SMITH, by way of Verified Complaint against

PHILIP D. MURPHY, in his official capacity as Governor of New Jersey, and the STATE OF NEW JERSEY, hereby state:

NATURE OF ACTION

1. This action brought by Plaintiffs seeks declaratory and injunctive relief against Defendants in the form of restraining Defendants from enacting, enforcing and/or otherwise acting upon P.L. 2021 Chapter 17 (the "Statute"), in violation of the United States and New Jersey Constitutions.

THE PARTIES

2. Plaintiff NEW JERSEY CITIZEN ACTION, INC. ("NJCA") is a New Jersey non-profit corporation, registered under Section 501(c)(4) of the Internal Revenue Code, with business addresses in the City of Newark, Essex County; Highland Park, Middlesex County; and Cherry Hill, Camden County. NJCA has 15,000 individual members, as well as 100 affiliated partner groups with vast networks of members across New Jersey.

3. For nearly 40 years, NJCA and its members have engaged in issue advocacy, education and outreach, as well as electoral campaigns. In addition, they have provided assistance to tens of thousands of New Jersey residents through their empowerment programs that offer financial coaching, housing counseling and discrimination monitoring, health care enrollment, and free tax preparation through their 501(c)(3) sister organization NJCAEF. Collectively, the work of NJCA and NJCAEF serves to improve the lives of low-

and moderate- income individuals and taxpayers and advance social, racial and economic justice for all New Jerseyans.

4. NJCA has championed and advocated for earned sick days, paid family leave, raising the minimum wage, tax fairness (equity), housing protections, consumer financial protections and health care issues. Of particular relevance to this case, NJCA has had an active role in expanding access to quality, affordable health care and reining in health care costs by holding providers and other health care entities accountable.

5. NJCA's membership of 15,000 individuals, many of whom own property in counties in which nonprofit hospitals are located, would be harmed by the exemptions given to these institutions that are at issue in this complaint. By allowing for-profit hospitals to shelter for profit partners tax-free on their campuses, property tax payers in the surrounding communities of NJ hospitals are disadvantaged. They are, in effect, subsidizing these for-profit health care entities through higher property taxes.

6. In addition, permitting property tax deductions on properties used by for-profit health providers renders the nonprofit hospital a mere forum for for-profit activities and violates the hospital's obligation to bring value to the community in exchange for tax exemption. It constitutes an abuse of their nonprofit status and contract with the community to provide affordable care on a nonprofit basis and other community benefits.

7. Pursuant to this legislation, for-profit health care providers are given an unfair advantage, which only contributes to the increasing profitization of healthcare and provides an incentive for nonprofit hospitals to contract out entire departments to for-profit physicians and hire temporary nursing staff -- trends that NJCA has long opposed due to their negative impact on consumers in terms of access, affordability and quality of care. NJCA has generally and specifically opposed the conversion of health care from non-profit to for-profit entities through campaigns it has waged including opposing the takeover of NJ hospitals by CarePoint, Prime, and Meritt, and the restructuring of Horizon Blue Cross Blue Shield as a mutual holding company.

8. NJCA also took an active role in opposing earlier versions of this bill introduced and passed by the Legislature prior to the pandemic.

9. Plaintiff MAURA COLLINSGRU is a taxpayer and owner of property in Palmyra, Burlington County, the county in which Virtua Health System is located. She is also the Health Care Program Director of NJCA, with a business address at 75 Raritan Avenue, Suite 200, Highland Park, Middlesex County. She is the principal coordinator of the New Jersey for Health Care Coalition consisting of numerous consumer groups, civil rights and immigration advocates and social service providers. Its mission is to improve access, affordability

and quality of health services in New Jersey, which includes a focus on holding nonprofit hospitals accountable.

10. Plaintiff AMERICAN FEDERATION OF TEACHERS NEW JERSEY ("AFTNJ") is a New Jersey non-profit membership corporation, with its official business address at 720 King Georges Road, Suite 300, Fords, NJ 08863, in Middlesex County. It represents over 30,000 PreK through grade 12 and higher education workers who live and work throughout New Jersey.

11. AFTNJ workers know firsthand the importance of large profitable institutions, including hospitals, paying their fair share in property taxes. As residents, taxpayers, homeowners and public servants, the union fully understands that the quality of education provided to students in New Jersey is directly tied to the ability of local Boards of Education to fund the programs our students and educators need. As many districts throughout the State struggle to cope with outdated facilities, staff shortages, and the inability to offer wrap-around student and family services, it is disheartening to see healthcare facilities skirt their social responsibilities by failing to pay property taxes despite the increasing level of for-profit activity occurring on their campuses. Working New Jerseyans should not be responsible for shouldering the burden of funding public education while large profitable institutions, such as hospitals, use their political power to secure legislation, which sanctions their failure to

contribute their fair share of local taxes. AFTNJ joins this lawsuit to right this wrong and to ensure that hospitals properly contribute to the communities in which they are located and from which they financially benefit.

12. Plaintiff DONNA CHIERA is a taxpayer and owner of property in Perth Amboy, Middlesex County, a municipality in which Hackensack-Meridian Raritan Bay Medical Center is located. She is also the President of AFTNJ, with a business address at 720 King Georges Road, Suite 300, Fords, NJ 08863, Middlesex County.

13. NJCA's and AFTNJ's individual members are harmed by the existence of tax exemptions, such as the one challenged herein, because they reduce public revenues and in so doing, deplete public funds that could otherwise be put to other public policy objectives, including education expenditures.

14. Plaintiffs MARK and KATHERINE SMITH are taxpayers and owners of real property on which they reside in South Brunswick Township in the County of Middlesex. As residents of a county in which are situated at least two hospitals -- Robert Wood Johnson University Hospital and Penn Medicine Princeton Health -- that are tax exempt, Mark and Katherine Smith's contribution to Middlesex County's tax collection increases in proportion to the exempt status of the hospitals that are freed by the Statute of the burden of contributing to the county tax base. Mark and Katherine Smith followed closely the tax-exempt litigation against Princeton

University (Docket Nos. Tax 7672-2016, among others), and attended multiple court sessions at the Tax Court in Morristown where the Princeton University matter was heard before the Hon. Vito Bianco and have a direct and personal commitment to the challenge of certain tax-exempt entities. They will lose the ability to bring such challenge as to the Middlesex County hospitals' exempt status by operation of the Statute insofar as Defendants intended to bar individual taxpayers, such as themselves, from making such challenges to an entity's tax-exempt status. In addition, the Smiths' property is adjacent to Princeton University's undeveloped site that bears the common name "Princeton Nurseries" and, upon information and belief, has a farmland assessment though farming activity is not observable on this site; Mr. and Mrs. Smith will lose the ability under the challenged law to bring an action challenging an improper farmland assessment on the Princeton University site.

15. Consequently, Plaintiffs NJCA, AFTNJ and their members as well as Mark and Katherine Smith have suffered and will continue to suffer an injury by the challenged statute's prohibition on third-party assessment and exemption challenges by citizens seeking to set aside unlawful tax exemption schemes that burden the tax base in their community and prejudice their own share of such tax raising.

16. Defendant, Philip D. Murphy ("Defendant Murphy"), at all

relevant times, was and is the Governor of the State of New Jersey, and is named as a defendant in his official capacity as such.

As Governor of the State of New Jersey, Defendant Murphy is sworn to, among other duties, diligently, faithfully and to the best of his ability, uphold the Constitution of the State of New Jersey, as well as maintain and enforce the laws of the State of New Jersey. Defendant's official office address is the State House, 225 W. State Street, City of Trenton, County of Mercer, State of New Jersey 08625.

17. Defendant State of New Jersey ("New Jersey"), at all relevant times, enacted the Statute in dispute in this litigation.

JURISDICTION AND VENUE

18. Venue is appropriate in the Superior Court of Mercer County pursuant to N.J. Court Rule 4:3-2(2), as Defendants' official address is in Mercer County, and Defendant Murphy is an elected New Jersey public official whose actions affect real property in the county.

FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS

19. All facts alleged herein are matters of public record and/or subject to judicial notice pursuant to N.J.R.E. 201.

20. On December 17, 2020, the New Jersey General Assembly passed Assembly Bill 1135.

21. On December 17, 2020, the New Jersey State Senate passed its

version of Assembly Bill 1135, designated S357/624 (collectively, with Assembly Bill 1135, the "Bill").

22. Once passed in both chambers of the New Jersey Legislature, Defendant Murphy signed the Bill into law on February 22, 2021, as Public Law 2021 Chapter 17 (the "Statute").

23. The Statute exempts allegedly non-profit hospitals from property taxation even if those hospitals and third-party medical providers operate for-profit business entities/subsidiaries and conduct for-profit business on hospital property.

24. The Statute imposes on these types of hospitals a community service contribution under the guise of a payment in lieu of property taxes.

25. The Statute is in response to the decision in AHS Hosp. Corp. v. Town of Morristown, 28 N.J. Tax 456 (2015), which held that certain portions of a "non-profit" hospital's property were subject to property tax because of significant for-profit activities being conducted thereon. The Tax Court found that the hospital exemption provided by N.J.S.A. 54:4-3.6 (prior to amendment by the Bill) did not apply to the hospital's entire property due to the for-profit nature of the business being conducted on the property and other factors.

26. (New) Section 3b of the Bill states, in relevant part:

If any portion of a hospital or a satellite emergency care facility is leased to or otherwise used by a profit-making medical provider for medical purposes related to

the delivery of health care services directly to the hospital, that portion shall be exempt from taxation, provided that the portion of the hospital or satellite emergency care facility is used exclusively for hospital purposes.

27. Article VIII, Section I, paragraph 1 of the Constitution of the State of New Jersey, the "Uniformity Clause," provides that:

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 property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

28. The Uniformity Clause provides that all real property must be assessed according to the same standard of value and must be treated in a manner comparable to other similarly-situated taxpayers.

29. The Statute violates the Uniformity Clause by specifically selecting hospital properties upon which significant for-profit activities are being conducted for favorable tax treatment in the form of exemption while at the same time requiring every other industry and taxpayer, including other charitable nonprofit organizations engaged in for-profit activity upon their property to pay the full and fair share of property taxes.

30. Article VIII, Section I, paragraph 2 of the Constitution of

the State of New Jersey, the "Exemption Clause," provides that

Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

31. The Exemption Clause provides that all exemptions from taxation must be assessed according to the same standards and must be treated in a manner comparable to other similarly situated taxpayers seeking exemptions from taxation.

32. The Statute violates the Exemption Clause by specifically selecting hospital properties for favorable tax treatment in the form of exemption, while at the same time requiring that every other industry and taxpayer, including other nonprofit entities seeking an exemption meet different and more stringent standards and qualifications to qualify for the charitable exemption from property taxes.

33. The Statute further violates the Exemption Clause by granting hospitals engaged in and/or allowing for-profit activities at their properties an exemption from property taxes. This "privilege" is expressly prohibited by the Exemption Clause, which

permits an exemption only if the entity is "not operating for profit."

34. "Special legislation" is expressly forbidden by several provisions of the New Jersey Constitution. Article IV, Section VII, paragraph 9 on the New Jersey Constitution provides in part that "[t]he Legislature shall not pass any private, special, or local laws . . . [r]elating to taxation or exemption therefrom." Article VIII, Section I, paragraph 2 of the New Jersey Constitution provides that exemption from taxation may be granted only by general laws. Article IV, Section VII, paragraph 7 of the New Jersey Constitution provides that no general law shall embrace any provision of a private, special, or local character.

35. The test for determining whether a statute constitutes special legislation is "whether the classification is reasonable, not arbitrary, and can be said to rest upon some rational basis justifying the distinction," and excludes those it should include. Vreeland v. Byrne, 72 N.J. 292, 299 (1977).

36. The Statute also violates the New Jersey Constitution on the additional ground that the singling out of nonprofit hospitals conducting and/or providing for-profit activities on their property for exemption and favorable tax treatment to the exclusion of other taxpayers, including nonprofit charitable organizations,

is unreasonable, arbitrary and capricious, and lacks any rational basis.

37. The Bill amended provisions related to appeals by taxpayers and tax districts as follows:

54:3-21. a. (1) Except as provided in subsection b. of this section a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property [, or feeling discriminated against by the assessed valuation of other property in the county,] or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; . . .

38. As indicated by the Senate Budget and Appropriations Committee Statement to A.1135, with Committee amendments, December 15, 2020, the Legislature intended to remove a taxpayer's right of review or remedy with respect to the assessed valuation or exempt status of the property of other taxpayers, including that of nonprofit charitable organizations such as colleges, educational facilities or hospitals. The Statement reads in part:

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill would eliminate this option, but not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

39. Article I, ¶18 of the New Jersey Constitution sets forth a taxpayer's right to petition government for redress or remedy of wrongs, which is also embodied in the First Amendment of the U.S. Constitution, enforced against the states through the XIV Amendment. This paragraph provides:

The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

40. Article VI, Sec. 5, ¶4 states:

Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

41. The Statute violates the New Jersey Constitution if it is interpreted to eliminate a taxpayer's constitutional right to seek review of the tax assessment and exemption status of another property owner in the Superior Court via a complaint in lieu of prerogative writ, as the Legislature apparently intended to do.

42. For all the above reason, Defendants must be enjoined from enacting, enforcing, or otherwise acting upon the Bill, now enacted in Statute, as doing so would be a violation of the New Jersey Constitution and U.S. Constitution as well as result in a gross distortion of the charitable property tax exemption to the serious detriment of the public.

COUNT ONE
(DECLARATORY AND INJUNCTIVE RELIEF
UNIFORMITY CLAUSE)

43. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth herein.

44. Defendants' enactment of P.L. 2021 Chapter 17 is in direct violation of the Uniformity Clause of the Constitution of the State of New Jersey and the Supreme Court's holding in New Jersey State League of Municipalities v. Kimmelman, 105 N.J. 422 (1987).

45. The provisions of the Statute are and will continue to be in direct violation of the Uniformity Clause of the Constitution of the State of New Jersey.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L. 2021 Chapter 17, violates the Constitution of the State of New Jersey, is invalid, void and of no force and effect, as well as a permanent Injunction against further infringement of Plaintiffs' rights under this clause, as well as any additional relief this Court deems equitable and just.

COUNT TWO
(DECLARATORY AND INJUNCTIVE RELIEF
EXEMPTIONS CLAUSE)

46. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth herein.

47. Defendants' enactment of P.L. 2021 Chapter 17 is in direct

violation of the Exemption Clause of the Constitution of the State of New Jersey and the Supreme Court's holding in New Jersey State League of Municipalities v. Kimmelman, 105 N.J. 422 (1987).

48. The provisions of the Statute are and will continue to be in direct violation of the Exemption Clause of the Constitution of the State of New Jersey.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L.2021 Chapter 17, violates the Constitution of the State of New Jersey, is invalid, void and of no force and effect, as well as a permanent Injunction against further infringement of Plaintiffs' rights under this clause, as well as any additional relief this Court deems equitable and just.

COUNT THREE
(DECLARATORY AND INJUNCTIVE RELIEF
SPECIAL LEGISLATION CLAUSES)

49. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth at herein.

50. Defendants' enactment of P.L. 2021 Ch. 17 constitutes "special legislation," in violation of various provisions of the New Jersey Constitution: Article IV, Section VII, paragraph 9; Article VIII, Section II, paragraph 2; and Article IV, Section VII, paragraph 7.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L. 2021 Chapter 17, violates the Constitution of the State of New Jersey, is invalid, void and of no force and effect, as well as a permanent Injunction against further infringement of Plaintiffs' rights under this clause, as well as any additional relief this Court deems equitable and just.

COUNT FOUR
(DECLARATORY AND INJUNCTIVE RELIEF
RIGHT OF REDRESS CLAUSES AND VIOLATION OF THE PRESERVATION OF
THE ACTION IN LIEU OF PREROGATIVE WRIT AS PRESERVED IN THE NEW
JERSEY CONSTITUTION)

51. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if set forth herein.

52. Defendants' enactment of P.L. 2021 Ch. 17 seeks to eliminate a taxpayer's right to challenge the tax assessment or exemption status of another property owner in violation of the New Jersey Constitution, Article 1, ¶18 and Article 6, Sec. 5, ¶4 and the First Amendment of the U.S. Constitution, as enforced against the State through the Fourteenth Amendment.

WHEREFORE, Plaintiffs seek a Declaratory Judgment that P.L. 2021 Chapter 17, ¶6 violates the Constitution of the State of New Jersey and the U.S. Constitution insofar as it eliminates a taxpayer's right to seek relief from discrimination in assessments or tax exemptions when that taxpayer challenges the assessment or tax exemption of another property owner in violation of the Actions

in Lieu of Prerogative Writ Clause of the New Jersey Constitution;
or, alternatively, a Declaratory Judgment that P.L.2021 Chapter
17, ¶6 must be construed to permit such third-party taxpayers to
file their complaints seeking review of the decisions made by local
tax authorities directly in the Superior Court pursuant to R. 4:69
(Actions in Lieu of Prerogative Writs, as well as a permanent
Injunction, pursuant to the New Jersey Civil Rights Act, N.J.S.A.
10:6-2(a) against any deprivation of Plaintiffs' constitutional
rights of redress and review of government action in the Superior
Court, as well as any additional relief this Court deems equitable
and just, including attorneys' fees pursuant to N.J.S.A. 10:6-2(f)
or common law.

Respectfully submitted,

NEW JERSEY APPLESEED PILC

By: /s/ Renée Steinhagen
Renée Steinhagen

Dated: March 18, 2022

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is hereby advised that RENÉE STEINHAGEN, ESQ., and BRUCE AFRAN, ESQ. on behalf of all Plaintiffs have been designated Trial Counsel in the matter.

RULE 1:38-7(b) CERTIFICATION

I certify that Confidential Personal Identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

/s/Renée Steinhagen
Renée Steinhagen

RULE 4:5-1 CERTIFICATION

I certify, in accordance with R. 4:5-1, that three counts of this Complaint are included within the Complaint filed by several municipalities in Docket No. MER-L-000738-21, currently pending before Judge Mala Sundar. This Complaint is not the subject matter of a pending arbitration proceeding or arbitration proceeding that is contemplated, and there are no other parties who should be joined in this action. On August 9, 2021, Plaintiffs made a motion to intervene in the above action; however, on September 24, 2021, Judge Sundar denied that motion. A copy of her Order is attached hereto.

/s/Renée Steinhagen
Renée Steinhagen

Dated: March 18, 2022

Renée Steinhagen, Esq.
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Attorney for Plaintiffs

	X	
	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	:	LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	:	DOCKET NO. MER-L-0001968-21
capacity as Healthcare Program	:	
Director, AMERICAN FEDERATION	:	
OF TEACHERS, NEW JERSEY, DONNA	:	Civil Action
CHIERA, in her capacity as	:	
President of AFTNJ, and	:	
MARK and KATHERINE SMITH,	:	STATEMENT OF UNDISPUTED
	:	MATERIAL FACTS IN SUPPORT
	:	OF PLAINTIFFS' CROSS-
Plaintiffs,	:	MOTION FOR SUMMARY JUDGMENT
	:	
	:	
-vs.-	:	
	:	
PHILIP D. MURPHY, in his	:	
official capacity as Governor	:	
of New Jersey, and the STATE	:	
OF NEW JERSEY,	:	
	:	
	:	
Defendants.	:	
	X	

Pursuant to R. 4:46-2(a), Plaintiffs, NEW JERSEY CITIZEN
ACTION, MAURA COLLINSGRU, AMERICAN FEDERATION OF TEACHERS, NEW
JERSEY, DONNA CHIERA and MARK SMITH and KATHERINE SMITH, submit

the following Statement of Undisputed Material Facts in support of their Cross-Motion for Summary Judgment.

The Amendment

1. The statutory amendment at issue is found in P.L. 2021, Chapter 17, Para. 6. (the "Amendment") A true copy of the entire Public Law is attached hereto.

2. On December 17, 2020, the New Jersey General Assembly passed Assembly Bill No. 1135 ("A.1135"). Verified Complaint at ¶20.

3. On December 17, 2020, the New Jersey State Senate passed its version of A.1135, designated S.357/624 (collectively the "Bill"). Verified Complaint at ¶21.

4. Once passed by both chambers of the New Jersey Legislature, Defendant Murphy signed the Bill into law on February 22, 2021, as Public Law 2021 Chapter 17. Verified Complaint at ¶22.

5. The Bill amended statutory provisions related to appeals by taxpayers and tax districts as follows:

54:3-21. a. (1) Except as provided in subsection b. of this section a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property [, or feeling discriminated against by the assessed valuation of other property in the county,] or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment

is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; . . .

Verified Complaint at ¶37.

Legislative History

6. As indicated by the Senate Budget and Appropriations Committee Statement to A.1135, with Committee amendments, December 15, 2020, the Legislature removed from Title 54 a taxpayer's right of review or remedy with respect to the assessed valuation or exempt status of the property of other taxpayers, including that of nonprofit charitable organizations such as colleges, educational facilities or hospitals. The Statement reads in part:

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill would eliminate this option, but not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

Verified Complaint at ¶38.

The Parties

7. Plaintiff NEW JERSEY CITIZEN ACTION, INC. ("NJCA") is a New Jersey non-profit corporation, registered under Section 501(c)(4) of the Internal Revenue Code with business addresses in the City of Newark, Essex County; Highland Park, Middlesex County; and Cherry Hill, Camden County. NJCA has 15,000 individual members,

as well as 100 affiliated partner groups with vast networks of members across New Jersey. Verified Complaint at ¶2. NJCA's membership of 15,000 individuals, many of whom own property in counties in which nonprofit hospitals are located, are harmed by the exemptions given to not-for-profit hospitals that are at issue in the complaint, and have an interest in challenging those tax exemptions. Verified Complaint at ¶5.

8. NJCA took an active role in opposing earlier versions of the Bill introduced and passed by the Legislature prior to the pandemic. Verified Complaint at ¶8.

9. Plaintiff MAURA COLLINSGRU is a taxpayer and owner of property in Palmyra, Burlington County, the county in which Virtua Health System is located. She is also the Health Care Program Director of NJCA, with a business address at 75 Raritan Avenue, Suite 200, Highland Park, Middlesex County. She is the principal coordinator of the New Jersey for Health Care Coalition consisting of numerous consumer groups, civil rights and immigration advocates and social service providers. Its mission is to improve access, affordability and quality of health services in NJ, which includes a focus on holding nonprofit hospitals accountable. Verified Complaint at ¶9.

10. Plaintiff AMERICAN FEDERATION OF TEACHERS NEW JERSEY ("AFTNJ") is a New Jersey non-profit membership corporation, with its official business address at 720 King Georges Road, Suite 300,

Fords, NJ 08863, in Middlesex County. It represents over 30,000 PreK through grade 12 and higher education workers who live and work throughout New Jersey. Verified Complaint at ¶10. AFTNJ workers knows firsthand the importance of large profitable institutions, including hospitals, paying their fair share in property taxes, and have an interest in challenging the tax-exempt status of those hospitals where there is an increased level of for-profit activity occurring on their campuses. Verified Complaint at ¶11.

11. Plaintiff DONNA CHIERA is a taxpayer and owner of property in Perth Amboy, Middlesex County, a municipality in which Hackensack-Meridian Raritan Bay Medical Center is located. She is also the President of AFTNJ, with a business address at 720 King Georges Road, Suite 300, Fords, NJ 08863, Middlesex County. Verified Complaint at ¶12.

12. Plaintiffs MARK and KATHERINE SMITH are taxpayers and owners of real property on which they reside in South Brunswick Township in the County of Middlesex. As residents of a county in which are situated at least two hospitals -- Robert Wood Johnson University Hospital and Penn Medicine Princeton Health -- that are tax exempt, Mark and Katherine Smith's contribution to Middlesex County's tax collection increases in proportion to the exempt status of the hospitals that are freed of the burden of contributing to the county tax base. Mark and Katherine Smith

followed closely the tax-exempt litigation against Princeton University (Docket Nos. Tax 7672-2016, among others), and attended multiple court sessions at the Tax Court in Morristown where the Princeton University matter was heard before the Hon. Vito Bianco and have a direct and personal commitment to the challenge of certain tax-exempt entities. Verified Complaint at ¶¶13,14.

13. Plaintiffs NJCA, AFTNJ and their members, as well as Mark and Katherine Smith, have suffered and will continue to suffer an injury -- i.e., deprivation of constitutional rights -- by the Amendment's facial prohibition on third-party assessment and exemption challenges to set aside unlawful tax exemption schemes that burden the tax base in their community and prejudice their own share of such taxes. Verified Complaint at ¶15.

14. Defendant, Philip D. Murphy ("Defendant Murphy"), at all relevant times, was and is the Governor of the State of New Jersey, and is named as a defendant in his official capacity as such. As Governor of the State of New Jersey, Defendant Murphy is sworn to, among other duties, diligently, faithfully and to the best of his ability, uphold the Constitution of the State of New Jersey, as well as maintain and enforce the laws of the State of New Jersey. Defendant's official office address is the State House, 225 W. State Street, City of Trenton, County of Mercer, State of New Jersey 08625. Verified Complaint at ¶16.

15. Defendant State of New Jersey ("New Jersey"), at all

relevant times, enacted the Amendment in dispute in this litigation. Verified Complaint at ¶17.

Dated: March 18, 2022

Respectfully submitted,

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER

/s/Renée Steinhagen
Renée Steinhagen

-and-

/s/Bruce Afran
Bruce Afran

CHAPTER 17

AN ACT concerning property tax exemptions, supplementing chapter 48 of Title 40 and chapter 4 of Title 54 of the Revised Statutes, and amending R.S.54:4-3.6 and R.S.54:3-21.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.40:48J-1 Assessment of community service contribution for certain tax exempt property owners; definitions.

1. a. (1) The owner of property used as a hospital or a satellite emergency care facility, which is exempt from taxation pursuant to section 3 of P.L.2021, c.17 (C.54:4-3.6j), shall annually be assessed a community service contribution to the municipality in which the licensed beds of the hospital are located and, in the case of a satellite emergency care facility, to the municipality in which such facility is located. These contributions shall be remitted directly to the municipalities in which the contributions are assessed.

(2) If a hospital and municipality have entered into a voluntary agreement prior to the enactment of P.L.2021, c.17 (C.40:48J-1 et al.), the hospital shall be required to pay the greater of the community service contribution required under paragraph (1) of subsection b. of this section, or the amount agreed upon in a voluntary agreement for the duration of the agreement between the municipality and the hospital.

(3) Nothing in this section shall be construed to prohibit a municipality and a hospital from entering into a voluntary agreement requiring additional payments by the hospital to the municipality pursuant to this section.

b. (1) For tax year 2021, the annual community service contribution required pursuant to this section shall, for a hospital, be equal to \$3 a day for each licensed bed at the hospital in the prior tax year, and shall, for a satellite emergency care facility, be equal to \$300 for each day in the prior tax year. For tax year 2022 and each tax year thereafter, the per day amount used to calculate an annual community service contribution for a hospital and a satellite emergency care facility shall increase by two percent over the prior tax year. The Commissioner of Health shall annually promulgate the per day amount to apply for each tax year. For the purposes of this subsection, the number of licensed beds per hospital shall not be less than the number of such beds in existence on January 1, 2020.

(2) An annual community service contribution shall be reduced by an amount equal to the sum of any payments remitted to the municipality in which the licensed beds of the hospital or satellite emergency care facility, as the case may be, is located, pursuant to a voluntary agreement operative in the prior tax year between the owner and the municipality to compensate for any municipal services benefitting the occupants and premises of the hospital or satellite emergency care facility.

(3) An annual community service contribution shall be payable in equal quarterly installments. The installments shall be payable on February 1, May 1, August 1, and November 1.

c. The obligation to remit an annual community service contribution pursuant to this section is legal, valid, and binding. If a quarterly installment of an annual community service contribution installment is not paid as and when due pursuant to subsection b. of this section, the unpaid balance shall constitute a municipal lien on the hospital or satellite emergency care facility property after 30 days, and shall be enforced and collected in the same manner as unpaid property taxes.

d. A municipality that receives an annual community service contribution installment pursuant to this section, or a payment under a voluntary agreement that reduces the amount of such contribution pursuant to paragraph (2) of subsection b. of this section, shall forthwith, upon receipt, remit five percent of the installment or voluntary payment, as the case may be, to the county in which the municipality is located.

e. The Commissioner of Health, in consultation with the New Jersey Health Care Facilities Financing Authority in the Department of Health and the Director of the Division of Local Government Services in the Department of Community Affairs, shall, by the first day of the fourth month next following the enactment of P.L.2021, c.17 (C.40:48J-1 et al.), adopt regulations necessary to effectuate the provisions of this section pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

f. Notwithstanding any other provision of this section to the contrary, an owner of property used as a hospital shall be exempt from remitting an annual community service contribution for the hospital if the owner certifies to the Department of Health that, in the prior year, the hospital did not bill any patient for inpatient or outpatient professional or technical services rendered at the hospital and the hospital has provided community benefit over the preceding three years for which the hospital has filed such forms averaging at least 12 percent of the hospital's total expenses, as documented on IRS Form 990, Schedule H, part 1, line 7K, column F. The hospital shall file a copy of the documentation as enumerated in this subsection with the municipal tax assessor on or before December 1 of the pre-tax year. Upon receipt of a copy of the documentation, the tax assessor shall notify the hospital, on or before December 31, that it is exempt from payment of the community service contribution for the tax year commencing January 1.

g. As used in this section:

"Hospital" means a general acute care hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), which maintains and operates organized facilities and services as approved and licensed by the Department of Health for the diagnosis, treatment, or care of persons suffering from acute illness, injury, or deformity and in which all diagnosis, treatment, and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State, and includes all land and buildings that are used in the delivery of health care services by such hospital and its medical providers or that are used for the management, maintenance, administration, support, and security of such hospital and its medical providers. "Hospital" shall not include a hospital owned or operated by a federal, State, regional, or local government entity, directly or as an instrumentality thereof.

"Licensed bed" means one of the total number of acute care beds for which an acute care hospital is approved for patient care by the Commissioner of Health, excluding skilled nursing, psychiatric, sub-acute, and newborn beds, and further excluding any acute care beds not commissioned for use.

"Medical provider" means an individual or entity which, acting within the scope of a licensure or certification, provides health care services, and includes, but is not limited to, a physician, physician assistant, psychologist, pharmacist, dentist, nurse, nurse practitioner, social worker, paramedic, respiratory care practitioner, medical or laboratory technician, ambulance or emergency medical worker, orthotist or prosthetist, radiological or other diagnostic service facility, bioanalytical laboratory, health care facility, or other limited licensed health care professional, and further includes administrative support staff of the individual or entity.

"Owner" means an association or corporation organized as a nonprofit entity pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes exclusively for hospital purposes that owns a hospital.

"Satellite emergency care facility" means a facility, which is owned and operated by a hospital, and which provides emergency care and treatment for patients.

"Voluntary agreement" means any payment in lieu of taxes agreement or other agreement entered into between the owner of the property and the municipality for the purpose of compensating the municipality for any municipal services the municipality provides to the hospital.

C.40:48J-2 Nonprofit Hospital Community Service Contribution Study Commission.

2. a. There is established, in but not of the Department of Health, a commission to be known as the Nonprofit Hospital Community Service Contribution Study Commission. The commission shall consist of ten members as follows: the Commissioner of Health, ex officio; the Director of the Division of Local Government Services in the Department of Community Affairs, ex officio; two members of the Senate to be appointed by the President of the Senate, who shall not both be of the same political party; two members of the General Assembly to be appointed by the Speaker of the General Assembly, who shall not both be of the same political party; two members, appointed by the Governor, who are mayors of municipalities entitled to receive annual community service contributions pursuant to section 1 of P.L.2021, c.17 (C.40:48J-1); and two members, appointed by the Governor, who are chief executive officers of hospitals assessed annual community service contributions pursuant to section 1 of P.L.2021, c.17 (C.40:48J-1). Each member may designate a representative to attend meetings of the commission, and each designee may lawfully vote and otherwise act on behalf of the member who designated that individual to serve as a designee. The members shall serve for terms of three years, commencing on the date of appointment, and may be reappointed. Vacancies in the membership of the commission shall be filled for the unexpired terms in the same manner as the original appointments.

b. The members shall be appointed within 60 days following the effective date of this section. The commission shall organize as soon as practicable after the appointment of a majority of its members and shall select a chair and a treasurer from among its members, and a secretary who need not be a member of the commission. The presence of six members of the commission shall constitute a quorum. The commission may conduct business without a quorum, but may only vote on the issuance of the report required to be submitted to the Governor and the Legislature pursuant to subsection e. of this section, and on any recommendations, when a quorum is present.

c. All commission members shall serve without compensation, but shall be eligible for reimbursement of necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available to the commission for its purposes.

d. The commission may meet and hold public hearings at the place or places it designates during the sessions or recesses of the Legislature.

e. The commission shall study the implementation of P.L.2021, c.17 (C.40:48J-1 et al.) and shall issue a report to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), every three years from the effective date of this section; provided, however, that the initial report shall be issued within one year following that effective date. The reports shall include: (1) an analysis of the financial impact of P.L.2021, c.17 (C.40:48J-1 et al.) on both hospitals and satellite emergency care facilities assessed annual community service contributions thereunder and the municipalities receiving such contributions; (2) an assessment of the adequacy of the amount of the annual community service contributions; (3) an analysis of the administration and equity of these contributions; and (4) any recommendations that the commission determines would improve the administration, equity, or any other aspect of the annual community service contribution system established by P.L.2021, c.17 (C.40:48J-1 et al.).

C.54:4-3.6j Exemption from taxation for certain properties used as hospital or satellite emergency care facility; definitions.

3. a. Property, including land and buildings, used as a hospital or a satellite emergency care facility, which is owned by an association or corporation organized as a nonprofit entity pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes exclusively for hospital purposes, shall be exempt from taxation, provided that, except as provided in subsection b. of this

section, if any portion of the property is leased to a profit-making organization or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt from taxation.

b. If any portion of a hospital or a satellite emergency care facility is leased to or otherwise used by a profit-making medical provider for medical purposes related to the delivery of health care services directly to the hospital, that portion shall be exempt from taxation, provided that the portion of the hospital or satellite emergency care facility is used exclusively for hospital purposes.

c. The owner of property exempt from taxation pursuant to subsection a. of this section shall be assessed an annual community service contribution pursuant to section 1 of P.L.2021, c.17 (C.40:48J-1).

d. As used in this section:

“Hospital” means a general acute care hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), which maintains and operates organized facilities and services as approved and licensed by the Department of Health for the diagnosis, treatment, or care of persons suffering from acute illness, injury, or deformity and in which all diagnosis, treatment, and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State, and includes all land and buildings that are used in the delivery of health care services by such hospital and its medical providers or that are used for the management, maintenance, administration, support, and security of such hospital and its medical providers. “Hospital” shall not include a hospital owned or operated by a federal, State, regional, or local government entity, directly or as an instrumentality thereof.

“Medical provider” means an individual or entity which, acting within the scope of a licensure or certification, provides health care services, and includes, but is not limited to, a physician, physician assistant, psychologist, pharmacist, dentist, nurse, nurse practitioner, social worker, paramedic, respiratory care practitioner, medical or laboratory technician, ambulance or emergency medical worker, orthotist or prosthetist, radiological or other diagnostic service facility, bioanalytical laboratory, health care facility, or other limited licensed health care professional, and further includes administrative support staff of the individual or entity.

“Satellite emergency care facility” means a facility, which is owned and operated by a hospital, and which provides emergency care and treatment for patients.

4. For tax years 2014, 2015, 2016, 2017, 2018, 2019, and 2020, property that would have been exempt from taxation pursuant to section 3 of P.L.2021, c.17 (C.54:4-3.6j), had that section been effective in those tax years, shall not be assessed as an omitted assessment pursuant to P.L.1947, c.413 (C.54:4-63.12 et seq.) or as a regular assessment pursuant to R.S.54:4-1. This section shall apply to all property owned by an association or corporation organized as a nonprofit entity pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes exclusively for hospital purposes, whether or not assessed as an omitted assessment or a regular assessment, as well as the omitted assessments or regular assessments of such property that is the subject of litigation that is pending or that may be subject to appeal before the county board of taxation, the tax court, or any other court on or after the date of enactment of P.L.2021, c.17 (C.40:48J-1 et al.). Nothing in this section shall be construed to require a municipality to refund any taxes paid on such property as a result of such omitted assessments or regular assessments pursuant to any previous settlement of litigation or other agreement for tax years 2014, 2015, 2016, 2017, 2018, 2019, and 2020.

5. R.S.54:4-3.6 is amended to read as follows:

Tax exempt property.

54:4-3.6. The following property shall be exempt from taxation under this chapter: all buildings actually used for colleges, schools, academies or seminaries, provided that if any portion of such buildings are leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt; all buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof or when located on land owned by an educational institution which derives its primary support from State revenue; all buildings actually and exclusively used for public libraries, asylum or schools for adults and children with intellectual disabilities; all buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals; all buildings actually and exclusively used and owned by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit; all buildings actually used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt; all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation; all buildings, other than those exempt from taxation pursuant to section 3 of P.L.2021, c.17 (C.54:4-3.6j), actually used in the work of associations and corporations organized exclusively for hospital purposes, provided that if any portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt; all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children; all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them; the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State, together with the accessory buildings located on the same premises; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned; all property owned and used by any nonprofit corporation in connection with its curriculum, work, care, treatment and study of men, women, or children with intellectual disabilities shall also be exempt from taxation, provided that such corporation

conducts and maintains research or professional training facilities for the care and training of men, women, or children with intellectual disabilities; provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes; and any tract of land purchased pursuant to subsection (n) of section 21 of P.L.1971, c.199 (C.40A:12-21), and located within a municipality, actually used for the cultivation and sale of fresh fruits and vegetables and owned by a duly incorporated nonprofit organization or association which includes among its principal purposes the cultivation and sale of fresh fruits and vegetables, other than a political, partisan, sectarian, denominational or religious organization or association. The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed or where an educational institution, as provided herein, has leased said property to a historical society or association or to a corporation organized for such purposes and created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes.

As used in this section "hospital purposes" includes health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L.1979, c.496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of 1979"; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.

6. R.S.54:3-21 is amended to read as follows:

Appeal by taxpayer or taxing district; petition; complaint; exception.

54:3-21. a. (1) Except as provided in subsection b. of this section a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000. In a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a taxpayer or a taxing district may appeal before or on May 1 to the county board of taxation by filing with it a petition of appeal or, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, by filing a complaint directly with the State Tax Court. Within ten days of the completion of the bulk mailing of notification of assessment, the assessor of the taxing district

shall file with the county board of taxation a certification setting forth the date on which the bulk mailing was completed. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within ten days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed. A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

(2) With respect to property located in a county participating in the demonstration program established in section 4 of P.L.2013, c.15 (C.54:1-104), a property located in a county operating under the "Property Tax Assessment Reform Act," P.L.2009, c.118 (C.54:1-86 et seq.), or a property located in a county that has adopted, by resolution, the provisions of section 1 of P.L.2018, c.94 (C.54:1-105), and except as provided in subsection b. of this section, a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county, may on or before January 15, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer, or taxing district, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.

If a petition of appeal is filed on January 15 or during the 19 days next preceding January 15, or a complaint is filed with the Tax Court on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

Within 10 days of the completion of the bulk mailing of notification of assessment, the assessor of the taxing district shall file with the county board of taxation a certification setting forth the date on which the bulk mailing was completed. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within 10 days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed. A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

b. No taxpayer or taxing district shall be entitled to appeal either an assessment or an exemption or both that is based on a financial agreement subject to the provisions of the "Long Term Tax Exemption Law" under the appeals process set forth in subsection a. of this section.

7. This act shall take effect immediately, except that section 4 of the bill shall be retroactive and apply to tax years 2014, 2015, 2016, 2017, 2018, 2019, and 2020 only.

Approved February 22, 2021.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1135

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 2020

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 1135.

As amended by the committee, this bill would reinstate the property tax exempt status of nonprofit hospitals, including satellite emergency care facilities, with for-profit medical providers on site. Under the amended bill, these hospitals would instead be required to pay annual community service contributions to their host municipalities to offset the costs of municipal services which directly benefit these hospitals and their employees. The bill also would establish a commission to study this new system, and also would eliminate certain third-party property tax appeals.

Under the bill, for tax year 2021, the annual community service contribution for a hospital would be equal to \$2.50 a day for each licensed bed at the hospital in the prior tax year, and the contribution for a satellite emergency care facility would be equal to \$250 for each day in the prior tax year. For tax year 2022 and each tax year thereafter, the per day amount used to calculate the community service contribution for a hospital and a satellite emergency care facility would increase by two percent over the prior tax year. For the purpose of calculating the annual service contribution required to be paid by each hospital under the bill, the bill sets a minimum number of licensed hospital beds in each hospital. This minimum number cannot be less than the number of beds in each hospital on January 1, 2020.

If a hospital and a municipality entered into a voluntary agreement for a payment in lieu of taxes or other financial contribution to the municipality prior to the enactment of the bill, the hospital would pay the greater of the community service contribution or the amount agreed upon in that voluntary agreement for the duration of the agreement between the municipality and the hospital. However, a hospital would be exempt from the requirement to remit a community service contribution for a tax year if, prior to December 1 of the pre-tax year, the owner certifies to the Department of Health that the hospital did not balance bill or collect payment from an individual for inpatient services rendered at the hospital by its employed physicians during the current calendar year, and that the hospital's forbearance of payment was lawful and consistent with an advisory opinion issued to

the hospital by the federal government; and the hospital has provided community benefit over the preceding three years for which the hospital has filed such forms averaging at least 12 percent of the hospital's total expenses, as documented on IRS Form 990, Schedule H.

The bill requires municipalities to provide five percent of an annual community service contribution, or a voluntary payment that counts against such contribution, to the county in which the municipality is located to offset the cost of county services which benefit the hospital.

The bill also establishes a permanent commission, known as the Nonprofit Hospital Community Service Contribution Study Commission, to study and issue a report to the Governor and the Legislature on the annual community service contribution system created by the bill. The initial report is due within one year of the effective date of that provision of the bill, and subsequent reports are due every three years from that effective date. The reports must include: (1) an analysis of the financial impact of the bill on the affected hospitals and municipalities; (2) an assessment of the adequacy of the amount of the annual community service contributions; (3) an analysis of the administration and equity of these contributions; and (4) any recommendations that the commission determines would improve the administration, equity, or any other aspect of the annual community service contribution system created by the bill.

The bill also prohibits the assessment of a nonprofit hospital as an omitted assessment or a regular assessment for tax years 2014 through 2020. This retroactive provision of the bill is intended to render tax appeals concerning the assessment of a nonprofit hospital as an omitted assessment or a regular assessment for tax years 2014 through 2020 moot.

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill would eliminate this option, but not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

The bill also clarifies that the process for challenging the exempt status of a parcel of real property is the same process for challenging the assessed valuation of a parcel of real property, consistent with existing practice.

COMMITTEE AMENDMENTS:

The committee made several amendments to the bill, including the following:

in section 1, to define the term “voluntary agreement” as used in that section;

to require that if a hospital and municipality entered into a voluntary agreement prior to the effective date of the bill, the hospital would be required to pay to the municipality the greater of the amount in the voluntary agreement or the community service contribution as calculated pursuant to the bill for the duration of the agreement, and to permit a municipality and a hospital to enter into a voluntary agreement requiring additional payments by the hospital to the municipality;

to clarify that the purpose of the community service contribution is to reimburse counties and municipalities for the cost of public services provided by these levels of government to hospitals, not just public safety services;

to set a minimum number of licensed hospital beds, for the purpose of calculating the annual community service contribution, at the number of beds in each hospital on January 1, 2020;

to require that a hospital would not have to pay a community service contribution to a municipality under the bill for a tax year if, prior to December 1 of the pre-tax year, the hospital certifies to the Department of Health that it did not balance bill or collect payment from an individual for inpatient services rendered by its employed physicians during the current calendar year and the hospital provided community benefit over the preceding three years averaging at least 12 percent of the hospital’s total expenses, as reflected in IRS Form 990, Schedule H;

to require that regulations to effectuate the provisions of the section are to be promulgated no later than the first day of the fourth month next following enactment of the bill;

in section 4, to require that property that would have been property tax exempt in tax years 2014 through 2020 under section 3 of the bill if that section had been in effect for those tax years, cannot be assessed as an omitted assessment or regular assessment for those tax years; and to clarify that the provisions of section 4 cannot be construed to require a municipality to refund any property taxes paid on property as a result of an omitted assessment or regular assessment pursuant to any previous settlement of litigation or other agreement for those tax years;

in section 6, a technical amendment to reflect the current language of R.S.54:3-21 following the enactment of P.L.2018, c.94; and

in the effective clause, to require that the provisions of section 4 of the bill shall be retroactive and apply to tax years 2014 through 2020 only.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill would have an indeterminate impact on local finances associated with the annual payment of community service contributions by property tax-exempt nonprofit hospitals and the prohibition of certain third-party property tax appeals. The OLS also estimates the bill could potentially increase State expenses due to the operation of the Nonprofit Hospital Community Service Contribution Study Commission.

By exempting certain nonprofit hospital facilities from property taxation, and requiring those facilities to make annual community service contributions to the host counties and municipalities, the bill is expected to increase the miscellaneous revenues of certain local government units throughout the State by roughly \$18.2 million. This figure would be reduced based on existing settlement agreements between hospitals and their host municipalities.

A hospital would be exempt from its community service contribution if it can certify that it did not balance bill or collect payment from an individual for inpatient services rendered by its employed physicians during the current calendar year and the hospital has provided community benefit over the preceding three years averaging at least 12 percent of the hospital's total expenses. Hospitals qualifying for this exemption would reduce the \$18.2 million figure above.

Additionally, the OLS cannot predict whether the collection of community service contributions by counties and municipalities will impact the total revenues of those local government units, given that such impact would depend on the spending decisions of each local government unit and the resulting impact on its property tax levy.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint] **ASSEMBLY, No. 1135**

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2020

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1135 (2R) with committee amendments.

This bill, as amended, would reinstate the property tax exempt status of nonprofit hospitals, including satellite emergency care facilities, with for-profit medical providers on site. As provided in the bill, these hospitals would instead be required to pay annual community service contributions to their host municipalities to offset the costs of municipal services which directly benefit these hospitals and their employees. The bill also would establish a commission to study this new system.

Under the bill, for tax year 2021, the annual community service contribution for a hospital would be equal to \$3 a day for each licensed bed at the hospital in the prior tax year, and the contribution for a satellite emergency care facility would be equal to \$300 for each day in the prior tax year. For tax year 2022 and each tax year thereafter, the per day amount used to calculate the community service contribution for a hospital and a satellite emergency care facility would increase by two percent over the prior tax year. For the purpose of calculating the annual service contribution required to be paid by each hospital under the bill, the bill sets a minimum number of licensed hospital beds in each hospital. This minimum number may not be less than the number of beds in each hospital on January 1, 2020.

If a hospital and a municipality entered into a voluntary agreement for a payment in lieu of taxes or other financial contribution to the municipality prior to the enactment of the bill, the hospital would pay the greater of the community service contribution or the amount agreed upon in that voluntary agreement for the duration of the agreement between the municipality and the hospital.

A hospital would be exempt from the requirement to remit a community service contribution for a tax year if the owner certifies to the Department of Health that, in the prior year, the hospital did not bill any patient for inpatient or outpatient professional or technical services rendered at the hospital and the hospital has provided

community benefit over the preceding three years for which the hospital has filed such forms averaging at least 12 percent of the hospital's total expenses, as documented on IRS Form 990, Schedule H, part 1, line 7K, column F.

The bill requires municipalities to provide five percent of an annual community service contribution, or a voluntary payment that counts against such contribution, to the county in which the municipality is located to offset the cost of county services which benefit the hospital.

The bill also establishes a permanent commission, known as the Nonprofit Hospital Community Service Contribution Study Commission, to study and issue a report to the Governor and the Legislature on the annual community service contribution system created by the bill. The initial report is due within one year of the effective date of that provision of the bill, and subsequent reports are due every three years from that effective date. The reports are required to include: (1) an analysis of the financial impact of the bill on the affected hospitals and municipalities; (2) an assessment of the adequacy of the amount of the annual community service contributions; (3) an analysis of the administration and equity of these contributions; and (4) any recommendations that the commission determines would improve the administration, equity, or any other aspect of the annual community service contribution system created by the bill.

The bill also prohibits the assessment of a nonprofit hospital as an omitted assessment or a regular assessment for tax years 2014 through 2020. A municipality would not be required to refund any taxes paid on such property as a result of such omitted assessments or regular assessments pursuant to any previous settlement of litigation or other agreement for those tax years. This retroactive provision of the bill is intended to render moot tax appeals concerning the assessment of a nonprofit hospital as an omitted assessment or a regular assessment for tax years 2014 through 2020.

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill would eliminate this option, but not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

The bill also clarifies that the process for challenging the exempt status of a parcel of real property is the same process for challenging the assessed valuation of a parcel of real property, consistent with existing practice.

As amended and reported by the committee, Assembly Bill No. 1135 (3R) is identical to the Senate Committee Substitute for Senate

Bill No. 357 and Senate Bill No. 624 (1R), as also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- increase the annual community service contribution per licensed bed rate to \$3 a day for a hospital, and the contribution rate to \$300 a day for a satellite emergency care facility;
- revise the exemption for hospitals meeting certain criteria from the community service contribution requirement;
- add language clarifying that the provisions of the bill do not apply to government owned or operated hospitals;
- add the Director of the Division of Local Government Services in the Department of Community Affairs to the Nonprofit Hospital Community Service Contribution Study Commission; and
- add language providing that any portion of a hospital or a satellite emergency care facility that is leased to or otherwise used by a profit-making medical provider for medical purposes related to the delivery of health care services directly to the hospital would only be exempt from property taxation if the portion of the hospital or satellite emergency care facility is used exclusively for hospital purposes.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1135

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2020

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1135 (1R), with committee amendments.

This bill, as amended, reinstates the property tax exempt status of nonprofit hospitals, including satellite emergency care facilities, with for-profit medical providers on site. As provided in the bill, these hospitals would instead be required to pay annual community service contributions to their host municipalities to offset the costs of municipal services which directly benefit these hospitals and their employees. The bill also establishes a commission to study this new system, and also eliminates certain third-party property tax appeals.

Under the bill, for tax year 2021, the annual community service contribution for a hospital would be equal to \$2.50 a day for each licensed bed at the hospital in the prior tax year, and the contribution for a satellite emergency care facility would be equal to \$250 for each day in the prior tax year. For tax year 2022 and each tax year thereafter, the per day amount used to calculate the community service contribution for a hospital and a satellite emergency care facility would increase by two percent over the prior tax year. For the purpose of calculating the annual service contribution required to be paid by each hospital under the bill, the bill sets a minimum number of licensed hospital beds in each hospital. This minimum number may not be less than the number of beds in each hospital on January 1, 2020.

If a hospital and a municipality entered into a voluntary agreement for a payment in lieu of taxes or other financial contribution to the municipality prior to the enactment of the bill, the hospital would pay the greater of the community service contribution or the amount agreed upon in that voluntary agreement for the duration of the agreement between the municipality and the hospital.

A hospital would be exempt from the requirement to remit a community service contribution for a tax year if, prior to December 1 of the pre-tax year, the owner certifies to the Department of Health that the hospital did not balance bill or collect payment from an individual for inpatient services rendered at the hospital by its

employed physicians during the current calendar year, and that the hospital's forbearance of payment was lawful and consistent with an advisory opinion issued to the hospital by the federal government; and the hospital has provided community benefit over the preceding three years for which the hospital has filed such forms averaging at least 12 percent of the hospital's total expenses, as documented on IRS Form 990, Schedule H.

The bill requires municipalities to provide five percent of an annual community service contribution, or a voluntary payment that counts against such contribution, to the county in which the municipality is located to offset the cost of county services which benefit the hospital.

The bill also establishes a permanent commission, known as the Nonprofit Hospital Community Service Contribution Study Commission, to study and issue a report to the Governor and the Legislature on the annual community service contribution system created by the bill. The initial report is due within one year of the effective date of that provision of the bill, and subsequent reports are due every three years from that effective date. The reports are required to include: (1) an analysis of the financial impact of the bill on the affected hospitals and municipalities; (2) an assessment of the adequacy of the amount of the annual community service contributions; (3) an analysis of the administration and equity of these contributions; and (4) any recommendations that the commission determines would improve the administration, equity, or any other aspect of the annual community service contribution system created by the bill.

The bill also prohibits the assessment of a nonprofit hospital as an omitted assessment or a regular assessment for tax years 2014 through 2020. A municipality would not be required to refund any taxes paid on such property as a result of such omitted assessments or regular assessments pursuant to any previous settlement of litigation or other agreement for those tax years. This retroactive provision of the bill is intended to render moot tax appeals concerning the assessment of a nonprofit hospital as an omitted assessment or a regular assessment for tax years 2014 through 2020.

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill eliminates this option but does not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

The bill also clarifies that the process for challenging the exempt status of a parcel of real property is the same process for challenging the assessed valuation of a parcel of real property, consistent with existing practice.

As amended and reported by the committee, Assembly Bill No. 1135 (2R) is identical to the Senate Committee Substitute for Senate Bill No. 357 and Senate Bill No. 624, which was also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amended the bill to add language clarifying that any portion of a hospital or a satellite emergency care facility that is leased to or otherwise used by a profit-making medical provider would only be exempt from property taxation if the lease or use is for medical purposes related to the delivery of health care services directly to the hospital.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill would have an indeterminate annual impact on local finances. Although the community service contributions by nonprofit hospitals could raise as much as \$18.2 million in annual municipal and county revenue, any revenue increase would be reduced by the indeterminate loss in property tax revenue as a result of the bill exempting these hospitals from property taxation. This analysis assumes that all other revenue and spending decisions by local governments would not change because of the enactment of this bill.

In addition, as the bill prohibits property taxpayers from filing property tax appeals with respect to the property of others, the OLS estimates that any reduction in the number of property tax appeals filed would lower local government operating expenditures.

The OLS also estimates the bill could potentially increase annual State expenses due to the operation of the Nonprofit Hospital Community Service Contribution Study Commission.

denied, Plaintiffs' cross motion for summary judgment also should be denied. Defendants should be permitted to consider its defense of this case, including whether to file an answer to Plaintiffs' complaint and conduct discovery. Defendants reserve the right to amend their responses herein, and submit any counterstatement of undisputed material facts, after they file an Answer and discovery is complete. Plaintiffs fail to provide any certification in support its recitation of purported undisputed facts in their cross-motion for summary judgment. Plaintiffs Complaint is unverified because Plaintiffs fail to provide a certification in support of the any of the allegations in their "Verified Complaint". Defendants' objects and responds that Plaintiffs' unsupported "Verified Complaint" consists of legal assertions and conclusions and does not contain proven factual statements requiring a response from the Defendants. Defendants reserve the right to amend their responses herein, and submit any counterstatement of undisputed material facts, after they file an Answer and discovery is complete. Nevertheless, for the sole purpose of adjudicating the pending cross-motion for summary judgment filed by the Plaintiffs in the above- captioned matter, the Defendants, Philip D. Murphy, in his official capacity as Governor of New Jersey, and the State of New Jersey, submit this response to Plaintiffs' statement of material facts not in dispute pursuant to R. 4:46-2:

The Amendment

1. Defendants admit Paragraph 1. Public Law 2021, Chapter 17 ("Remedial Legislation") speaks for itself.

2. Defendants admit Paragraph 2. Assembly Bill No. 1135 speaks for itself.

3. Defendants admit Paragraph 3. The Senate version of Assembly Bill No. 1135, designated S.357/624 speaks for itself.

4. Defendants admit Paragraph 4. The Remedial Legislation speaks for itself.

5. Defendants admit Paragraph 5. The Remedial Legislation for itself.

Legislative History

6. Defendants admit Paragraph 6.

The Parties

7. Paragraph 7 is denied as stated, except to the extent that Plaintiffs New Jersey Citizen Action, Inc. ("NJCA") has identified its membership and as having offices in the City of Newark, Highland Park, and Cherry Hill in Plaintiffs' complaint. Paragraph 7 includes conclusions of law for which a response is not required from Defendant.

8. Paragraph 8 is denied as stated, except to the extent that NJCA opposed the Remedial Legislation.

9. Paragraph 9 is denied as stated, except to the extent that Plaintiff Maria Collinsgru has identified herself as a taxpayer and owner of property in Palmyra, Burlington County.

10. Paragraph 10 is denied as stated, except that Defendant admits that Plaintiff American Federation of Teachers New Jersey's ("AFTNJ") official business address is located at 720 King Georges Road, Suite 300, Fords, New Jersey.

11. Paragraph 11 is denied as stated, except that Defendant admits that Donna Chiera is the President of ("AFTNJ"), whose business address is 720 King Georges Road, Suite 300, Fords, New Jersey.

12. Paragraph 12 is denied as stated, except that Defendants admit that Robert Wood Johnson University Hospital and Penn Medicine Princeton Health in Middlesex County.

13. Defendants deny Paragraph 13 as stated. The Remedial Legislation speaks for itself. Additionally, Paragraph 13 calls for a conclusion of law for which this litigation will resolve.

14. Defendants admit Paragraph 14.

[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

15. Paragraph 15 is denied as stated, except that Defendants admits that the Legislature enacted the Remedial Legislation.

Respectfully submitted,

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Abiola G. Miles
Abiola G. Miles
Deputy Attorney General
Attorney for Defendant

Dated: May 25, 2022



May 17, 2022

Hon. Mala Sundar, P.J.T.C.
Robert Hughes Justice Complex,
25 Market Street, 7th Fl.
Trenton, New Jersey 08625
Taxcttrenton2@njcourts.gov

Re: New Jersey Citizen Action et al. v. Philip Murphy and
State of New Jersey, Docket No. MER-L- 001968-21

Dear Judge Sundar:

In accordance with your previous Case Management Order, dated January 24, 2022, plaintiffs, New Jersey Citizen Action, American Federation of Teachers, New Jersey, Maura Collinsgru, Donna Chiera, Mark Smith and Katherine Smith, hereby withdraw Counts I-III of the aforementioned complaint.

Given plaintiffs' participation in oral argument in Colacitti et al v. Murphy, Docket No. 000738-21, this court may dismiss such counts from the afore-mentioned case without prejudicing plaintiffs' ability to participate in any appeal that is filed.

Respectfully submitted,

NEW JERSEY APPLESEED PILC

By: /s/Renée Steinhagen
Renée Steinhagen, Esq.

-and-

/s/Bruce Afran
Bruce Afran, Esq.

Cc: Attorneys for All Parties

New Jersey Appleseed
Public Interest Law Center of New Jersey
23 James Street
Newark, New Jersey 07102

Phone: 973.735.0523 Cell: 917-771-8060
Email: renee@njappleseed.org
Website: www.njappleseed.org

BY THE COURT

New Jersey Citizen Action,	:	SUPERIOR COURT OF NEW JERSEY
Maura Collinsgru, in her capacity as	:	LAW DIVISION, MERCER COUNTY
Healthcare Program Director,	:	
American Federation of Teachers, NJ	:	DOCKET NO. MER-L-001968-2021
Donna Chiera, in her capacity as President	:	
of AFTNJ, and,	:	
Mark and Katherine Smith,	:	Civil Action
	:	
Plaintiffs,	:	ORDER
	:	
-vs.-	:	
	:	
Phillip D. Murphy, in his official capacity	:	
as Governor of New Jersey, and,	:	
State of New Jersey,	:	
Defendants.	:	

Plaintiffs having withdrawn Counts I-III of their complaint in accordance with this court's Case Management Order issued on January 24, 2022, on notice to defendants; and for good cause;

IT IS ON THIS 23rd day of May, 2022, **ORDERED** that Counts I-III of plaintiffs' complaint are hereby dismissed with prejudice.

/s/ Mala Sundar
Hon. Mala Sundar P.J.T.C.
t/a Superior Court, Law Division

Renée Steinhagen, Esq.
 Atty No. 038691989
 NEW JERSEY APPLESEED
 PUBLIC INTEREST LAW CENTER, INC
 23 James Street
 Newark, NJ 07102
 (973) 735-0523
Attorney for Plaintiffs

Bruce Afran, Esq.
 Atty. No. 010751986
 48 Cuyler Road
 Princeton, NJ 08540
 (609)454-7435
Attorney for Plaintiffs

	X	
	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	:	LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	:	DOCKET NO. MER-L-0001968-21
capacity as Healthcare Program	:	
Director, AMERICAN FEDERATION	:	
OF TEACHERS, NEW JERSEY, DONNA	:	Civil Action
CHIERA, in her capacity as	:	
President of AFTNJ, and.	:	
MARK and KATHERINE SMITH,	:	
	:	
	:	
Plaintiffs,	:	
	:	CERTIFICATION OF
	:	RENÉE STEINHAGEN, ESQ.
-vs.-	:	
	:	
PHILLIP D. MURPHY, in his	:	
official capacity as Governor	:	
of New Jersey, and the STATE	:	
OF NEW JERSEY,	:	
	:	
Defendants.	:	
	X	

I, RENÉE STEINHAGEN, hereby certify as follows"

1. I am the Executive Director of New Jersey Appleseed Public Interest Law Center, co-counsel in this matter with Bruce Afran, Esq. We represent the individual and organizational

plaintiffs in this matter, and I make this certification in support of their cross-motion for summary judgment to establish that all the plaintiffs have standing to prosecute this case.

2. I am attaching a true and accurate copy of the 2021-2022 property tax statement of Maura Collisgru as Exhibit A.
3. I am attaching a true and accurate copy of the 2021 property tax statement of Donna Chiera as Exhibit B.
4. I am attaching a true and accurate copy of the quarterly 2022 property tax statement of Mark and Katherine Smith as Exhibit C.
5. I am attaching the certification of Dena Mottola Jaborska, Executive Director of New Jersey Citizen Action as Exhibit D.
6. I am attaching the certification of Donna Chiera, the President of the American Federation of Teachers, New Jersey as Exhibit E.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By: /s/ Renée Steinhagen
Renée Steinhagen

Dated: July 22, 2022

July 6, 2022
11:03 AMBOROUGH OF PALMYRA
Tax Account Detail Inquiry

Page No: 1

BLQ: 153.04 1080.
Owner Name: COLLINSGRU, MAURATax Year: 2021 to 2022
Property Location: 1080 HARBOUR DR

Tax Year: 2021	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
Original Billed:	1,352.69	1,352.69	1,342.56	1,342.55	5,390.49
Payments:	1,352.69	1,352.69	1,342.56	1,342.55	5,390.49
Balance:	0.00	0.00	0.00	0.00	0.00

Date	Qtr	Type	Code	Check No	Mthd	Reference	Batch Id	Principal	Interest	2021 Prin Balance
		Description								
		Original Billed						5,390.49		5,390.49
02/04/21	1	Payment	001	3798424221	CK	13621	5 WIP0204	1,352.69	0.00	4,037.80
		WIP								
05/21/21	2	Payment	001	3807304085	CK	14029	20 WIP0521	1,352.69	6.01	2,685.11
		ON LINE PAYMENTS								
08/12/21	3	Payment	001	502	CK	14279	59 081221LY	1,342.56	0.00	1,342.55
11/08/21	4	Payment	001	3817678661	CK	14598	11 WIP1108	1,342.55	0.00	0.00
		ON LINE PAYMENTS								

Tax Year: 2022	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
Original Billed:	1,347.63	1,347.62	0.00	0.00	2,695.25
Payments:	1,347.63	1,347.62	0.00	0.00	2,695.25
Balance:	0.00	0.00	0.00	0.00	0.00

Date	Qtr	Type	Code	Check No	Mthd	Reference	Batch Id	Principal	Interest	2022 Prin Balance
		Description								
		Original Billed						2,695.25		2,695.25
02/08/22	1	Payment	001	3823256191	CK	14854	7 WIP0208	1,347.63	0.00	1,347.62
		ON LINE PAYMENTS								
04/29/22	2	Payment	001	3828360296	CK	15215	9 WIP0429	1,347.62	0.00	0.00
		WIP ON LINE PAYMENTS								

Total Principal Balance for Tax Years in Range: 0.00

2021 FINAL/2022 PRELIMINARY TAX BILL

CITY OF PERTH AMBOY MIDDLESEX COUNTY

BLOCK NUMBER		LOT NUMBER	QUALIFICATION	EXPLANATION OF TAXES		RATE PER \$100	AMOUNT OF TAX
55		19					
Property Locat.		286 HIGH ST.		COUNTY TAX		0.398	1194.00
Building Desc.		2.5S-S-TH-BG-2U		SCHOOL TAX		0.775	2325.00
Additional Lots				LOCAL MUNICIPAL TAX		1.738	5214.00
Land Dimens.		1774 SQ FT		COUNTY OPEN SPACE TAX		0.033	99.00
Bank		Mortgage #	Tax Acct. # 00001263	MUNICIPAL LIBRARY TAX		0.035	105.00
ASSESSED VALUATION INFORMATION							
▼ LAND ▼		▼ IMPROVEMENTS ▼		▼ TOTAL ▼			
84000		216000		300000			
EXEMPTIONS ▶		NET TAXABLE VALUE ▶		300000			
TANKIEWICZ, NORMAN & CHIERA, DONNA				2021 TOTAL TAX		2.979	
286 HIGH ST.				2021 NET TAX		8937.00	
PERTH AMBOY, NJ				LESS 2021 PREV. BILLED		4467.00	
				BALANCE OF 2021 TAX		4470.00	
2021 3RD QTR DUE AUG. 1, 2021		2235.00	2021 4TH QTR DUE NOV. 1, 2021	2235.00	2022 1ST QTR DUE FEB. 1, 2022	2234.25	2022 2ND QTR DUE MAY. 1, 2022
							2234.25

INFORMATION FOR TAXPAYERS

MAKE CHECK
PAYABLE TO: CITY OF PERTH AMBOY

MAIL TO: 260 HIGH STREET
PERTH AMBOY, NJ 08861
PHONE 732-826-0290 X 4027

2022 PRELIMINARY TAX

PRELIMINARY TAX IS EQUAL TO ONE HALF OF 2021 TOTAL NET TAX

4468.50

SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

GRACE PERIOD IS EXTENDED TO 9/8/21
IF NOT PAID ON OR BEFORE 9/8/2021
INTEREST WILL BE CHARGED BACK TO
8/1 AND INTEREST IS 8% UP TO \$1500.
AND 18% THEREAFTER. YOU CAN PAY ON
THE CITY OF PERTH AMBOY WEBSITE
FREE FROM YOUR CHECKING ACCOUNT.
THERE IS A WHITE DROP BOX IN FRONT
OF CITY HALL FOR CHECKS AND MONEY
ORDERS. PLEASE PAY TAXES ON TIME
IN ORDER TO AVOID TAX SALE. THANK
YOU!

DISTRIBUTION OF TAXES

County Taxes	14.46%	\$ 1293.00
School Taxes	26.02%	\$ 2325.00
Municipal Taxes	59.52%	\$ 5319.00

Pa131

STATE AID USED TO OFFSET LOCAL PROPERTY TAXES: The budgets of the government agencies funded by this tax bill include State aid used to reduce property taxes. State aid offset information for current year municipal tax bills will start becoming available at the end of July. Access the Division of Local Government Services' website at http://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html to find (based on the assessed value of this parcel) the amount of state aid used to offset the amount of local property taxes.

2022 ESTIMATED 3RD QUARTER TAX BILL

Block Number	Lot Number	Owner Name
99	8.031	
Property Loc	979 RIDGE ROAD	
Block Desc		
Address Loc		
Land Area	3.7901 AC	
Map	00011880	
ASSESSED VALUATION INFORMATION		
Land	Improvements	TOTAL
114000	130800	244800
		244800

SMITH, MARK G. R. & KATHERINE C.N.
P.O. BOX 343/979 RIDGE RD
KINGSTON, NJ 08528

TOWNSHIP OF SOUTH BRUNSWICK**EXPLANATION OF TAXES**

DESCRIPTION	EST. PER. UNIT	ANNUAL TAX
ESTIMATED TAX NOTICE		
2022 3RD QTR TAX DUE:		3300.51
TAX PAYER INFORMATION		

Estimated Tax Bills are considered the same as Regular Tax Bills in regard to all provisions affecting Tax Bills, including interest and the use of the Bill for calculating Escrow Requirements by Mortgage Services.

2022 3RD QTR DUE AUG. 1, 2022	3300.51	2022 4TH QTR DUE NOV. 1, 2022	2022 1ST QTR DUE FEB. 1, 2023	2022 2ND QTR DUE MAY 1, 2023
----------------------------------	---------	----------------------------------	----------------------------------	---------------------------------

INFORMATION FOR TAXPAYERS	2022 PRELIMINARY TAX
<p>MAKE CHECK PAYABLE TO TOWNSHIP OF SOUTH BRUNSWICK</p> <p>TELEPHONE (732) 329-4000 Ext. 7854 TDD/TTY (732) 823-3965</p> <p>MAIL TO SOUTH BRUNSWICK TAX COLLECTOR 548 RIDGE ROAD P.O. BOX 190 MONMOUTH JUNCTION, N.J. 08852</p> <p>SEE REVERSE SIDE FOR ADDITIONAL INFORMATION</p> <p>IF YOU ARE ENROLLED IN OUR ACH DIRECT WITHDRAWAL, YOUR BANK ACCOUNT WILL BE DEBITED ON AUGUST 1, 2022. THE GRACE PERIOD FOR 3Q2022 IS AUGUST 10, 2022. POSTMARKS ARE NOT ACCEPTED. WWW.SOUTHBRUNSWICKNJ.GOV YOU CAN VIEW/PAY YOUR ACCOUNT ON-LINE. FEES APPLY.</p>	<p>PRELIMINARY TAX IS EQUAL TO ONE HALF OF 2022 TOTAL NET TAX</p> <p>DISTRIBUTION OF TAXES</p>
<p>STATE AID USED TO OFFSET LOCAL PROPERTY TAXES: The budgets of the government agencies funded by this tax bill include State aid used to reduce property taxes. State aid offset information for current year municipal tax bills will start becoming available at the end of July. Access the Division of Local Government Services' website at http://www.nj.gov/dca/division/dlgs/resources/property_tax.html to find (based on the assessed value of this parcel) the amount of state aid used to offset property taxes on this parcel.</p>	

KVELAKS

Renée Steinhagen, Esq.
 Atty No. 038691989
 NEW JERSEY APPLESEED
 PUBLIC INTEREST LAW CENTER, INC
 23 James Street
 Newark, NJ 07102
 (973) 735-0523
Attorney for Plaintiffs

Bruce Afran, Esq.
 Atty. No. 010751986
 48 Cuyler Road
 Princeton, NJ 08540
 (609)454-7435
Attorney for Plaintiffs

	X
	: SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	: LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	: DOCKET NO. MER-L-0001968-21
capacity as Healthcare Program	:
Director, AMERICAN FEDERATION	:
OF TEACHERS, NEW JERSEY, DONNA	: Civil Action
CHIERA, in her capacity as	:
President of AFTNJ, and.	:
MARK and KATHERINE SMITH,	:
	: CERTIFICATION OF
	: DENA MOTTOLA JABORSKA
Plaintiffs,	:
	:
	:
-vs.-	:
	:
PHILLIP D. MURPHY, in his	:
official capacity as Governor	:
of New Jersey, and the STATE	:
OF NEW JERSEY,	:
	:
Defendants.	:
	X

I, DENA MOTTOLA JABORSKA, hereby certify as follows"

1. I am the Executive Director of Plaintiff NEW JERSEY CITIZEN ACTION, INC. ("NJCA"), which is a New Jersey non-profit corporation, registered under Section 501(c)(4) of the Internal

Revenue Code with business addresses in the City of Newark, Essex County; Highland Park, Middlesex County; and Cherry Hill, Camden County. NJCA has 15,000 individual members, as well as 100 affiliated partner groups with vast networks of members across New Jersey. I make this this certification in support of NJCA's cross-motion for summary judgment, and in particular to establish NJCA's special interest in this matter.

2. For nearly 40 years, NJCA and its members have engaged in issue advocacy, education and outreach, as well as electoral campaigns. In addition, we have provided assistance to tens of thousands of New Jersey residents through our empowerment programs that offer financial coaching, housing counseling and discrimination monitoring, health care enrollment, and free tax preparation through their 501(c)(3) sister organization NJCAEF. Collectively, the work of NJCA and NJCAEF serves to improve the lives of low- and moderate- income individuals and taxpayers and advance social, racial and economic justice for all New Jerseyans.

3. NJCA has championed and advocated for earned sick days, paid family leave, raising the minimum wage, tax fairness (equity), housing protections, consumer financial protections and health care issues. Of particular relevance to this case, NJCA has had an active role in expanding access to quality, affordable health care and reining in health care costs by holding providers and other health care entities accountable.

4. NJCA's membership of 15,000 individuals, many of whom own property in counties in which nonprofit hospitals are located, would be harmed by the exemptions given to these institutions that are at issue in this complaint. By allowing for-profit hospitals to shelter for profit partners tax free on their campuses, property tax payers in the surrounding communities of NJ hospitals are disadvantaged. They are in effect subsidizing these for-profit health care entities through higher property taxes.

5. In addition, permitting property tax deduction on properties used by for-profit health providers renders the nonprofit hospital a mere forum for for-profit activities and violates the hospital's obligation to bring value to the community in exchange for tax-exemption. It constitutes an abuse of their nonprofit status and contract with the community to provide affordable care on a nonprofit basis and other community benefits.

6. Pursuant to this legislation, for-profit health care providers are given an unfair advantage, which only contributes to the increasing profitization of healthcare and provides an incentive for nonprofit hospitals to contract out entire departments to for-profit physicians and hire temporary nursing staff -- trends that NJCA has long opposed due to their negative impact on consumers in terms of access, affordability and quality of care. NJCA has generally and specifically opposed the conversion of health care from non-profit to for-profit

entities through campaigns it has waged including opposing the takeover of NJ hospitals by Carepoint, Prime, and Meritt, and the restructuring of Horizon Blue Cross Blue Shield as a mutual holding company.

7. NJCA also took an active role in opposing earlier versions of this bill introduced and passed by the Legislature prior to the pandemic.

8. NJCA joined this lawsuit to ensure that hospitals properly contribute to the communities in which they are located and from which they financially benefit, and specifically, that tax payers should be able to challenge the property tax exemption of nonprofit hospitals that have for-profit activity on their campus, if appropriate.

9. NJCA's individual members are harmed by the existence of tax exemptions, such as the one challenged in a related lawsuit in which NJCA received *amicus curiae* status, because they reduce public revenues and in so doing, deplete public funds that could otherwise be put to other public policy objectives. Additionally, NJCA's individual members are harmed if N.J.S.A. 54:3-21(a) is interpreted to deprive them and other taxpayers of the ability to seek review of the tax exemption of a nonprofit hospital residing in the municipality or county in which they own property. I hereby certify that the foregoing statements made by me are true.

I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By: /s/ Dena Mottola Jaborska
Dena Mottola Jaborska

Dated: July 19, 2022

Renée Steinhagen, Esq.
 Atty No. 038691989
 NEW JERSEY APPLESEED
 PUBLIC INTEREST LAW CENTER, INC
 23 James Street
 Newark, NJ 07102
 (973) 735-0523
Attorney for Plaintiffs

Bruce Afran, Esq.
 Atty. No. 010751986
 48 Cuyler Road
 Princeton, NJ 08540
 (609)454-7435
Attorney for Plaintiffs

	X	
	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY CITIZEN ACTION,	:	LAW DIVISION, MERCER COUNTY
MAURA COLLINSGRU, in her	:	DOCKET NO. MER-L-0001968-21
capacity as Healthcare Program	:	
Director, AMERICAN FEDERATION	:	
OF TEACHERS, NEW JERSEY, DONNA	:	Civil Action
CHIERA, in her capacity as	:	
President of AFTNJ, and.	:	
MARK and KATHERINE SMITH,	:	
	:	CERTIFICATION OF
	:	DONNA CHIERA
Plaintiffs,	:	
	:	
	:	
-vs.-	:	
	:	
PHILLIP D. MURPHY, in his	:	
official capacity as Governor	:	
of New Jersey, and the STATE	:	
OF NEW JERSEY,	:	
	:	
Defendants.	:	
	X	

I, DONNA CHIERA, hereby certify as follows:

1. I am a taxpayer and owner of property in Perth Amboy, Middlesex County, a municipality in which Hackensack-Meridian Raritan Bay Medical Center is located. I am also the President of

the AMERICAN FEDERATION OF TEACHERS NEW JERSEY ("AFTNJ"), with a business address at 720 King George Road, Suite 300, Fords, NJ 08863, Middlesex County. I make this certification in support of AFTNJ's cross-motion for summary judgment, and in particular to establish AFTNJ's special interest in this matter.

2. AFTNJ is a New Jersey non-profit membership corporation, with its official business address at 720 King George Road, Suite 300, Fords, NJ 08863, in Middlesex County. It represents over 30,000 PreK through grade 12 and higher education workers who live and work throughout New Jersey.

3. AFTNJ workers know firsthand the importance of large profitable institutions, including hospitals, paying their fair share in property taxes. As residents, taxpayers, homeowners and public servants, the union fully understands that the quality of education provided to students in New Jersey is directly tied to the ability of local Boards of Education to fund the programs our students and educators need.

4. As many districts throughout the State struggle to cope with outdated facilities, staff shortages, and the inability to offer wrap-around student and family services, it is disheartening to see healthcare facilities skirt their social responsibilities by failing to pay property taxes despite the increasing level of for-profit activity occurring on their campuses.

5. AFTNJ and its members believe that working New Jerseyans should not be responsible for shouldering the burden of funding public education while large profitable institutions, such as hospitals, use their political power to secure legislation, which sanctions their failure to contribute their fair share of local taxes.

6. AFTNJ joins this lawsuit to right this wrong and to ensure that hospitals properly contribute to the communities in which they are located and from which they financially benefit, and specifically, that tax payers should be able to challenge the property tax exemption of nonprofit hospitals that have for-profit activity on their campus, if appropriate.

7. AFTNJ's individual members are harmed by the existence of tax exemptions, such as the one challenged in a related matter, in which AFTNJ received *amicus curiae* status, in which NJCA received *amicus curiae* status because they reduce public revenues and in so doing, deplete public funds that could otherwise be put to other public policy objectives, including education expenditures. Additionally, AFTNJ's individual members are harmed if N.J.S.A. 54:3-21(a) is interpreted to deprive them and other taxpayers of the ability to seek review of the tax exemption of a nonprofit hospital residing in the municipality or county in which they own property.

I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By: /s/ Donna Chiera
Donna Chiera

Dated: July 20, 2022



New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW)

NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU, FED. OF TEACHERS-NJ, DONNA CHEIRA, AND MARK AND KATHERINE SMITH, VS. PHILIP D. MURPHY AND STATE OF NEW JERSEY.

ATTORNEY / LAW FIRM / PRO SE LITIGANT

NAME

RENEE W STEINHAGEN, Esq.

STREET ADDRESS

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STATE

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ZIP

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ON APPEAL FROM

TRIAL COURT JUDGE

MALA NARAYANAN, JSC

TRIAL COURT OR STATE AGENCY

MERCER

TRIAL COURT OR AGENCY NUMBER

MER-L-1968-21

NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU, AFT-NJ, DONNA CHIERA, MARK

Notice is hereby given that **AND KATHERINE SMITH** appeals to the Appellate Division from a ☐ Judgment or ☒ Order entered on **09/28/2022** in the ☒ Civil ☐ Criminal or ☐ Family Part of the Superior Court ☐ Tax Court or from a ☐ State Agency decision entered on _____

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief ☐ pre-trial detention
If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____ specify

Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☐ self ☐ private counsel _____

specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	MALA NARAYANAN, JSC	11/10/2022
Trial Court Division Manager	MERCER	11/10/2022
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU, AFT-NJ, DONNA CHIERA, MARK AND KATHERINE SMITH	BRUCE IRA AFRAN, Esq. BRUCE I. AFRAN 10 BRAEBURN DRIVE PRINCETON NJ 08540 609-924-2075 bruceafran@aol.com,princetonparalegalservice s@gmail.com	11/10/2022
STATE OF NEW JERSEY	ABIOLA G MILES, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625 609-984-3900 abiola.miles@law.njoag.gov	11/10/2022
STATE OF NEW JERSEY	JAMES JOSEPH ROBINSON, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625 609-984-3900 james.robinson@law.njoag.gov	11/10/2022
INDEPENDENT UNIVERSITIES AND COLLEGES OF NJ	LAWRENCE S LUSTBERG, Esq. GIBBONS PC ONE GATEWAY CTR NEWARK NJ 07102-5310 973-596-4500 llustberg@gibbonslaw.com,ktolson@gibbonsla w.com,nmitchell@gibbonslaw.com	11/10/2022

(*) truncated due to space limit. Please find full information in the additional pages of the form.

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CORPORATIONS, INC.**

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11/10/2022

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11/10/2022

PHILIP MURPHY

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11/10/2022

Attached transcript request form has been served where applicable on the following:

Name

Date of Service

Transcript Office

Clerk of the Tax Court

State Agency

Exempt from submitting the transcript request form due to the following:

☒ The transcripts are not required.

☐ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

☐ Motion for transcripts at public expense filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

11/10/2022

Date

s/ RENEE W STEINHAGEN, Esq.

Signature of Attorney or Pro Se Litigant

BAR ID #

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New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

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☐ Plaintiff ☐ Defendant ☒ Other (Specify)

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Amicus Attorney		Email Address: ndemuro@oslaw.com, msandoval@oslaw.com,			
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify)					
Name NICOLE M DE MURO, Esq.			Client NEW JERSEY HOSPITAL ASSOCIATION		
Street Address 14 VILLAGE PARK RD		City CEDAR GROVE	State NJ	Zip 07009-1426	Telephone Number 973-239-5700
Appellant's attorney email address continued below					
PARTY NAME: NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU, AFT-NJ, DONNA CHIERA, MARK AND KATHERINE SMITH ATTORNEY NAME: BRUCE IRA AFRAN, Esq. bruceafran@aol.com princetonparalegalservices@gmail.com					
Respondent's attorney email address continued below					
PARTY NAME: STATE OF NEW JERSEY ATTORNEY NAME: JAMES JOSEPH ROBINSON, Esq. james.robinson@law.njoag.gov PARTY NAME: PHILIP MURPHY ATTORNEY NAME: ABIOLA G MILES, Esq. abiola.miles@law.njoag.gov					
Additional Party's attorney email address continued below					
PARTY NAME: INDEPENDENT UNIVERSITIES AND COLLEGES OF NJ ATTORNEY NAME: LAWRENCE S LUSTBERG, Esq. llustberg@gibbonslaw.com ktolson@gibbonslaw.com nmitchell@gibbonslaw.com PARTY NAME: CENTER FOR NONPROFIT CORPORATIONS, INC. ATTORNEY NAME: LAWRENCE S LUSTBERG, Esq. llustberg@gibbonslaw.com ktolson@gibbonslaw.com nmitchell@gibbonslaw.com PARTY NAME: NEW JERSEY HOSPITAL ASSOCIATION ATTORNEY NAME: JAMES J DI GIULIO, Esq. jdigiulio@oslaw.com mchina@oslaw.com PARTY NAME: NEW JERSEY HOSPITAL ASSOCIATION ATTORNEY NAME: NICOLE M DE MURO, Esq. ndemuro@oslaw.com msandoval@oslaw.com					



New Jersey Judiciary
Superior Court - Appellate Division
Civil Case Information Statement

Please type or clearly print all information.

Title in Full
**NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU, FED. OF
TEACHERS-NJ, DONNA CHEIRA, AND MARK AND KATHERINE
SMITH,
VS.
PHILIP D. MURPHY AND STATE OF NEW JERSEY.**

Trial Court or Agency Docket Number
MER-L-1968-21

• Attach additional sheets as necessary for any information below.

Appellant's Attorney * Email Address: **renee@njappleseed.org**

☒ Plaintiff ☐ Defendant ☐ Other (Specify)

Name

RENEE W STEINHAGEN, Esq.

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Respondent's Attorney * Email Address: **abiola.miles@law.njoag.gov**

☐ Plaintiff ☒ Defendant ☐ Other (Specify)

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Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:

Order and Decision dated September 28, 2022 granting Defendants' motion to dismiss the complaint, with prejudice and denying Plaintiffs' cross-motion for summary judgment and proposed amendment to include a claim under the New Jersey Civil Rights Act due to lack of justiciable controversy.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (There may not be any claims against any party in the trial court or agency, either in this or a consolidated action, which have not been disposed. These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.)

☒ Yes ☐ No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2?

☐ Yes ☒ No ☐ N/A

A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.

B) If the order has not been certified or has been improperly certified, leave to appeal must be sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter is final and appealable as of right.

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Were any claims dismissed without prejudice? ☐ Yes ☒ No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(g)) ☒ Yes ☐ No

Give a Brief Statement of the Facts and Procedural History:

Validity or interpretation of a statute is being questioned. Plaintiffs' sought declaratory relief as to the constitutionality of the amendment to N.J.S.A. 54:3-21 that eliminated a third party's right to challenge a charity's tax exemption or assessment. The State moved to dismiss. Amici Independent Universities and Colleges of NJ, NJ Hospital Association and others supported the State and participated in briefing and oral argument. In response, Plaintiffs cross moved for summary judgment arguing that declaratory judgment was necessary since Legislative amendment eliminate the right to bring such third party tax challenges in violation of the State Constitution's preservation of such rights via the action in lieu of prerogative writ. On September 28, 2022 the trial court dismissed the Complaint and denied the cross-motion on the the ground that there was no justiciable controversy. The basis of the holding was that the Legislature did not eliminate the right to challenge tax exemptions, but merely eliminated the administrative route for such challenges via tax appeal under N.J.S.A. 54:3-21. In addition, the trial court denied plaintiff's motion to amend the complaint under the NJ Civil Rights Act since it held there was no justiciable controversy and therefore no need to amend the Complaint.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to R. 2:5-2(a)(6). (Appellant or cross-appellant only.):

- 1. Does the record support Plaintiffs' request for declaratory relief that the right to make a third-party challenge to a tax assessment or exemption continues via the in-lieu of prerogative writ clause of the NJ Constitution upon the Legislature's elimination of such right of appeal pursuant to P.L. 2021, c.17, sec. 6.**
- 2. Did the Court err by finding that the matter lacks a justiciable controversy because the State and Amici all conceded that the Legislature could not deprive third-party taxpayers of their constitutional right to review decisions made by local tax authorities, despite their stated intent to eliminate third-party tax appeals via the former statutory remedy in N.J.S.A. 54:3-21 (that had existed for over 100 years)?**
- 3. Did the court abuse its discretion by denying Plaintiffs' Motion to amend the complaint to state a claim under the NJCRA when the State had not yet answered the Complaint?**

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court, complete the following:

- Did the trial judge issue oral findings or an opinion? If so, on what date? 09/28/2022 ☒ Yes ☐ No
- Did the trial judge issue written findings or an opinion? If so, on what date? 09/28/2022 ☒ Yes ☐ No
- Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☒ Yes ☐ No ☐ Unknown

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of Your Inquiry:

1. Is there any appeal now pending or about to be brought before this court which:

- (A) Arises from substantially the same case or controversy as this appeal? ☐ Yes ☒ No
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☐ Yes ☒ No

If the answer to the question above is Yes, state:

Case Title

Trial Court Docket#

Party Name

2. Was there any prior appeal involving this case or controversy?

☐ Yes ☒ No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.)

Appellate Division Docket Number

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference.

☒ Yes ☐ No

Explain your answer:

This matter could benefit from a CASP conference because Plaintiff would settle this matter if the State agrees to take administrative action to publish and make known to local tax authorities, to the judiciary and to the public that P.L. 2021, c. 17, sec. 6 eliminated ONLY a taxpayer's administrative remedy to challenge another property owner's assessment or exemption, and the right to make such third-party challenge persists directly in the Superior Court pursuant to R. 5:69-1.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

**NEW JERSEY CITIZEN ACTION, MAURA
COLLINSGRU, AFT-NJ, DONNA CHIERA, MARK
AND KATHERINE SMITH**

Name of Appellant or Respondent

RENEE W STEINHAGEN, Esq.

Name of Counsel of Record
(or your name if not represented by counsel)

11/10/2022

Date

s/ RENEE W STEINHAGEN, Esq.

Signature of Counsel of Record
(or your signature if not represented by counsel)

038691989

Bar #

renee@njappleseed.org

Email Address



New Jersey Judiciary
Superior Court - Appellate Division
CIVIL Case Information Statement

Additional appellants continued below

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☒ Plaintiff ☐ Defendant ☐ Other (Specify)

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☐ Plaintiff ☒ Defendant ☐ Other (Specify)

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Additional parties continued below

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Name

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PARTY NAME: INDEPENDENT UNIVERSITIES AND COLLEGES OF NJ ATTORNEY NAME: LAWRENCE S LUSTBERG, Esq. llustberg@gibbonslaw.com ktolson@gibbonslaw.com nmitchell@gibbonslaw.com PARTY NAME: CENTER FOR NONPROFIT CORPORATIONS, INC. ATTORNEY NAME: LAWRENCE S LUSTBERG, Esq. llustberg@gibbonslaw.com ktolson@gibbonslaw.com nmitchell@gibbonslaw.com PARTY NAME: NEW JERSEY HOSPITAL ASSOCIATION ATTORNEY NAME: JAMES J DI GIULIO, Esq. jdigiulio@oslaw.com mchina@oslaw.com PARTY NAME: NEW JERSEY HOSPITAL ASSOCIATION ATTORNEY NAME: NICOLE M DE MURO, Esq. ndemuro@oslaw.com msandoval@oslaw.com					



New Jersey Judiciary
Superior Court - Appellate Division
Civil Case Information Statement

Please type or clearly print all information.

Title in Full
**NEW JERSEY CITIZEN ACTION, MAURA COLLINSGRU, FED. OF
TEACHERS-NJ, DONNA CHEIRA, AND MARK AND KATHERINE
SMITH,
VS.
PHILIP D. MURPHY AND STATE OF NEW JERSEY.**

Trial Court or Agency Docket Number
MER-L-1968-21

• Attach additional sheets as necessary for any information below.

Appellant's Attorney * Email Address: **renee@njappleseed.org**

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RENEE W STEINHAGEN, Esq.

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Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:

Order and Decision dated September 28, 2022 granting Defendants' motion to dismiss the complaint, with prejudice, and denying Plaintiffs' cross-motion for summary judgment and Plaintiffs' motion to amend the complaint.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (There may not be any claims against any party in the trial court or agency, either in this or a consolidated action, which have not been disposed. These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.)

☒ Yes ☐ No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2?

☐ Yes ☐ No ☒ N/A

A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.

B) If the order has not been certified or has been improperly certified, leave to appeal must be sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter is final and appealable as of right.

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Were any claims dismissed without prejudice? ☐ Yes ☒ No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(g)) ☒ Yes ☐ No

Give a Brief Statement of the Facts and Procedural History:

Plaintiffs' sought declaratory relief as to the constitutionality of the amendment to N.J.S.A. 54:3-21 that eliminated a third party's right to challenge the local property tax exemption or assessment of another taxpayer. The State moved to dismiss. Plaintiffs cross moved for summary judgment arguing that declaratory judgment was necessary and separately moved to amend their complaint to include a NJCRA claim. On September 28, 2022, the trial court dismissed the Complaint and denied Plaintiffs' cross-motion for summary judgment due to the lack of a justiciable controversy. The trial court further denied the the motion to amend the complaint as futile due to the lack of a justiciable controversy.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to R. 2:5-2(a)(6). (Appellant or cross-appellant only.):

Per the instructions Respondents State of New Jersey and Philip D. Murphy do not respond to this question.

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court, complete the following:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ ☐ Yes ☒ No
2. Did the trial judge issue written findings or an opinion? If so, on what date? 09/28/2022 ☒ Yes ☐ No
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ Yes ☒ No ☐ Unknown

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of Your Inquiry: 11/16/2022

1. Is there any appeal now pending or about to be brought before this court which:

- (A) Arises from substantially the same case or controversy as this appeal? ☐ Yes ☒ No
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☐ Yes ☒ No

If the answer to the question above is Yes, state:

Case Title	Trial Court Docket#	Party Name
------------	---------------------	------------

2. Was there any prior appeal involving this case or controversy? ☐ Yes ☒ No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.)	Appellate Division Docket Number
---	----------------------------------

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. ☐ Yes ☒ No

Explain your answer:

There has been a finding that there is no justiciable controversy. Accordingly, there is no basis for compromise.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

STATE OF NEW JERSEY

Name of Appellant or Respondent

JAMES JOSEPH ROBINSON, Esq.

Name of Counsel of Record
(or your name if not represented by counsel)

11/23/2022

Date

s/ **JAMES JOSEPH ROBINSON,**

Esq.

Signature of Counsel of Record
(or your signature if not represented by counsel)

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New Jersey Judiciary
Superior Court - Appellate Division
CIVIL Case Information Statement

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“voluntary agreement” with the taxing municipality. Id. at § 1. For hospitals, the community service contribution equals three dollars for each licensed bed in the prior tax year, except that the number of licensed beds cannot be lower than the number of licensed beds on January 1, 2020. Ibid. For Satellites, the community service contribution equals \$300 per day in the prior tax year. Ibid. These amounts are scheduled to increase by two percent annually, beginning in 2022. Ibid. Additionally, the Remedial Legislation establishes a Nonprofit Hospital Community Service Contribution Study Commission to report on the financial impact of the community service contribution. Id. at § 2.

D. Statutes governing Third Party tax appeals.

The ability to appeal a real property assessment directly with the county board of taxation (or Tax Court) is statutory. Macleod v. City of Hoboken, 330 N.J. Super. 502, 505-06 (App. Div. 2000) (citing F.M.C. Stores Co. v. Borough of Morris Plains, 195 N.J. Super. 373, 381 (App. Div. 1984), aff’d, 100 N.J. 418 (1985); see also Hovbilt, Inc. v. Twp. of Howell, 138 N.J. 598, 603 (1994) (discussing the statutory framework of N.J.S.A. 54:3-21)). While a taxpayer has a constitutional right to challenge their own assessment or exemption status, the ability to challenge another taxpayer’s assessment or exemption status is governed solely by legislation. Compare Keane v. Twp. of Monroe, 25 N.J. Tax 479,

495 (Tax 2010) (citing Murnick v. City of Asbury Park, 95 N.J. 452 (1984), with MacLeod, 330 N.J. Super. 505-06.

The Remedial Legislation amended N.J.S.A. 54:3-21 to "prohibit[] property taxpayers from filing [a direct property tax appeal to the county board of taxation (or Tax Court)] with respect to the property of others." Sponsor's Statement to A. 1135 10-11 (L. 2021, c. 17). The so-called third party appeal has been a formal part of New Jersey property tax jurisprudence since 1906. It was then, with L. 1906, c. 120 § 3, that the Legislature formalized a statutory cause of action to appeal for "any taxpayer feeling aggrieved by the assessed valuation of his property . . . or feeling that he is discriminated against by the assessed valuation of any other property." L. 1906, c. 120 § 3 (Approved April 14, 1906) ("1906 Act" and emphasis added); see Ewing Twp. v. Mercer Paper Tube Corp., 8 N.J. Tax 84, 90 (1985) (discussing how the 1906 Act, that completely revised the 1903 statute, was the prototype of N.J.S.A. 54:3-21, providing the ability of third party tax appeals for the first time).

Since then, the Legislature maintained the third party appeal provision as part of the real property assessment law, and shortly thereafter, in "1908 [the court] construed [that provision], in accordance with its plain language, as according standing to a taxpayer to challenge, on discrimination grounds, the alleged underassessment of the property of others in the district." See

NEW JERSEY CITIZEN ACTION,
MAURA COLLINSGRU, in her
capacity as Healthcare
Program Director, AMERICAN
FEDERATION OF TEACHERS, NEW
JERSEY, DONNA CHIERA, in her
capacity as President of
AFTNJ, and MARK and KATHERINE
SMITH,

Plaintiffs,

V.

PHILIP D. MURPHY, in his
official capacity as Governor
of New Jersey, and the STATE
OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO. MER-L-001968-21

Civil Action

DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS THE
VERIFIED COMPLAINT WITH PREJUDICE AND BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE VERIFIED COMPLAINT AND
CROSS-MOTION FOR SUMMARY JUDGMENT

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Also on the Brief, Deputy Attorneys General:
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assessment, such as the existing added omitted law, and Chapter 123 relief. N.J.S.A. 54:4-63.11; N.J.S.A. 54:1-35a and 54:1-35b; 54:3-22; 54:51A-6.

A brief background of local property tax appeals process is helpful to understanding these remedies. The law is unequivocal: challenges to local property tax assessments, whatever their nature, must follow the statutory appeal procedure as set forth in N.J.S.A. 54:3-21 and the statutory omitted property appeal procedures set forth in N.J.S.A. 54:4-63.13.¹

The statutory remedies available to taxpayers in the context of a regular tax appeal under N.J.S.A. 54:3-21 or in an omitted appeal under N.J.S.A. 54:4-63.13 are more than adequate to address any alleged valuation error or discrimination in a taxpayer's assessment, whether of a constitutional dimension or otherwise, by virtue of the Laws of 1973, Chapter 123, codified at N.J.S.A. 54:4-22 and N.J.S.A. 54:51A-6 ("Chapter 123"). Chapter 123 provides taxpayers with an efficient and practical means of achieving tax

¹ "On the written complaint of the tax assessor, the collector of taxes, or any taxpayer, of the taxing district, or of the governing body thereof, or upon a resolution by the county board of taxation, of its own motion, the county board of taxation shall hear" matters regarding specific property allegedly omitted from assessment in a particular year. N.J.S.A. 54:4-63.13.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1767

STATE OF NEW JERSEY

DATED: JULY 16, 2020

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 1767.

This bill would prohibit property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. This bill would limit property taxpayers to filing property tax appeals concerning their own property. The bill would not disturb the ability of local governments to appeal the assessment or exempt status of any property in the county.

The bill also prohibits a taxpayer or taxing district from appealing an assessment or exemption granted to another taxpayer arising from a financial agreement between the taxpayer and the taxing district in which the taxpayer's property is located.

The bill also would clarify that the process for challenging the exempt status of property is the same process for challenging the assessed valuation of property.



PRESS RELEASES

New Jersey Senate to Pass Ban on Third-Party Tax Appeals

May 26, 2017, 10:41 am | in

NJBIA Urges Senate to Pass Ban on Third-Party Tax Appeals

The New Jersey Business & Industry Association today urged the Senate to vote to prevent property taxpayers from challenging the property tax assessments of nonprofit organizations in their county.

Under the bill, S-2212 (Singer, R-30), individual taxpayers would only be allowed to appeal the tax assessments on their own properties. Any challenges about the tax-exempt status of individual nonprofit organizations could only come from the local government.

x

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“Many organizations like hospitals, educational institutions and charities could be severely damaged by third-party tax appeals because they operate on such thin margins,” said Mary Beaumont, NJBIA vice president for Health and Legal Affairs. “Should they lose a tax appeal case, they may not be able to stay open, and entire communities would be deprived of the services they depend on.

“Local governments are there to represent the interests of all taxpayers and are the ones that should be designated to take up such cases,” Beaumont said.



NEWSROOM ([HTTPS://NJBIA.ORG/CATEGORY/NEWSROOM/](https://njbja.org/category/newsroom/))

Ban on Third-Party Tax Appeals Needed to Protect Non-profit Organizations, NJBIA Says

Published March 13, 2017 - **Updated** August 14, 2021

The New Jersey Business & Industry Association supports legislation scheduled for a Senate vote today that would limit property tax appeals to the owners of the properties themselves.

More Newsroom

The bill, S-2212 (Singer, R-30), would prevent property taxpayers from challenging the assessments of nonprofit organizations in their county.

“Organizations like hospitals, educational institutions and charities operate on very thin margins and may not be able to stay open if they lose a tax appeal case,” said Mary Beaumont, NJBIA vice president for Health and Legal Affairs. “Third-party appeals can be costly and create economic uncertainty for organizations that our communities embrace and depend on.”

Beaumont noted that nothing in the bill would prevent local government from challenging the assessments or tax-exempt status of any property within their jurisdiction. Nor would it prevent individuals from filing appeals concerning their own property.

“Local governments are there to represent the interests of all taxpayers and are the ones that should be designated to take up such cases,” Beaumont said.



[\(https://njbja.org/njbja-statement-on-governors-climate-policy-announcements/\)](https://njbja.org/njbja-statement-on-governors-climate-policy-announcements/)

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News

New Jersey Bill Would Kill Third-Party Property Tax Appeals

Bloomberg BNA

3.3.2017

New Jersey is one of a handful of states where it is possible to appeal the tax assessment of somebody else's property—challenges that could soon be eliminated under a proposal winding through the state Senate.

Hospitals and nonprofits strongly support the measure, saying they can't afford the risk of third-party challenges to their tax exempt status, also legal under current law.

The legislation also specifically says that taxpayers and taxing districts can't challenge a financial agreement negotiated between a municipality and a nonprofit entity, Susan A. Feeney, a partner in McCarter & English LLP's tax and employee benefits practice group who focuses on state and local property tax matters, told Bloomberg BNA.

📅 February 20, 2023

📌 Latest:



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Home > Uncategorized > Proposed NJ Bill Bans Third Party Tax Appeals

Proposed NJ Bill Bans Third Party Tax Appeals

📅 On March 24, 2017 / By jmushnick

New Jersey lawmakers are currently considering legislation that would prohibit third parties from filing property tax appeals with respect to the property of



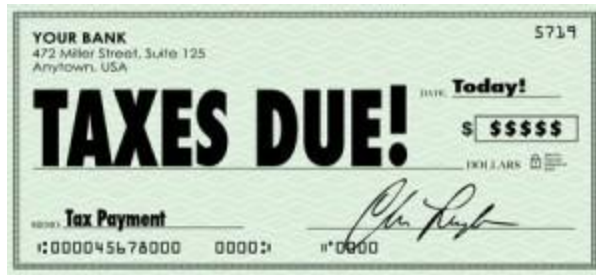
others. Bills have been introduced in both the Senate and the Assembly.

Under current law, property taxpayers may challenge the assessment or

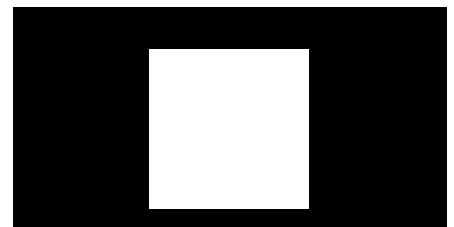
exempt status of their own property as well as that of any other property in their county. The proposed legislation ([S-2212/A-3888](#)) would limit property taxpayers to filing property tax appeals concerning their own property.

In support of the bill, its authors note that can be costly and create uncertainty in local government finances. Notably, the bill would not alter the ability of local governments to appeal the assessment or exempt status of any property in the county. As set forth in the statement accompanying the bill: “As the representatives of all local taxpayers, local governments are the best and most properly suited parties to challenge the assessment or exempt status of a property whenever the owner is not involved.” The proposed legislation would also clarify that the process for challenging the exempt status of property is the same process for challenging the assessed valuation of property.

Given the legal costs associated with defending property tax appeals, the proposed legislation is good news for New Jersey municipalities. The Senate Community and Urban Affairs Committee recently advanced S-2212 with amendments. The revised legislation would also prohibit a taxpayer or taxing



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00:00

04:16

Executive Order



State of New Jersey



Editor: John
G. Geppert,
Jr.
Partner,
Pa172

district from appealing an assessment or exemption that is granted to another taxpayer and arises from a financial agreement entered into between the taxpayer and the taxing district in which the taxpayer's property is located. Accordingly, the [amended bill would also insulate municipal financial agreements](#) with hospitals and institutions of higher education.

If enacted, the proposed measure would take effect immediately. However, its provisions would apply to property tax appeals filed for the next tax year following the date of enactment. We will be closely tracking the status of the bills and encourage readers to check back for updates.

For more information about the proposed property tax bill or the legal issues involved, we encourage you to contact a member of [Scarinci Hollenbeck's Government Law Group](#).

Categories : Uncategorized Tags : Property tax / Property Tax appeal

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Name:



Date: September 19, 2016

To: Members, Assembly State & Local Government Committee

From: Neil Eicher, Vice President, Government Relations & Policy

Cc: Jillian Lynch, Committee Aide, Assembly Democratic Office
Matthew Gould, Committee Aide, Assembly Republican Office
Cindy Lombardi Hespe, OLS Aide, Office of Legislative Services

Re: **A-3888 – Prohibits certain third-party property tax appeals.**

On behalf of the New Jersey Hospital Association and its over 400 members, we write to express our strong support for **A-3888**, sponsored by Assemblyman Reed Gusciora (D-Trenton), which would address third-party property tax appeals.

This legislation would protect taxpayers and municipalities by prohibiting a third party from filing a property tax appeal with respect to the property of others. As you may know, current law allows any property taxpayer to challenge the assessment or exempt status of any other property in the county, in addition to their own. The sponsor's stated intention is to reduce the number of costly tax appeals and bring certainty to local government finances, as local government representatives are best suited to challenge assessments or the exempt status of a property.

The New Jersey Hospital Association supports this common sense reform that will bring stability to municipalities, property taxpayers, and property tax exempt organizations. Since the sweeping decision issued last June by a New Jersey tax court that Morristown Medical Center was not entitled to tax exemption on nearly all of its property, municipalities and their nonprofit hospitals have been left with extreme uncertainty. The result has been a slew of property tax lawsuits across the state, pitting local governments against the hospitals that serve their residents.

While NJHA continues to seek a permanent legislative solution to the broader property tax issue affecting hospitals, the urgent need to prevent third parties from interposing is an important step that has gained broad support. Protecting municipalities and nonprofit hospitals from third-party challenges to mutually beneficial assessments and agreements is paramount to rebuilding the cooperation and fiscal certainty that is needed.

We urge you to support this important piece of legislation. Thank you for your time and consideration. Please do not hesitate to contact us at (609) 275-4251.

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Property Valuation

New Jersey Bill Would Kill Third-Party Property Tax Appeals

New Jersey is one of a handful of states where it is possible to appeal the tax assessment of somebody else's property—challenges that could soon be eliminated under a proposal winding through the state Senate.

Hospitals and nonprofits strongly support the measure, saying they can't afford the risk of third-party challenges to their tax exempt status, also legal under current law.

"Organizations like charities, hospitals, and educational institutions operate on very thin margins," Mary Beaumont, vice president for health and legal affairs at the New Jersey Business & Industry Association (NJBIA), told Bloomberg BNA Feb. 28. For many nonprofits, having to litigate a third-party tax appeal "could cause some of them to go under."

The proposed legislation, S.B. 2212, is the result of litigation in Princeton and Morristown, N.J., that led to multi-million dollar settlements and put hospitals and nonprofits throughout the state on edge. Sponsored by Sen. Robert W. Singer (R), the bill would prevent third-party challenges of tax assessments as well as third-party challenges to a taxpayer's tax exempt status. It would also protect financial agreements that taxpayers reach with their local taxing district.

The Senate Community and Urban Affairs Committee approved the bill 4-0 on Feb. 27. Amendments approved by the Senate Feb. 27 make the bill identical to its companion bill, A.B. 3888. The bill is now on second reading in the Senate.

Third-Party Mess. Third-party appeals of another property owner's valuation are unusual, Fred Nicely, senior tax counsel for the Council On State Taxation (COST), told Bloomberg BNA. Tax appeals are usually between the assessor and the property owner, he said. "Adding a third party into the mix just makes a mess of things."

Other states that allow third-party appeals include Oklahoma, Ohio and Pennsylvania, according to research by COST, a Washington, D.C.-based trade association composed of about 600 multistate corporations engaged in interstate and international business.

Under current law in New Jersey, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county, according to a Feb. 27 statement accompa-

nying the bill. The bill would limit the filing of property tax appeals to the owners of the properties themselves.

Nonprofits Vulnerable. Such a legislative fix is needed to protect vulnerable nonprofits from the risk of "arbitrary third-party challenges," Linda M. Czipo, president and chief executive officer of the Center for Non-Profits, told Bloomberg BNA.

The risks for nonprofits increased after a procedural ruling in 2015, when New Jersey Tax Court Judge Vito L. Bianco held that a group of township property owners had standing to challenge Princeton University's tax exempt status, and Princeton had the burden of proving it should remain tax exempt.

"Princeton University had the burden of essentially re-proving its property tax exemption," Czipo told Bloomberg BNA. "That's the part in particular that makes us extremely concerned."

Princeton Challenge. In that case, the property owners challenged Princeton's tax exempt status for tax years 2011, 2014, 2015 and 2016, asserting that the school's profit-generating businesses such as concert halls, restaurants, intellectual property licensing and real estate rentals negated the school's tax exemption. Princeton announced in October 2016 that it had settled the case just before it went to trial, agreeing to pay more than \$18 million over several years to the borough, a nonprofit housing group, and 896 homeowners (*Fields v. Trs. of Princeton Univ.*, N.J. Tax Ct., No. 005907-2014, settlement 10/14/16).

S.B. 2212 would prevent such third-party challenges, although it would still allow local governments to appeal the assessment or exempt status of properties in their county.

Are Hospitals Nonprofits? The legislation also specifically says that taxpayers and taxing districts can't challenge a financial agreement negotiated between a municipality and a nonprofit entity, Susan A. Feeney, a partner in McCarter & English LLP's tax and employee benefits practice group who focuses on state and local property tax matters, told Bloomberg BNA.

This is especially important for nonprofit hospitals in New Jersey, which have been on shaky ground since a third-party challenge in Morristown, N.J., called into question their exemption from local property taxes.

In, *AHS Hospital Corp. v. Town of Morristown*, the court found that Morristown Medical Center was operating as a for-profit hospital, rather than as the nonprofit it claimed to be. The hospital's parent corporation, Atlantic Hospital System, settled the case by

agreeing to pay the town \$10 million in back taxes and \$5.5 million in penalties and interest and penalties over 10 years (*AHS Hosp. Corp. v. Town of Morristown*, N.J. Tax Ct., No. 010900-2007, *settlement* 11/10/15). .

The Morristown case has since spurred a number of hospitals in the state to enter into financial agreements with their local tax authority to help stabilize budgets and avoid potential litigation.

The bill would ensure those agreements won't be challenged, Feeney said. "Without a bill like this, you could question these agreements."

Mutual Agreements. "We don't want to see those types of mutual agreements derailed," Kerry McKean Kelly, spokeswoman for the New Jersey Hospital Association, told Bloomberg BNA in an email. The association supports the bill.

There are now 38 lawsuits on the books between hospitals and municipalities, she said. "The legal bills are mounting for both sides and we need legislation, not endless litigation."

The New Jersey League of Municipalities agreed, noting an increasing number of financial agreements between nonprofit hospitals and municipalities.

If not protected, "these agreements are at risk of being challenged and bottled up in the court system," Michael F. Cerra, the group's assistant executive director, wrote in a letter to the Senate Community and Urban Affairs Committee Feb. 27.

"We want to encourage these agreements," which help budgeting for both the hospital and the municipality, Cerra told Bloomberg BNA. "When you can reach an agreement like this, it doesn't really serve anybody's purposes to have that being challenged."

BY LESLIE A. PAPPAS

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To contact the editor responsible for this story: Ryan C. Tuck at rtuck@bna.com

□ Text of S.B. 2212 is at <http://src.bna.com/mC9>.



(<https://njnonprofits.org>)

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Legislation to Protect Non-Profits from Arbitrary Tax Exemption Challenges by Third Parties Signed as Part of Broader Bill

Updated September 8, 2021

Legislation (https://www.njleg.state.nj.us/2020/Bills/PL21/17_.PDF) that would help curtail arbitrary challenges to non-profits' property tax exemptions by limiting the ability of third parties to appeal the property tax exempt status of other entities was signed into law in February 2021 as part of comprehensive measure to clarify non-profit hospitals' property tax exemption in the wake of a 2015 tax court ruling involving Morristown Medical Center. The third-party provision, which was strongly supported by the Center for Non-Profits

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(https://www.njnonprofits.org/A3888_S2212_Statement_to_AAP_06_2017.pdf), addresses a significant concern that arose in light of the property tax challenges to Morristown Medical Center and Princeton University.

In the Princeton case, a challenge to the property tax exemption of Princeton University was brought by a small group of residents who disagree with the exemption already granted by the municipality. The municipality was named a defendant in that suit. In October 2016, Princeton University announced that it had reached a settlement (https://www.njnonprofits.org/PrincetonU_PropertyTax.html) with the plaintiffs in that case, but significant questions still remain.

In the case against Princeton University and the municipality, in a November 2015 procedural ruling, Tax Court of New Jersey Judge Vito Bianco held (http://www.judiciary.state.nj.us/taxcourt/tax_published/05904-14opn.pdf) not only that the residents have legal standing to challenge the municipality's determination that the University is property-tax exempt, but has also ruled that the non-profit (in this instance, Princeton University) has the burden of re-proving its eligibility for property tax exemption, even when the challenge is brought by third parties. This ruling leaves thousands of non-profit property owners of all sizes – particularly those that might be unpopular or controversial – vulnerable to arbitrary legal challenges by residents that would be extremely costly and time-consuming to defend, diverting scarce resources away from essential programs and services.

Amending the existing statute to limit the ability of third parties to challenge non-profit property tax exemptions will help to protect organizations from being arbitrarily forced to re-prove their exemptions repeatedly and from needlessly siphoning resources away from charitable purposes.

Non-profit organizations are straining under the weight of skyrocketing demand for services and resources that have not kept pace with the steadily escalating costs of providing programs and services that our communities need. Clarifying that third parties do not have standing to challenge the property tax exemption of non-profits, while preserving the authority of local governments, would provide needed assurance and protection for thousands of non-profit property owners throughout the state.

Court Challenge Launched to New Law

In April 2021, four municipalities launched a legal challenge (<https://www.thedailyjournal.com/story/news/2021/04/19/nj-lawsuit-hospital-non-profit-property-tax-exempt-unconstituional-governor-murphy/7260511002/>) to the hospital elements of the new statute, claiming that they violate the uniformity and tax exemption provisions of the State Constitution. Other parties may be seeking to join the suit as well.

The Center continues to track the court decisions, legislation, and other developments closely for their potential ramifications for New Jersey's charitable community. We are committed to promoting policies that preserve the ability of the non-profit community to provide the programs and services that people need.

If you have questions or would like more information about the Center's involvement in this or any other non-profit issue, contact Linda Czipo at the Center (<https://www.njnonprofits.org/Contact.html>).